

# CALPINE CORP

## FORM 10-K (Annual Report)

Filed 03/15/01 for the Period Ending 12/31/00

Address	717 TEXAS AVENUE SUITE 1000 HOUSTON, TX 77002
Telephone	7138302000
CIK	0000916457
Symbol	CPN
SIC Code	4911 - Electric Services
Industry	Electric Utilities
Sector	Utilities
Fiscal Year	12/31

# CALPINE CORP

## FORM 10-K (Annual Report)

Filed 3/15/2001 For Period Ending 12/31/2000

Address	50 WEST SAN FERNANDO ST SAN JOSE, California 95113
Telephone	408-995-5115
CIK	0000916457
Industry	Electric Utilities
Sector	Utilities
Fiscal Year	12/31

---

---

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549**

**FORM 10-K**

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

FOR THE FISCAL YEAR ENDED DECEMBER 31, 2000

OR

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934

*COMMISSION FILE NUMBER 1-12079*

**CALPINE CORPORATION**  
(A DELAWARE CORPORATION)

I.R.S. EMPLOYER IDENTIFICATION NO. 77-0212977

50 WEST SAN FERNANDO STREET  
SAN JOSE, CALIFORNIA 95113  
TELEPHONE: (408) 995-5115

SECURITIES REGISTERED PURSUANT TO SECTION 12(b) OF THE ACT:

CALPINE CORPORATION COMMON STOCK, \$.001 PAR VALUE REGISTERED ON THE NEW YORK  
STOCK EXCHANGE

SECURITIES REGISTERED PURSUANT TO SECTION 12(g) OF THE ACT: NONE.

Indicate by check mark whether the Registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the Registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark if disclosure of delinquent filers pursuant to Item 405 of Regulation S-K is not contained herein, and will not be contained, to the best of Registrant's knowledge, in definitive proxy or information statements incorporated by reference in Part III of the Form 10-K or any amendment to this Form 10-K.

Aggregate market value of the voting stock held by non-affiliates of the Registrant as of March 13, 2001: \$13.1 billion. Common stock outstanding as of March 13, 2001: 284,794,073.

**DOCUMENTS INCORPORATED BY REFERENCE**

Portions of the documents listed below have been incorporated by reference into the indicated parts of this report, as specified in the responses to the item numbers involved.

relating to the 2001 Annual Meeting of  
Shareholders..... Part III (Items 10, 11, 12 and 13)

---

---

**FORM 10-K  
ANNUAL REPORT  
FOR THE YEAR ENDED DECEMBER 31, 2000**

**TABLE OF CONTENTS**

	PAGE
	----
PART I	
Item 1. Business.....	1
Item 2. Properties.....	22
Item 3. Legal Proceedings.....	24
Item 4. Submission of Matters To A Vote of Security Holders.....	24
PART II	
Item 5. Market for Registrant's Common Equity and Related Stockholder Matters.....	24
Item 6. Selected Financial Data.....	25
Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.....	25
Item 7a. Quantitative and Qualitative Disclosure about Market Risk...	25
Item 8. Financial Statements and Supplementary Data.....	25
Item 9. Changes in and Disagreements with Accountants on Accounting and Financial Disclosure.....	25
PART III	
Item 10. Executive Officers, Directors and Key Employees.....	25
Item 11. Executive Compensation.....	25
Item 12. Security Ownership of Certain Beneficial Owners and Management.....	26
Item 13. Certain Relationships and Related Transactions.....	26
PART IV	
Item 14. Exhibits, Financial Statement Schedules and Reports on Form 8-K.....	26
Signatures.....	32
Index to Consolidated Financial Statements and Other Information.....	F-1

## ITEM 1. BUSINESS

Except for historical financial information contained herein, the matters discussed in this annual report may be considered "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding the intent, belief or current expectations of Calpine Corporation ("the Company") and its management. Prospective investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties that could materially affect actual results such as, but not limited to, (i) changes in government regulations, including pending changes in California, and anticipated deregulation of the electric energy industry, (ii) commercial operations of new plants that may be delayed or prevented because of various development and construction risks, such as a failure to obtain financing and the necessary permits to operate or the failure of third-party contractors to perform their contractual obligations, (iii) cost estimates are preliminary and actual costs may be higher than estimated, (iv) the assurance that the Company will develop additional plants, (v) a competitor's development of a lower-cost generating gas-fired power plant, (vi) the risks associated with marketing and selling power from power plants in the newly competitive energy market, (vii) the risks associated with marketing and selling combustion turbine parts and components in the competitive combustion turbine parts market, (viii) the risks associated with engineering, designing and manufacturing combustion turbine parts and components, (ix) delivery and performance risks associated with combustion turbine parts and components attributable to production, quality control, suppliers and transportation, (x) the successful exploitation of an oil or gas resource that ultimately depends upon the geology of the resource, the total amount and cost to develop recoverable reserves, and operational factors relating to the extraction of natural gas, or (xi) those risks and uncertainties identified in Management's Discussion and Analysis -- Risk Factors included with the Consolidated Financial Statements in this report and incorporated into this Item 1 -- Business section. Prospective investors are also cautioned that the California energy market remains uncertain. The Company's management is working closely with a number of parties to resolve the current uncertainty. This is an ongoing process and, therefore, the outcome cannot be predicted. It is possible that any such outcome will include changes in government regulations, business and contractual relationships or other factors that could materially affect the Company. However, management believes that a final resolution will not have a material adverse impact on the Company. Prospective investors are also referred to the other risks identified from time to time in the Company's reports and registration statements filed with the Securities and Exchange Commission.

### OVERVIEW

Calpine is a leading independent power company engaged in the development, acquisition, ownership and operation of power generation facilities and the sale of electricity predominantly in the United States. We have experienced significant growth in all aspects of our business over the last five years. Currently, we own interests in 50 power plants having a net capacity of 5,849 megawatts. We also have 25 gas-fired projects under construction having a net capacity of 14,028 megawatts and have announced plans to develop 28 gas-fired projects (power plants and expansions of current facilities) with a net capacity of 15,142 megawatts. Upon completion of the projects under construction, we will have interests in 74 power plants located in 21 states having a net capacity of 19,877 megawatts. Of this total generating capacity, 96% will be attributable to gas-fired facilities and 4% will be attributable to geothermal facilities. As a result of our expansion program, our revenues, cash flow, earnings and assets have grown significantly over the last five years, as shown in the table below.

	1996	2000	COMPOUND ANNUAL GROWTH RATE	
	-----	-----	-----	
	(DOLLARS	IN	MILLIONS)	
Total Revenue.....	\$ 214.6	\$2,282.8	81%	
EBITDA.....	110.7	825.9	65%	
Net Income.....	18.7	323.5	104%	
Total Assets.....	1,031.4	9,737.3	75%	

Since our inception in 1984, we have developed substantial expertise in all aspects of the development, acquisition and operation of power generation facilities. We believe that the vertical integration of our extensive engineering, construction management, operations, fuel management, power marketing and financing capabilities provides us with a competitive advantage to successfully implement our acquisition and development program and has contributed to our significant growth over the past five years.

## **THE MARKET**

The power industry represents the third largest industry in the United States, with an estimated end-user market of over \$215 billion of electricity sales in 2000 produced by an aggregate base of power generation facilities with a capacity of approximately 860,000 megawatts. In response to increasing customer demand for access to low-cost electricity and enhanced services, new regulatory initiatives have been and are continuing to be adopted at both the state and federal level to increase competition in the domestic power generation industry. The power generation industry historically has been largely characterized by electric utility monopolies producing electricity from old, inefficient, high-cost generating facilities selling to a captive customer base. Industry trends and regulatory initiatives have transformed the existing market into a more competitive market where end-users purchase electricity from a variety of suppliers, including non-utility generators, power marketers, public utilities and others.

There is a significant need for additional power generating capacity throughout the United States, both to satisfy increasing demand, as well as to replace old and inefficient generating facilities. Due to environmental and economic considerations, we believe this new capacity will be provided predominantly by gas-fired facilities. We believe that these market trends will create substantial opportunities for efficient, low-cost power producers that can produce and sell energy to customers at competitive rates.

In addition, as a result of a variety of factors, including deregulation of the power generation market, utilities, independent power producers and industrial companies are disposing of power generation facilities. To date, numerous utilities have sold or announced their intentions to sell their power generation facilities and have focused their resources on the transmission and distribution business segments. Many independent producers operating a limited number of power plants are also seeking to dispose of their plants in response to competitive pressures, and industrial companies are selling their power plants to redeploy capital in their core businesses.

## **STRATEGY**

Our strategy is to continue our rapid growth by capitalizing on the significant opportunities in the power market, primarily through our active development and acquisition programs. In pursuing our growth strategy, we utilize our management and technical knowledge to implement a fully integrated approach to the acquisition, development and operation of power generation facilities. This approach uses our expertise in design, engineering, procurement, finance, construction management, fuel and resource production, acquisition, operations and power marketing, which we believe provides us with a competitive advantage. The key elements of our strategy are as follows:

- Development of new and expansion of existing power plants. We are actively pursuing the development of new, and expansion of both baseload and peaking capacity at our existing, highly efficient, low-cost, gas-fired power plants to replace old and inefficient generating facilities and meet the demand for new generation.
- Acquisition of power plants. Our strategy is to acquire power generating facilities that meet our stringent criteria, provide significant potential for revenue, cash flow and earnings growth and provide the opportunity to enhance the operating efficiencies of the plants.
- Enhancement of existing power plants. We continually seek to maximize the power generation and revenue potential of our operating assets and minimize our operating and maintenance expenses and fuel costs.

## RECENT DEVELOPMENTS

**Project Development and Construction.** On February 12, 2001, we announced that the Florida Public Service Commission approved a joint application filed by Calpine and Seminole Electric Cooperative, Inc. ("Seminole"), under which we will build the Osprey Energy Center to supply electric power to help meet Seminole's members' power needs.

**Issuance of Securities.** On February 15, 2001, we completed a public offering of \$1.15 billion of our 8 1/2% Senior Notes due 2011. The Senior Notes due 2011 bear interest at 8 1/2% per year, payable semi-annually, and mature on February 15, 2011.

**California Power Market.** The deregulation of the California power market has produced significant unanticipated results in the past year. The deregulation froze the rates that utilities can charge their retail and business customers in California and prohibited the utilities from buying power on a forward basis, while wholesale power prices were not subjected to limits.

In the past year, a series of factors have reduced the supply of power to California, which has resulted in wholesale power prices that have been significantly higher than historical levels. Several factors contributed to this increase. These included:

- significantly increased volatility in prices and supplies of natural gas;
- an unusually dry fall and winter in the Pacific Northwest, which reduced the amount of available hydroelectric power from that region (typically, California imports a portion of its power from this source);
- the large number of power generating facilities in California nearing the end of their useful lives, resulting in increased downtime (either for repairs or because they have exhausted their air pollution credits and replacement credits have become too costly to acquire on the secondary market); and
- continued obstacles to new power plant construction in California, which deprived the market of new power sources that could have, in part, ameliorated the adverse effects of the foregoing factors.

As a result of this situation, two major California utilities that are subject to the retail rate freeze, including Pacific Gas & Electric Company ("PG&E"), have faced wholesale prices that far exceed the retail prices they are permitted to charge. This has led to significant underrecovery of costs by these utilities; and they have been widely reported to be facing the prospect of insolvency. As a consequence, these utilities have defaulted under a variety of contractual obligations, including payment obligations to power generators. PG&E has defaulted on payment obligations to us. (For additional information, including information on certain receivables, see Notes 15 and 19 of the Notes to Consolidated Financial Statements.)

We have historically sold power to PG&E, which is one of the California utilities that is subject to the rate freeze. We are currently selling power to PG&E pursuant to long-term qualifying facility ("QF") contracts, which are subject to federal regulation under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") (16 U.S.C. sec. 796 et seq.). The QF contracts provide that the California Public Utilities Commission ("CPUC") has the authority to determine the appropriate utility "avoided cost" to be used to set energy payments for certain QF contracts, including those for all of our QF plants in California which sell power to PG&E. Section 390 of the California Public Utility Code provided QFs the option to elect to receive energy payments based on the California Power Exchange ("PX") market clearing price. In mid- 2000, our QF facilities elected this option and were paid based upon the PX zonal day ahead clearing price ("PX Price") from summer 2000 until January 19, 2001, when the PX ceased operating a day ahead market. Since that time, the CPUC has ordered that the price to be paid for energy deliveries by QFs electing the PX Price shall be based on a natural gas cost-based "transition formula." The CPUC has conducted proceedings (R. 99-11-022) to determine whether the PX Price was the appropriate price for the energy component upon which to base payments to QFs which had elected the PX based pricing option. It is possible that the CPUC could order a payment adjustment based on a different energy price determination. We believe that the PX Price was the appropriate price for energy payments but there can be no assurance that this will be the outcome of the CPUC proceedings. Legislation has recently been introduced in the California legislature

(SB 47X) that would establish a fixed price for the QF contracts for a 5 year period and would eliminate any PX Price adjustment prior to December 31, 2000. There can be no assurances that this legislation will be enacted.

We have continued to honor our contractual obligations to PG&E under our QF contracts. To date, we have refrained from pursuing our collection remedies with respect to PG&E's default, however, we have been actively involved with the California utilities, the California legislature, and other interested parties to develop legislation designed to stabilize energy prices through the application of a long-term energy pricing methodology (for a five-year period) in place of the short-term pricing methodology currently utilized under the QF contracts, as discussed above. We also expect further legislation to enable the California utilities to finance over a longer term the difference between the wholesale prices that have been paid and the retail prices they received during last fall and into this winter. We believe that this should enhance PG&E's ability to make payment of all past due amounts. However, management cannot predict the timing or ultimate outcome of the legislative process or the payment of amounts due under our contracts.

As this situation has deteriorated, California has taken steps to restore a predictable and reliable power market to the State. Recently, California adopted legislation permitting it to issue long-term revenue bonds to provide funding for wholesale purchases of power. The bonds will be repaid with the proceeds of payments by retail customers over time. The California Department of Water Resources ("DWR") sought bids for long-term power supply contracts. We successfully bid in that auction, and announced, as indicated below, that we have signed three significant long-term power supply contracts with DWR.

On February 7, 2001, we announced the signing of a 10-year, \$4.6 billion fixed-price contract with DWR to provide electricity to the State of California. We committed to sell up to 1,000 megawatts of electricity, with initial deliveries of 200 megawatts starting October 1, 2001, and increasing to 1,000 megawatts by January 1, 2004. This contract will continue through 2011. The electricity will be sold directly to DWR on a 24-hour, 7-day-a-week basis.

On February 28, 2001, we announced the signing of two long-term power sales contracts with DWR. Under the terms of the first contract, a \$5.2 billion, 10-year, fixed-price contract, we commit to sell up to 1,000 megawatts of generation. Initial deliveries are scheduled to begin July 1, 2001 with 200 megawatts and increase to 1,000 megawatts by as early as July 2002. Under the terms of the second contract, a 20-year contract totaling up to \$3.1 billion, we will supply DWR with up to 495 megawatts of peaking generation, beginning with 90 megawatts as early as August 2001, and increasing up to 495 megawatts as early as August 2002.

On March 13, 2001, we announced the signing of a two-month deal to provide 555 megawatts of electricity to DWR from our new South Point Energy Center during plant testing, effective immediately through May 15, 2001.

FERC Investigation into California Wholesale Markets. Beginning in May 2000, wholesale energy prices in the California markets increased to levels well above 1999 levels. In response, on June 28, 2000, the ISO Board of Governors reduced the price cap applicable to the ISO's wholesale energy and ancillary services markets from \$750/MWh to \$500/MWh. The ISO subsequently reduced the price cap to \$250/MWh on August 1, 2000. During this period, however, the California Power Exchange Corporation ("PX") maintained a separate price cap set at a much higher level applicable to the "day-ahead" and "day-of" markets administered by the PX. On August 23, 2000, the FERC denied a complaint filed August 2, 2000 by San Diego Gas & Electric Company ("SDG&E") that sought to extend the ISO's \$250 price cap to all California energy and ancillary service markets, not just the markets administered by the ISO. However, in its order denying the relief sought by SDG&E, the FERC instructed its staff to initiate an investigation of the California power markets and to report its findings to the FERC and held further hearing procedures in abeyance pending the outcome of this investigation.

On November 1, 2000, the FERC released a Staff Report detailing the results of the Staff investigation, together with an "Order Proposing Remedies for California Wholesale Markets" ("November 1 Order"). In the November 1 Order, the FERC found that the California power market structure and market rules were

seriously flawed, and that these flaws, together with short supply relative to demand, resulted in unusually high energy prices. The November 1 Order proposed specific remedies to the identified market flaws, including: (a) imposition of a so-called "soft" price cap at \$150/MWh to be applied to both the PX and ISO markets, which would allow bids above \$150/MWh to be accepted, but will subject such bids to certain reporting obligations requiring sellers to provide cost data and/or identify applicable opportunity costs and specifying that such bids may not set the overall market clearing price, (b) elimination of the requirement that the California utilities sell into and buy from the PX, (c) establishment of independent non-stakeholder governing boards for the ISO and the PX, and (d) establishment of penalty charges for scheduling deviations outside of a prescribed range. In the November 1 Order the FERC established October 2, 2000, the date 60 days after the filing of the SDG&E complaint, as the "refund effective date." Under the November 1 Order, rates charged for service after that date through December 31, 2002 will remain subject to refund if determined by the FERC not to be just and reasonable. While the FERC concluded that the Federal Power Act and prior court decisions interpreting that act strongly suggested that refunds would not be permissible for charges in the period prior to October 2, 2000, it noted that it was willing to explore proposals for equitable relief with respect to charges made in that period. All of the Company's receivables from PG&E relate to energy generated by QF facilities. Under FERC regulations, QF contracts are exempt from regulation under the Federal Power Act, which is the legislation that provides the authority for the FERC to compel refunds or frame other equitable relief with respect to the California wholesale markets. See "Government Regulation -- Federal Energy Regulation -- Federal Power Act Regulation." Therefore, the Company believes that any refund or other equitable remedy that the FERC may impose with respect to the California wholesale markets will not affect the Company's ability to pursue payment by PG&E of all past due amounts as described above.

On December 15, 2000, the FERC issued a subsequent order that affirmed in large measure the November 1 Order (the "December 15 Order"). Various parties have filed requests for administrative rehearing and for judicial review of aspects of the FERC's December 15 Order. The outcome of these proceedings, and the extent to which the FERC or a reviewing court may revise aspects of the December 15 Order or the extent to which these proceedings may result in a refund of or reduction in the amounts charged by the Company's subsidiaries for power sold in the ISO and PX markets, cannot be determined at this time.

### **DESCRIPTION OF FACILITIES**

At March 8, 2001, Calpine had interests in 50 power generation facilities representing 5,849 megawatts of net capacity. Of these 50 projects, 31 are gas-fired power plants with a net capacity of 4,999 megawatts, and 19 are geothermal power generation facilities with a net capacity of 850 megawatts. We also have 24 gas-fired projects and one project expansion currently under construction with a net capacity of 14,028 megawatts, and have announced the development of 21 additional power plants and seven project expansions with a net capacity of 15,142 megawatts. Each of the power generation facilities currently in operation produces electricity for sale to a utility or other third-party end user. Thermal energy produced by the gas-fired cogeneration facilities is sold to governmental and industrial users.

The gas-fired and geothermal power generation projects in which we have an interest produce electricity and thermal energy that are typically sold pursuant to long-term power sales agreements. Revenue from a power sales agreement usually consists of two components: energy payments and capacity payments. Energy payments are based on a power plant's net electrical output where payment rates may be determined by a schedule of prices covering a fixed number of years under the power sales agreement, after which payment rates are usually indexed to the fuel costs of the contracting utility or to general inflation indices. Capacity payments are based on a power plant's net electrical output and/or its available capacity. Energy payments are made for each kilowatt hour of energy delivered, while capacity payments, under certain circumstances, are made whether or not any electricity is delivered.

Upon completion of our projects under construction, we will provide operating and maintenance services for 69 of the 74 power plants in which we have an interest. Such services include the operation of power plants, geothermal steam fields, wells and well pumps, gas fields, gathering systems and gas pipelines. We also supervise maintenance, materials purchasing and inventory control, manage cash flow, train staff and prepare

operating and maintenance manuals for each power generation facility that we operate. As a facility develops an operating history, we analyze its operation and may modify or upgrade equipment or adjust operating procedures or maintenance measures to enhance the facility's reliability or profitability. These services are sometimes performed under the terms of an operating and maintenance agreement pursuant to which we are generally reimbursed for certain costs, paid an annual operating fee and may also be paid an incentive fee based on the performance of the facility. The fees payable to us are generally subordinated to any lease payments or debt service obligations of financing for the project.

In order to provide fuel for the gas-fired power generation facilities in which we have an interest, natural gas reserves are acquired or natural gas is purchased from third parties under supply agreements. We attempt to structure a gas-fired power facility's fuel supply agreement so that gas costs have a direct relationship to the fuel component of revenue energy payments. See "Properties" for further discussion of our gas reserves.

We currently hold interests in geothermal leaseholds in The Geysers that produce steam that is supplied to the power generation facilities owned by us for use in producing electricity.

Certain power generation facilities in which we have an interest have been financed primarily with project financing that is structured to be serviced out of the cash flows derived from the sale of electricity and thermal energy produced by such facilities and provides that the obligations to pay interest and principal on the loans are secured almost solely by the capital stock or partnership interests, physical assets, contracts and/or cash flow attributable to the entities that own the facilities. The lenders under non-recourse project financing generally have no recourse for repayment against us or any of our assets or the assets of any other entity other than foreclosure on pledges of stock or partnership interests and the assets attributable to the entities that own the facilities.

Substantially all of the power generation facilities in which we have an interest are located on sites which we own or are leased on a long-term basis. See "Properties."

Set forth below is certain information regarding our operating power plants, plants under construction, and announced development projects.

	NUMBER OF PLANTS	MEGAWATTS			
		BASELOAD CAPACITY	PEAKING CAPACITY	CALPINE NET INTEREST BASELOAD	CALPINE NET INTEREST PEAKING
In operation					
Geothermal power plants.....	19	850	850	850	850
Gas-fired power plants.....	31	4,866	5,916	4,007	4,999
Under construction					
New facilities.....	24	13,418	15,446	11,807	13,668
Expansion projects (one).....	--	--	360	--	360
Announced development					
New facilities.....	21	12,253	14,514	11,987	14,225
Expansion projects (seven).....	--	322	917	322	917
	95	31,709	38,003	28,973	35,019
	==	=====	=====	=====	=====

## OPERATING POWER PLANTS

POWER PLANT	STATE OR PROVINCE	BASELOAD CAPACITY (MW)	PEAKING CAPACITY (MW)	CALPINE INTEREST PERCENTAGE	CALPINE NET INTEREST BASELOAD (MW)	CALPINE NET INTEREST PEAKING (MW)	2000 GENERATION MWH
<b>GEOHERMAL POWER PLANTS</b>							
Sonoma County (12 plants).....	CA	512.0	512.0	100.0%	512.0	512.0	3,488,792
Lake County (2 plants).....	CA	145.0	145.0	100.0%	145.0	145.0	944,441
Calistoga.....	CA	73.0	73.0	100.0%	73.0	73.0	533,531
Sonoma.....	CA	53.0	53.0	100.0%	53.0	53.0	380,478
West Ford Flat.....	CA	27.0	27.0	100.0%	27.0	27.0	217,231
Bear Canyon.....	CA	20.0	20.0	100.0%	20.0	20.0	146,193
Aidlin.....	CA	20.0	20.0	100.0%	20.0	20.0	149,074
Total Geothermal Power Plants.....		850.0	850.0		850.0	850.0	5,859,740
<b>GAS-FIRED POWER PLANTS</b>							
Pasadena Power Plant.....	TX	751.0	787.0	100.0%	751.0	787.0	3,150,018
Broad River Energy Center.....	SC	--	541.0	100.0%	--	541.0	21,451
Hidalgo Energy Center.....	TX	502.0	502.0	78.5%	394.1	394.1	981,498
Texas City Power Plant.....	TX	465.0	471.0	100.0%	465.0	471.0	3,413,022
Clear Lake Power Plant.....	TX	335.0	412.0	100.0%	335.0	412.0	2,937,853
Rumford Power Plant.....	ME	237.0	251.0	100.0%	237.0	251.0	105,256
Tiverton Power Plant.....	RI	240.0	240.0	100.0%	240.0	240.0	292,798
Gordonsville Power Plant.....	VA	233.0	238.0	50.0%	116.5	119.0	119,287
Lockport Power Plant.....	NY	177.0	198.0	11.4%	20.1	22.5	186,826
DePere Energy Center.....	WI	--	180.0	100.0%	--	180.0	53,631
Morris Power Plant.....	IL	155.0	177.5	86.0%	134.0	146.4	535,323
Bayonne Power Plant.....	NJ	158.0	170.0	7.5%	11.9	12.8	105,277
Dighton Power Plant.....	MA	162.0	168.0	100.0%	162.0	168.0	839,746
Androscoggin Energy Center.....	ME	160.0	160.0	32.3%	51.7	51.7	53,979
Auburndale Power Plant.....	FL	143.0	153.0	100.0%	143.0	153.0	512,118
Grays Ferry Power Plant.....	PA	143.0	148.0	40.0%	57.2	59.2	417,485
Gilroy Power Plant.....	CA	112.0	131.0	100.0%	112.0	131.0	917,348
Pryor Power Plant.....	OK	109.0	124.0	80.0%	87.2	99.2	321,146
Sumas Power Plant.....	WA	120.0	122.0	50.0%	60.0	61.0	1,087,658
Parlin Power Plant.....	NJ	89.0	118.0	80.0%	71.2	94.4	347,002
King City Power Plant.....	CA	103.0	115.0	100.0%	103.0	115.0	914,807
Kennedy International Airport Power Plant("KIAC").....	NY	95.0	105.0	100.0%	95.0	105.0	231,404
Pittsburg Power Plant.....	CA	64.0	71.0	100.0%	64.0	71.0	438,444
Newark Power Plant.....	NJ	47.0	58.0	80.0%	37.6	46.4	271,164
Bethpage Power Plant.....	NY	52.0	53.7	100.0%	52.0	53.7	384,448
Greenleaf 1 Power Plant.....	CA	50.0	50.0	100.0%	50.0	50.0	379,205
Greenleaf 2 Power Plant.....	CA	50.0	50.0	100.0%	50.0	50.0	358,961
Stony Brook Power Plant.....	NY	36.0	40.0	100.0%	36.0	40.0	125,455
Watsonville Power Plant.....	CA	29.0	30.0	100.0%	29.0	30.0	219,516
Agnews Power Plant.....	CA	26.5	28.6	100.0%	26.5	28.6	113,798
Philadelphia Water Project.....	PA	22.0	23.0	66.4%	14.6	15.3	890
Total Gas-Fired Power Plants.....		4,865.5	5,915.8		4,006.6	4,999.3	19,836,814
Total Operating Power Plants.....		5,715.5	6,765.8		4,856.6	5,849.3	25,696,554

**PROJECTS UNDER CONSTRUCTION AND ANNOUNCED DEVELOPMENT**

POWER PLANT	POWER GENERATION TECHNOLOGY	STATE OR PROVINCE	BASELOAD CAPACITY (MW)	PEAKING CAPACITY (MW)	CALPINE INTEREST PERCENTAGE	CALPINE NET INTEREST BASELOAD (MW)	CALPINE NET INTEREST PEAKING (MW)
PROJECTS UNDER CONSTRUCTION							
Acadia Energy Center.....	Gas	LA	1,080.0	1,239.0	50.0%	540.0	619.5
Oneta Energy Center.....	Gas	OK	960.3	1,137.8	100.0%	960.3	1,137.8
Freestone Energy Center.....	Gas	TX	1,002.8	1,051.6	100.0%	1,002.8	1,051.6
Delta Energy Center.....	Gas	CA	798.0	874.0	50.0%	399.0	437.0
Baytown Power Plant.....	Gas	TX	704.0	834.0	100.0%	704.0	834.0
Decatur Energy Center.....	Gas	AL	659.0	794.0	100.0%	659.0	794.0
Morgan Energy Center.....	Gas	AL	660.0	790.0	100.0%	660.0	790.0
Magic Valley Generating Station...	Gas	TX	687.0	750.0	100.0%	687.0	750.0
Hermiston Power Project.....	Gas	OR	530.0	630.0	100.0%	530.0	630.0
Channel Energy Center.....	Gas	TX	519.0	628.0	100.0%	519.0	628.0
Aries Power Plant.....	Gas	MO	516.0	591.0	50.0%	258.0	295.5
Washington Parish Energy Center...	Gas	LA	490.0	577.0	100.0%	490.0	577.0
South Point Energy Center.....	Gas	AZ	526.0	555.0	100.0%	526.0	555.0
Los Medanos Energy Center.....	Gas	CA	493.0	555.0	100.0%	493.0	555.0
Sutter Power Plant.....	Gas	CA	516.0	547.0	100.0%	516.0	547.0
Lost Pines 1 Power Plant.....	Gas	TX	522.0	545.0	50.0%	261.0	272.5
Ontelaunee Energy Center.....	Gas	PA	511.0	541.0	100.0%	511.0	541.0
Westbrook Energy Center.....	Gas	ME	487.0	525.0	100.0%	487.0	525.0
RockGen Energy Center.....	Gas	WI	--	523.8	100.0%	--	523.8
Corpus Christi Energy Center.....	Gas	TX	522.7	522.7	100.0%	522.7	522.7
Carville Energy Center.....	Gas	LA	522.7	522.7	100.0%	522.7	522.7
Broad River Energy Center Expansion.....	Gas	SC	--	360.0	100.0%	--	360.0
Santa Rosa Energy Center.....	Gas	FL	252.0	252.0	100.0%	252.0	252.0
Hog Bayou Energy Center.....	Gas	AL	246.6	246.6	66.7%	164.5	164.5
Pine Bluff Energy Center.....	Gas	AR	213.3	213.3	66.7%	142.3	142.3
Total Projects Under Construction.....			13,418.4	15,805.5		11,807.3	14,027.9

POWER PLANT	POWER GENERATION TECHNOLOGY	STATE OR PROVINCE	BASELOAD CAPACITY (MW)	PEAKING CAPACITY (MW)	CALPINE INTEREST PERCENTAGE	CALPINE NET INTEREST BASELOAD (MW)	CALPINE NET INTEREST PEAKING (MW)
ANNOUNCED DEVELOPMENT							
Blue Heron Energy Center.....	Gas	FL	1,080.0	1,239.0	100.0%	1,080.0	1,239.0
Lawrence Energy Center.....	Gas	OH	850.0	1,100.0	100.0%	850.0	1,100.0
East Altamont Energy Center.....	Gas	CA	820.0	1,065.0	100.0%	820.0	1,065.0
Haywood Energy Center.....	Gas	TN	800.0	915.0	100.0%	800.0	915.0
Lone Oak Energy Center.....	Gas	MS	800.0	915.0	100.0%	800.0	915.0
Augusta Energy Center.....	Gas	GA	750.0	850.0	100.0%	750.0	850.0
Hillabee Energy Center.....	Gas	AL	710.0	770.0	100.0%	710.0	770.0
Fremont Energy Center.....	Gas	OH	550.0	700.0	100.0%	550.0	700.0
Wawayanda Energy Center.....	Gas	NY	530.0	630.0	100.0%	530.0	630.0
Otay Mesa Generating Project.....	Gas	CA	540.0	618.0	100.0%	540.0	618.0
Teayawa Energy Center.....	Gas	CA	530.0	608.0	100.0%	530.0	608.0
RiverGen Energy Center.....	Gas	WI	450.0	600.0	100.0%	450.0	600.0
Osprey Energy Center.....	Gas	FL	530.0	590.0	100.0%	530.0	590.0
Metcalfe Energy Center.....	Gas	CA	532.5	578.7	50.0%	266.3	289.4
Thompson Creek Energy Center.....	Gas	LA	500.0	575.0	100.0%	500.0	575.0
Columbia Energy Center.....	Gas	SC	500.0	550.0	100.0%	500.0	550.0
Hammond Energy Center.....	Gas	IN	500.0	550.0	100.0%	500.0	550.0
Mt. Vernon Energy Center.....	Gas	IN	522.7	522.7	100.0%	522.7	522.7
Towantic Energy Center.....	Gas	CT	508.0	508.0	100.0%	508.0	508.0
California Peakners (4 projects)...	Gas	CA	--	495.0	100.0%	--	495.0
Zion Energy Center.....	Gas	IL	--	330.0	100.0%	--	330.0
Calgary Energy Centre.....	Gas	AB	250.0	300.0	100.0%	250.0	300.0
Pine Bluff Energy Center Expansion.....	Gas	AR	246.6	246.6	100.0%	246.6	246.6
Auburndale Expansion.....	Gas	FL	--	100.0	100.0%	--	100.0
DePere Energy Center Expansion....	Gas	WI	75.0	75.0	100.0%	75.0	75.0
Total Announced Development.....			12,574.8	15,431.0		12,308.6	15,141.7

## PROJECT DEVELOPMENT AND ACQUISITIONS

We are actively engaged in the development and acquisition of power generation projects. We have historically focused principally on the development and acquisition of interests in gas-fired and geothermal power projects, although we also consider projects that utilize other power generation technologies. We have significant expertise in a variety of power generation technologies and have substantial capabilities in each aspect of the development and acquisition process, including design, engineering, procurement, construction management, fuel and resource acquisition and management, power marketing, financing and operations.

### ACQUISITIONS

We will consider the acquisition of an interest in operating projects as well as projects under development where we would assume responsibility for completing the development of the project. In the acquisition of power generation facilities, we generally seek to acquire an ownership interest in facilities that offer us attractive opportunities for revenue and earnings growth, and that permit us to assume sole responsibility for the operation and maintenance of the facility. In evaluating and selecting a project for acquisition, we consider a variety of factors, including the type of power generation technology utilized, the location of the project, the terms of any existing power or thermal energy sales agreements, gas supply and transportation agreements and wheeling agreements, the quantity and quality of any geothermal or other natural resource involved, and the

actual condition of the physical plant. In addition, we assess the past performance of an operating project and prepare financial projections to determine the profitability of the project. We generally seek to obtain a significant equity interest in a project and to obtain the operation and maintenance contract for that project.

## **PROJECT DEVELOPMENT**

The development of power generation projects involves numerous elements, including evaluating and selecting development opportunities, designing and engineering the project, obtaining power sales agreements, acquiring necessary land rights, permits and fuel resources, obtaining financing and managing construction. We intend to focus primarily on development opportunities where we are able to capitalize on our expertise in implementing an innovative and fully integrated approach to project development in which we control the entire development process. Utilizing this approach, we believe that we are able to enhance the value of our projects throughout each stage of development in an effort to maximize our return on investment.

We are pursuing the development of highly efficient, low-cost power plants to provide competitively priced and environmentally friendly power to electricity markets. We intend to sell all or a portion of the power generated by such plants into the competitive market through a portfolio of short, medium and long-term power sales agreements.

### **Projects Under Construction**

**Acadia Energy Center.** On March 6, 2000, we announced that we entered into a partnership agreement with Cleco Midstream Resources, an affiliate of Pineville, Louisiana-based Cleco Corporation, to participate in the Acadia Energy Center. The partners plan to build, own and operate the 1,239 megawatt natural gas-fired energy center near Eunice, Louisiana. We have a 620 megawatt net interest in this facility. Construction began in mid 2000 and commercial operation for the energy center is expected in May 2002. On October 20, 2000, we jointly announced with Cleco Corporation the signing of a 20-year contract with Aquila Energy, a wholly owned subsidiary of UtiliCorp United, for 580 megawatts of the output of the jointly owned Acadia Energy Center. Under terms of a tolling agreement, starting July 1, 2002, Aquila Energy will supply the natural gas needed to generate 580 megawatts of electricity and will own and market the produced power.

**Oneta Energy Center.** On July 20, 2000, we completed the acquisition of the development rights to construct, own and operate the Oneta Energy Center from Panda Energy, International, Inc. Oneta is a 1,138 megawatt natural gas-fired energy center under construction in Coweta, Oklahoma, southeast of Tulsa. We anticipate that the Oneta Energy Center will commence commercial operation in July 2002.

**Freestone Energy Center.** On June 15, 2000, we announced that we acquired the rights to develop, build, own and operate the Freestone Energy Center from New Orleans, Louisiana-based Entergy Corp. Freestone is a 1,052 megawatt natural gas-fired energy center located in Freestone County, Texas, near Fairfield, about 80 miles southeast of Dallas. Construction commenced in August 2000 and commercial operation is expected to begin in the summer of 2002.

**Delta Energy Center.** In February 1999, we, together with Bechtel Enterprises, announced plans to develop an 874 megawatt gas-fired cogeneration energy center in Pittsburg, California in which we have a 437 megawatt net interest. The Delta Energy Center will provide steam and electricity to the nearby Dow Chemical Company facility and market the excess electricity into the California power market. Construction began in April 2000 and we expect commercial operation to commence in May 2002.

**Baytown Power Plant.** In October 1999, we announced plans to build, own and operate an 834 megawatt gas-fired cogeneration power plant at Bayer Corporation's chemical facility in Baytown, Texas. The Baytown Power Plant will supply Bayer with all of its electric and steam requirements for 20 years and market excess electricity into the Texas wholesale power market. Construction commenced in early 2000 and commercial operation is expected to commence in late 2001.

**Decatur Energy Center.** On February 2, 2000, we announced plans to build, own and operate a 794 megawatt gas-fired cogeneration energy center at Solutia Inc.'s Decatur, Alabama chemical facility. Under a 20-year agreement, Solutia will lease a portion of the facility to meet its electricity needs and

purchase its steam requirements from us. Excess power from the facility will be sold into the Southeastern Wholesale Power Market under a variety of short, medium and long-term contracts. We will also build a new intrastate natural gas pipeline to fuel the energy center. Construction began in September 2000 and commercial operation is expected to commence in mid 2002.

**Morgan Energy Center.** On June 27, 2000, we announced plans to build, own and operate a natural gas-fired cogeneration energy center at the BP Amoco chemical facility in Decatur, Alabama. The proposed Morgan Energy Center will generate approximately 790 megawatts of electricity in addition to supplying steam for BP Amoco's facility. Construction began in September 2000 and we expect commercial operation to commence in December 2002.

**Magic Valley Generating Station.** In May 1998, we announced that we signed a 20-year power sales agreement to provide electricity to the Magic Valley Electric Cooperative, Inc. of Mercedes, Texas beginning in 2001. The power will be supplied by our Magic Valley Generating Station, a 750 megawatt natural gas-fired generating station under construction in Edinburg, Texas. Magic Valley Electric Cooperative Inc., a 51,000 member non-profit electric cooperative, initially will purchase from 250 to 400 megawatts of capacity, with an option to purchase additional capacity. We are marketing additional capacity to other wholesale customers, initially targeting south Texas. Construction commenced in the spring of 1999 with commercial operation scheduled to begin in the second quarter of 2001.

**Hermiston Power Project.** On January 28, 2000, we acquired the development rights for the Hermiston Power Project, a 630 megawatt gas-fired cogeneration power facility located near Hermiston, Oregon. Construction commenced in the summer of 2000 and we anticipate that commercial operation of the facility will commence in mid 2002.

**Channel Energy Center.** In October 1999, we announced we had executed a letter of intent that gave us the exclusive right to negotiate with LYONDELL-CITGO Refining LP to build, own and operate a 628 megawatt gas-fired cogeneration energy center at the LYONDELL-CITGO refinery in Houston, Texas. The Channel Energy Center will supply all of the electricity and steam requirements for 20 years to the refinery. Construction began in early 2000 and commercial operation is expected to begin in the summer of 2001.

**Aries Power Plant.** On January 14, 2000, we acquired a 296 megawatt net interest in the Aries Power Plant, a 591 megawatt natural gas-fired plant currently under construction near Pleasant Hill, Missouri, from a subsidiary of Aquila Energy Corporation. Construction started in the fall of 1999 and commercial operation is scheduled to begin in late 2001. The majority of the facility's output will be sold to Missouri Public Service through May 2005. Thereafter, power will be sold into the Southwest Power Pool and the Southeast Electric Reliability Counsel regional power markets.

**Washington Parish Energy Center.** On January 26, 2001, we announced the acquisition of the development rights from Cogentrix, an independent power company based in North Carolina, for the 577 megawatt Washington Parish Energy Center, located near Bogalusa, Louisiana. We are managing construction of the facility, which began in January 2001, and will operate the facility when it enters commercial operation in 2002.

**South Point Power Plant.** In May 1998, we announced that we had entered into a long-term lease agreement with the Fort Mojave Indian Tribe to develop a 555 megawatt gas-fired power plant on the tribe's reservation in Mojave County, Arizona. Construction commenced in August 1999 and we anticipate that the South Point Power Plant will begin operation in May 2001. In accordance with a five-year power sales agreement with the Imperial Irrigation District ("IID"), we will deliver 150 megawatts of electricity from the South Point Power Plant to IID's southern California electric customers beginning in May 2002. Thereafter, the electricity generated will be sold to the Arizona, Nevada and California power markets.

**Los Medanos Energy Center.** In September 1999, we finalized an agreement with Enron North America for the development rights of a 555 megawatt gas-fired energy center in Pittsburg, California. We expect that the Los Medanos Energy Center will be California's second newly constructed power facility since deregulation of the California power market in 1998. Construction commenced in September 1999 and

commercial operation is expected to begin in the summer of 2001. The facility will provide electricity and industrial steam totaling approximately 65 megawatts to USS-POSCO Industries under a long-term agreement. The remaining output will be sold into the California power market.

**Sutter Power Plant.** In February 1997, we announced plans to develop a 547 megawatt gas-fired combined cycle power plant in Sutter County, in northern California. The Sutter Power Plant is expected to be California's first newly constructed power plant since deregulation of the California power market in 1998. Construction commenced in the third quarter of 1999 and the Sutter Power Plant is expected to begin commercial operation in the summer of 2001. In accordance with an agreement we entered into with the Sacramento Municipal Utility District ("SMUD") on January 18, 2000, the Sutter Power Plant will provide 150 megawatts of electricity to SMUD's customer base for a five-year period beginning with the plant's startup.

**Lost Pines 1 Power Plant.** In September 1999, we entered into definitive agreements with Austin, Texas-based GenTex Power Corporation, the power generation affiliate of the Lower Colorado River Authority, to build a 545 megawatt gas-fired power plant in Bastrop County, Texas. We have a 273 megawatt net interest in this facility. Construction began in October 1999 and commercial operation is expected to begin in mid 2001. Upon commercial operation, GenTex will take half of the electrical output for sale to its customers, and we will market the remaining energy to the Texas power market.

**Ontelaunee Energy Center.** In June 1999, we announced that we had acquired the rights to develop a 541 megawatt gas-fired energy center in Ontelaunee Township in eastern Pennsylvania. Construction began in July 2000 and commercial operation is estimated to commence in the spring of 2002. Output from the Ontelaunee Energy Center will be sold into the Pennsylvania/New Jersey/Maryland ("PJM") power pool and pursuant to bilateral contracts.

**Westbrook Energy Center.** In February 1999, we acquired from Genesis Power Corporation, a New England based power developer, the development rights to a 525 megawatt gas-fired combined cycle energy center located in Westbrook, Maine. Construction commenced in early 1999 and commercial operation is scheduled for the spring of 2001. It is anticipated that the output generated by the Westbrook Energy Center will be sold into the New England power market and to wholesale and retail customers in the northeastern United States.

**RockGen Energy Center.** The 524 megawatt RockGen Energy Center is located in the town of Christiana in Dane County, Wisconsin. Construction began in April 2000 and we expect commercial operation to commence in July 2001. On August 10, 1998, IES Utilities, Wisconsin Power and Light Company and Interstate Power Company (collectively the "Alliant Utilities") entered into a long-term power purchase agreement with the RockGen Energy Center. In January 1999, the RockGen Energy Center also entered into a long-term tolling arrangement with Duke Energy Trading and Marketing, L.L.C.

**Corpus Christi Energy Center.** The Corpus Christi Energy Center is a 523 megawatt combined cycle, cogeneration energy center located in Corpus Christi, Texas. Construction began in June 2000 and we expect commercial operation to begin in June 2002. In March 1999, a long-term energy services agreement was executed with CITGO Refining and Chemicals Company, L.P. ("CITGO") under which CITGO will purchase from the Corpus Christi Energy Center all of the steam and electricity that it requires but does not internally generate at its Corpus Christi refinery.

**Carville Energy Center.** The Carville Energy Center is a 523 megawatt combined cycle, cogeneration energy center located in St. Gabriel, Louisiana. Construction of the facility began in October 2000 and commercial operation is expected to commence in May 2002. On December 28, 1999, a long-term energy services agreement was executed with Cos-Mar Inc. ("Cos-Mar") under which Cos-Mar will purchase from the Carville Energy Center all of the steam and electric power (if allowed under applicable regulations) that it requires but does not internally generate at its St. Gabriel chemical plant.

**Broad River Energy Center Expansion.** This expansion, the second phase of construction of the Broad River Energy Center, involves the installation of two additional combustion turbines capable of producing an additional 360 megawatts of peaking power. Construction is expected to be completed in the spring of 2001.

On November 15, 2000, we announced that our wholly owned subsidiary, SkyGen Energy LLC ("SkyGen"), entered into an agreement to supply CP&L Energy ("CP&L") additional power produced from the Broad River Energy Center Expansion project.

**Santa Rosa Energy Center.** The Santa Rosa Energy Center is a 252 megawatt combined cycle, energy center located near Pensacola, Florida. Construction began in September 2000 and commercial operation is expected to commence in September 2002.

**Hog Bayou Energy Center.** We have a 165 megawatt net interest in this 247 megawatt gas-fired combined cycle facility located in Mobile, Alabama. Construction of the facility began in July 1999 and commercial operation is expected to commence in June 2001.

**Pine Bluff Energy Center.** We have a 142 megawatt interest in this 213 megawatt steam and electric power cogeneration energy center near Pine Bluff, Arkansas. Construction began in September 1999 and we anticipate the facility will commence commercial operation in May 2001. On November 25, 1998, International Paper entered into a long-term energy services agreement under which International Paper will purchase from the Pine Bluff Energy Center all of the steam and electric power (if allowed under applicable regulations) that it requires but does not internally generate at its Pine Bluff mill.

### **Announced Development Projects**

**Blue Heron Energy Center.** On January 11, 2000 we announced plans to build, own and operate a 1,239 megawatt gas-fired cogeneration energy center in Indian River County, Florida outside of Vero Beach. We anticipate that construction will commence in early 2002 and that commercial operation of the facility will commence in mid 2004.

**Lawrence Energy Center.** On October 23, 2000, we announced that we entered into a project development agreement to build, own and operate a 1,100 megawatt natural gas-fired energy center to be located on the Ohio River in Hamilton Township in Lawrence County, Ohio. The proposed Lawrence Energy Center will represent a \$510 million investment, with a target commercial operation date of December 2004.

**East Altamont Energy Center.** On December 12, 2000, we announced that we are considering plans to develop and operate a new energy-efficient electric generating facility, the proposed \$550 million East Altamont Energy Center, located in the northeastern corner of Alameda County in northern California. We are preparing technical studies for the proposed 1,065 megawatt facility. Upon completion of licensing through the California Energy Commission ("CEC"), construction would begin in June 2002, with commercial operation beginning in June 2004.

**Haywood Energy Center.** On July 19, 2000, we announced we will develop, construct and own a natural gas-fired, combined cycle power generation facility in Haywood County, Tennessee. The 915 megawatt facility is scheduled to begin commercial operation in late 2004.

**Lone Oak Energy Center.** On February 22, 2000, we announced plans to build, own and operate the Lone Oak Energy Center, a 915 megawatt gas-fired cogeneration facility in Lowndes County, Mississippi. We anticipate that construction will commence in mid 2001 and that commercial operation of the facility will commence in the spring of 2003.

**Augusta Energy Center.** On January 17, 2001, our wholly owned subsidiary, SkyGen, announced plans to build, own and operate an 850 megawatt natural gas-fired cogeneration energy center in Augusta, Georgia. The proposed Augusta Energy Center will supply energy to DSM Chemicals North America, Inc. for use in its production processes. Construction is expected to begin in the third quarter of 2001, with an estimated commercial operation date of May 2003.

**Hillabee Energy Center.** On February 24, 2000, we announced plans to build, own and operate the Hillabee Energy Center, a 770 megawatt gas-fired cogeneration facility in Tallapoosa County, Alabama. We anticipate that construction will commence in mid 2001 and that commercial operation of the facility will commence in mid 2003.

Fremont Energy Center. On May 23, 2000, we announced the acquisition of development rights to build, own and operate a 700 megawatt gas-fired facility to be located near Fremont, Ohio. Construction is scheduled to begin in mid 2001 and we expect commercial operation to commence in mid 2003.

Wawayanda Energy Center. On March 23, 2000, we announced plans to build, own and operate the Wawayanda Energy Center, a 630 megawatt gas-fired facility to be located near Middletown, New York. We anticipate that construction will begin in early 2002 and commercial operation will begin in early 2004.

Otay Mesa Generating Project. On December 18, 2000, we announced with PG&E Corporation an agreement under which we will acquire the rights to construct the Otay Mesa Generating Project in San Diego County. In accordance with the terms of the agreement, we will build, own and operate the 618 megawatt generating facility, and PG&E Corporation's National Energy Group will contract for up to 250 megawatts of the project's output. Construction is expected to begin in the fall of 2001 and commercial operation is scheduled for the fall of 2003.

Teayawa Energy Center. On June 29, 2000, we announced that we secured the rights to develop, build, own and operate the Teayawa Energy Center, a 608 megawatt natural gas-fired power generating facility near the town of Thermal in Riverside County, California through a development agreement with Adair International Oil and Gas, Inc. The Teayawa Energy Center will be sited on the Torres Martinez Desert Cahuilla Indians' land through a long-term lease agreement with the Torres Martinez. Construction is scheduled to begin in early 2002 and commercial operation is expected in early 2004.

RiverGen Energy Center. Our proposed 600 megawatt RiverGen Energy Center will be located near Beloit, Wisconsin. Construction of the RiverGen Energy Center is expected to begin during the fourth quarter of 2001, with commercial operation starting in late 2003. On February 13, 2001, we announced that our wholly owned subsidiary, SkyGen Energy LLC, entered into a ten-year agreement to supply Wisconsin Power & Light Company 453 megawatts of electric capacity and energy from the proposed RiverGen Energy Center.

Osprey Energy Center. On January 11, 2000, we announced plans to build, own and operate the Osprey Energy Center, a 590 megawatt gas-fired cogeneration energy center near the city of Auburndale, Florida. On February 12, 2001, the Florida Public Service Commission approved the application for the facility, which will be built adjacent to our existing power facility, the Auburndale Power Plant. We anticipate that construction will commence in the fall of 2001 and commercial operation of the facility will commence in the fall of 2003. In accordance with an agreement we entered into with Tampa, Florida-based Seminole, the Osprey Energy Center will supply electric power to help meet Seminole's member systems' power needs for a period of 17 years beginning in June 2003.

Metcalf Energy Center. In February 1999, we, together with Bechtel Enterprises, announced plans to develop, own and operate a 579 megawatt gas-fired cogeneration energy center in San Jose, California. We have a 289 megawatt net interest in this facility. The CEC is currently considering whether to override a November 2000 vote by the San Jose City Council denying a request to change the zoning designation of the land at the proposed site. We cannot predict at this time whether the CEC will in fact override this vote. If the CEC does elect to override this vote, we expect the CEC review, licensing and public hearing process would be completed in mid 2001. We would then anticipate that construction would commence, subject to any further delays, and that commercial operation of the facility would commence in late 2003. We plan to sell the electricity generated by the Metcalf Energy Center into the California power market.

Thompson Creek Energy Center. The Thompson Creek Energy Center is a 575 megawatt combined cycle, cogeneration project located in Louisiana. We expect construction to begin in late 2001 and anticipate that the facility will commence commercial operation in late 2003.

Columbia Energy Center. The Columbia Energy Center is a 550 megawatt combined cycle cogeneration project located in Columbia, South Carolina. We expect construction will commence in June 2001 and commercial operation will begin in May 2003. On August 15, 2000, a long-term energy services agreement was executed with Eastman Chemical Company ("Eastman") under which Eastman will purchase from the Columbia Energy Center all of the steam and electric power (if allowed under applicable regulations) that it requires but does not internally generate at its Columbia chemical plant.

Hammond Energy Center. The Hammond Energy Center is a 550 megawatt facility to be located in Indiana. Construction is scheduled to begin in late 2001 and commercial operation is expected in late 2003.

Mt. Vernon Energy Center. The Mt. Vernon Energy Center is a 523 megawatt facility to be located in Indiana. Construction is scheduled to begin in late 2001 and commercial operation is expected to commence in late 2003.

Towantic Energy Center. In November 1999, we completed the acquisition of development rights to build, own and operate the Towantic Energy Center. The Towantic Energy Center is a 508 megawatt gas-fired cogeneration plant located in Oxford, Connecticut. This power plant will market its electricity via bilateral contracts into the New England region. In February 2000, a town-wide referendum in the Town of Oxford, Connecticut approved the sale of the town-owned land for the Towantic Energy Center. Construction is estimated to commence in mid 2002 and commercial operation is expected in March 2004.

California Peakers (4 projects). Eleven GE LM6000 turbines will be installed at four of our operating gas-fired power plants in California to increase peaking capacity by a total of 495 megawatts. Six turbines will be installed at the Gilroy Power Plant, three at the Watsonville Power Plant, one at the Greenleaf 2 Power Plant and one at the King City Power Plant.

Zion Energy Center. The Zion Energy Center is a 330 megawatt simple cycle facility located in Zion, Illinois. Construction is scheduled to begin in July 2001 with commercial operation expected to commence in April 2002. In December 2000, a contract was executed for the long-term sale of capacity from the Zion Energy Center.

Calgary Energy Centre. On April 20, 2000, we announced plans to construct the Calgary Energy Centre. Scheduled to begin commercial operation in early 2003, the 300 megawatt combined cycle, natural gas-fired facility was the first independent power project announced in the Calgary area, and represents our first investment in the Canadian power industry.

Pine Bluff Energy Center Expansion. Construction on this 247 megawatt expansion of the Pine Bluff Energy Center is expected to commence in September 2001 and operation is anticipated to begin in September 2003.

Auburndale Expansion. On July 6, 2000, we announced the addition of 100 megawatts of peaking capacity to the natural gas-fired, cogeneration facility located in Auburndale, Florida. Construction is scheduled to begin in October 2001 with commercial operation expected to commence in early 2002.

DePere Energy Center Expansion. This second phase of construction of the DePere Energy Center will convert the DePere, Wisconsin facility from a 180 megawatt simple cycle gas-fired combustion turbine to a 255 megawatt combined cycle cogeneration system. The expansion is expected to be complete by January 2004. All electric capacity and energy will be sold to the Wisconsin Public Service Corporation under a 25-year power purchase agreement. Nicolet Paper Company, an affiliate of International Paper Company, will purchase the cogenerated steam.

## **OIL AND GAS PROPERTIES**

Montis Niger. In January 1997, we purchased Montis Niger, Inc., a gas production and pipeline company operating primarily in the Sacramento Basin in northern California, which we subsequently renamed Calpine Gas Company. As of December 31, 2000, Calpine Gas Company owned proven natural gas reserves, leasehold acreage and operated an 80-mile pipeline delivering gas to our Greenleaf 1 and 2 Power Plants. We currently supply the majority of the fuel requirements for the Greenleaf 1 and 2 Power Plants.

Calpine Natural Gas Company. In October 1999, we purchased Sheridan Energy, Inc., a natural gas exploration and production company operating in northern California and the Gulf Coast region, which we subsequently renamed Calpine Natural Gas Company ("CNGC"). CNGC's oil and gas properties are primarily natural gas and are located in strategic markets where we are developing low-cost natural gas supplies and proprietary pipeline systems in support of our natural gas-fired power plants.

Vintage. In December 1999, we completed the acquisition of Vintage Petroleum, Inc.'s ("Vintage") interest in the Rio Vista Gas Unit and related areas, representing primarily natural gas reserves located in the Sacramento Basin in northern California. As a result of this acquisition and the Sheridan Energy, Inc. ("Sheridan") acquisition, we own a 99.5% working interest in the Rio Vista Gas Unit and certain development acreage in northern California.

Western. On February 4, 2000, we acquired 100% of the stock of Western Gas Resources California ("Western") from Western Gas Resources, Inc. Western's assets include the 130-mile Steelhead natural gas pipeline and the remaining interest in the Sacramento River Gas System natural gas pipeline, now 100% owned by us.

Gulf of Mexico. In June 2000, we acquired an interest in the East Cameron, High Island and South Pelto fields in the Gulf of Mexico which includes 10 producing wells and 5 drilling locations enhanced with 3-D seismic, one of which has already been successfully drilled.

Calpine Canada Natural Gas, Ltd. On July 5, 2000, we purchased Calgary-based Quintana Minerals Canada Corp. ("QMCC"), a natural gas exploration and production company, whose reserves are located in British Columbia, Alberta and Saskatchewan provinces in Canada. We subsequently changed its name to Calpine Canada Natural Gas, Ltd. ("CCNG"). The assets include interests in 1,300 wells.

Additionally, in November 2000, we acquired TriGas Exploration Inc. ("TriGas"), of Calgary, Alberta, an exploration company focused on developing and producing gas reserves in south-central Alberta. We subsequently merged the company into CCNG. The assets include an interest in 74 producing wells located in the Acme, Lone Pine, Lone Pine South and Irricana fields, 48,000 net acres of undeveloped lands, two compression facilities, a 26.6% working interest in the Crossfield gas processing plant located near the fields, and a majority interest in 63 miles of pipeline that conduct the gas to two nearby gas-fired power generation facilities.

Colorado and Gulf Coast. In July 2000, we acquired natural gas assets in the Piceance Basin, Colorado and onshore Gulf Coast from a privately-held Houston, Texas-based company. The assets include 126 producing wells, 79,000 acres of undeveloped lands, and 195 potential drilling locations with historical success rates of over 90 percent.

Encal Energy Ltd. ("Encal"). On February 8, 2001, we announced our plans to acquire all of the common shares of Encal, a Calgary, Alberta-based natural gas and petroleum exploration and development company, through a stock-for-stock exchange in which Encal shareholders will receive Cdn. \$12.00 per share in Calpine common equivalent shares based on an exchange ratio to be determined prior to closing. The aggregate value of the transaction, for which we expect to use pooling of interests accounting, is approximately \$1.2 billion, including the assumed indebtedness of Encal. Upon completion of the acquisition, we will gain approximately 1.0 trillion cubic feet equivalent of proved and provable natural gas resources, net of royalties. This transaction also provides access to firm gas transportation capacity from western Canada to California and the eastern U.S., and an accomplished management team capable of leading our business expansion in Canada. With the addition of Encal's assets, which currently produce approximately 230 million cubic feet of gas equivalent ("mmcf") per day, net of royalties, our net production is expected to increase to 390 mmcf per day in North America, enough to fuel approximately 2,300 megawatts of our power fleet. We expect to close this transaction during the second quarter of 2001.

## **GOVERNMENT REGULATION**

We are subject to complex and stringent energy, environmental and other governmental laws and regulations at the federal, state and local levels in connection with the development, ownership and operation of our energy generation facilities. Federal laws and regulations govern transactions by electrical and gas utility companies, the types of fuel which may be utilized by an electric generating plant, the type of energy which may be produced by such a plant and the ownership of a plant. State utility regulatory commissions must approve the rates and, in some instances, other terms and conditions under which public utilities sell at retail electricity that they have purchased from independent producers. Under certain circumstances where specific

exemptions are otherwise unavailable, state utility regulatory commissions may have broad jurisdiction over non-utility electric power plants. Energy producing projects also are subject to federal, state and local laws and administrative regulations which govern the emissions and other substances produced, discharged or disposed of by a plant and the geographical location, zoning, land use and operation of a plant. Applicable federal environmental laws typically have both state and local enforcement and implementation provisions. These environmental laws and regulations generally require that a wide variety of permits and other approvals be obtained before the commencement of construction or operation of an energy-producing facility and that the facility then operate in compliance with such permits and approvals.

## **FEDERAL ENERGY REGULATION**

### **PURPA**

The enactment of the PURPA and the adoption of regulations thereunder by the Federal Energy Regulatory Commission ("FERC") provided incentives for the development of cogeneration facilities and small power production facilities (those utilizing renewable fuels and having a capacity of less than 80 megawatts).

A domestic electricity generating project must be a QF under FERC regulations in order to take advantage of certain rate and regulatory incentives provided by PURPA. PURPA exempts owners of QFs from the Public Utility Holding Company Act of 1935, as amended ("PUHCA"), and exempts QFs from most provisions of the Federal Power Act (the "FPA") and, except under certain limited circumstances, state laws concerning rate or financial regulation. These exemptions are important to us and our competitors. We believe that each of the electricity generating projects in which we own an interest and which operates as a QF power producer currently meets the requirements under PURPA necessary for QF status.

PURPA provides two primary benefits to QFs. First, QFs generally are relieved of compliance with extensive federal and state regulations that control the financial structure of an electric generating plant and the prices and terms on which electricity may be sold by the plant. Second, the FERC's regulations promulgated under PURPA require that electric utilities purchase electricity generated by QFs at a price based on the purchasing utility's "avoided cost," and that the utility sell back-up power to the QF on a non-discriminatory basis. The term "avoided cost" is defined as the incremental cost to an electric utility of electric energy or capacity, or both, which, but for the purchase from QFs, such utility would generate for itself or purchase from another source. The FERC regulations also permit QFs and utilities to negotiate agreements for utility purchases of power at rates lower than the utility's avoided costs. While public utilities are not explicitly required by PURPA to enter into long-term power sales agreements, PURPA helped to create a regulatory environment in which it has been common for long-term agreements to be negotiated.

In order to be a QF, a cogeneration facility must produce not only electricity, but also useful thermal energy for use in an industrial or commercial process for heating or cooling applications in certain proportions to the facility's total energy output and must meet certain energy efficiency standards. A geothermal facility may qualify as a QF if it produces less than 80 megawatts of electricity. Finally, a QF (including a geothermal QF or other qualifying small power producer) must not be controlled or more than 50% owned by one or more electric utilities or by most electric utility holding companies, or one or more subsidiaries of such a utility or holding company or any combination thereof.

We endeavor to develop our projects, monitor compliance by the projects with applicable regulations and choose our customers in a manner which minimizes the risks of any project losing its QF status. Certain factors necessary to maintain QF status are, however, subject to the risk of events outside our control. For example, loss of a thermal energy customer or failure of a thermal energy customer to take required amounts of thermal energy from a cogeneration facility that is a QF could cause the facility to fail requirements regarding the level of useful thermal energy output. Upon the occurrence of such an event, we would seek to replace the thermal energy customer or find another use for the thermal energy which meets PURPA's requirements, but no assurance can be given that this would be possible.

If one of the facilities in which we have an interest should lose its status as a QF, the project would no longer be entitled to the exemptions from PUHCA and the FPA. This could also trigger certain rights of termination under the facility's power sales agreement, could subject the facility to rate regulation as a public utility under the FPA and state law and could result in us inadvertently becoming an electric utility holding company by owning more than 10% of the voting securities of, or controlling, a facility that would no longer be exempt from PUHCA. This could cause all of our remaining projects to lose their qualifying status, because QFs may not be controlled or more than 50% owned by such electric utility holding companies. Loss of QF status may also trigger defaults under covenants to maintain QF status in the projects' power sales agreements, steam sales agreements and financing agreements and result in termination, penalties or acceleration of indebtedness under such agreements such that loss of status may be on a retroactive or a prospective basis.

Under the Energy Policy Act of 1992, if a facility can be qualified as an exempt wholesale generator ("EWG"), meaning that all of its output is sold for resale rather than to end users, it will be exempt from PUHCA even if it does not qualify as a QF. Therefore, another response to the loss or potential loss of QF status would be to apply to have the project qualified as an EWG. However, assuming this changed status would be permissible under the terms of the applicable power sales agreement, rate approval from FERC would be required. In addition, the facility would be required to cease selling electricity to any retail customers (such as the thermal energy customer) to retain its EWG status and could become subject to state regulation of sales of thermal energy. See "Public Utility Holding Company Regulation."

Currently, Congress is considering proposed legislation that would amend PURPA by eliminating the requirement that utilities purchase electricity from QFs at avoided costs. We do not know whether such legislation will be passed or what form it may take. We believe that if any such legislation is passed, it would apply only to new projects, and we believe it would not affect our existing QFs. There can be no assurance, however, that any legislation passed would not adversely impact our existing projects.

### **Public Utility Holding Company Regulation**

Under PUHCA, any corporation, partnership or other legal entity which owns or controls 10% or more of the outstanding voting securities of a "public utility company" or a company which is a "holding company" for a public utility company is subject to registration with the Securities and Exchange Commission ("SEC") and regulation under PUHCA, unless eligible for an exemption. A holding company of a public utility company that is subject to registration is required by PUHCA to limit its utility operations to a single integrated utility system and to divest any other operations not functionally related to the operation of that utility system. Approval by the SEC is required for nearly all important financial and business dealings of a registered holding company. Under PURPA, most QFs are not public utility companies under PUHCA.

The Energy Policy Act of 1992, among other things, amends PUHCA to allow EWGs, under certain circumstances, to own and operate non-QF electric generating facilities without subjecting those producers to registration or regulation under PUHCA. The effect of such amendments has been to enhance the development of non-QFs which do not have to meet the fuel, production and ownership requirements of PURPA. We believe that these amendments benefit us by expanding our ability to own and operate facilities that do not qualify for QF status. However, they have also resulted in increased competition by allowing utilities and their affiliates to develop such facilities which are not subject to the constraints of PUHCA.

### **Federal Natural Gas Transportation Regulation**

We have an ownership interest in 55 gas-fired cogeneration plants in operation or under construction. The cost of natural gas is ordinarily the largest expense of a gas-fired project and is critical to the project's economics. The risks associated with using natural gas can include the need to arrange transportation of the gas from great distances, including obtaining removal, export and import authority if the gas is transported from Canada; the possibility of interruption of the gas supply or transportation (depending on the quality of the gas reserves purchased or dedicated to the project, the financial and operating strength of the gas supplier, whether firm or non-firm transportation is purchased and the operations of the gas pipeline); and obligations to take a minimum quantity of gas and pay for it (i.e., take-and-pay obligations).

Pursuant to the Natural Gas Act, FERC has jurisdiction over the transportation and storage of natural gas in interstate commerce. With respect to most transactions that do not involve the construction of pipeline facilities, regulatory authorization can be obtained on a self-implementing basis. However, interstate pipeline rates and terms and conditions for such services are subject to continuing FERC oversight.

### **Federal Power Act Regulation**

Under the FPA, FERC is authorized to regulate the transmission of electric energy and the sale of electric energy at wholesale in interstate commerce. Unless otherwise exempt, any person that owns or operates facilities used for such purposes is considered a "public utility" subject to FERC jurisdiction. FERC regulation under the FPA includes approval of the disposition of utility property, authorization of the issuance of securities by public utilities, regulation of the rates, terms and conditions for the transmission or sale of electric energy at wholesale in interstate commerce, the regulation of interlocking directorates, a uniform system of accounts and reporting requirements for public utilities.

FERC regulations implementing PURPA provide that a QF is exempt from regulation under the foregoing provisions of the FPA. An EWG is not exempt from the FPA and therefore an EWG that makes sales of electric energy at wholesale in interstate commerce is subject to FERC regulation as a "public utility." However, many of the regulations which customarily apply to traditional public utilities have been waived or relaxed for power marketers, EWGs and other non-traditional public utilities that lack market power. EWGs are regularly granted authorization to charge market based rates, blanket authority to issue securities, and waivers of certain FERC requirements pertaining to accounts, reports and interlocking directorates. Such action is intended to implement FERC's policy to foster a more competitive wholesale power market.

Many of the generating projects in which we own an interest are operated as QFs and are therefore exempt from FERC regulation under the FPA. However, several of our generating projects are or will be EWGs subject to FERC jurisdiction under the FPA. Several of our affiliates have been granted authority to engage in sales at market based rates and to issue securities and have also been granted the customary waivers of FERC regulations available to non-traditional public utilities; however we cannot assure that such authorities or waivers will be granted in the future to other affiliates.

### **STATE REGULATION**

State public utility commissions ("PUCs") have historically had broad authority to regulate both the rates charged by, and the financial activities of, electric utilities operating in their states and to promulgate regulation for implementation of PURPA. Since a power sales agreement becomes a part of a utility's cost structure (generally reflected in its retail rates), power sales agreements with independent electricity producers, such as EWGs, are potentially under the regulatory purview of PUCs and in particular the process by which the utility has entered into the power sales agreements. If a PUC has approved the process by which a utility secures its power supply, a PUC is generally inclined to "pass through" the expense associated with a power purchase agreement with an independent power producer to the utility's retail customers. However, a regulatory commission under certain circumstances may disallow the full reimbursement to a utility for the cost to purchase power from a QF or an EWG. In addition, retail sales of electricity or thermal energy by an independent power producer may be subject to PUC regulation depending on state law. Independent power producers which are not QFs under PURPA, or EWGs pursuant to the Energy Policy Act of 1992, are considered to be public utilities in many states and are subject to broad regulation by a PUC, ranging from requirement of certificate of public convenience and necessity to regulation of organizational, accounting, financial and other corporate matters. States may assert jurisdiction over the siting and construction of electric generating facilities including QFs and EWGs and, with the exception of QFs, over the issuance of securities and the sale or other transfer of assets by these facilities.

State PUCs also have jurisdiction over the transportation of natural gas by local distribution companies ("LDCs"). Each state's regulatory laws are somewhat different; however, all generally require the LDC to obtain approval from the PUC for the construction of facilities and transportation services if the LDC's

generally applicable tariffs do not cover the proposed transaction. LDC rates are usually subject to continuing PUC oversight.

## **REGULATION OF CANADIAN GAS**

The Canadian natural gas industry is subject to extensive regulation by governmental authorities. At the federal level, a party exporting gas from Canada must obtain an export license from the Canadian National Energy Board ("NEB"). The NEB also regulates Canadian pipeline transportation rates and the construction of pipeline facilities. Gas producers also must obtain a removal permit or license from provincial authorities before natural gas may be removed from the province, and provincial authorities may regulate intra-provincial pipeline and gathering systems. In addition, a party importing natural gas into the United States first must obtain an import authorization from the U.S. Department of Energy.

## **ENVIRONMENTAL REGULATIONS**

The exploration for and development of geothermal resources and natural gas and the construction and operation of wellfields, pipelines and power projects are subject to extensive federal, state and local laws and regulations adopted for the protection of the environment and to regulate land use. The laws and regulations applicable to us primarily involve the discharge of emissions into the water and air and the use of water, but can also include wetlands preservation, endangered species, waste disposal and noise regulations. These laws and regulations in many cases require a lengthy and complex process of obtaining licenses, permits and approvals from federal, state and local agencies.

Noncompliance with environmental laws and regulations can result in the imposition of civil or criminal fines or penalties. In some instances, environmental laws also may impose clean-up or other remedial obligations in the event of a release of pollutants or contaminants into the environment. The following federal laws are among the more significant environmental laws as they apply to us. In most cases, analogous state laws also exist that may impose similar, and in some cases more stringent, requirements on us as those discussed below.

### **Clean Air Act**

The Federal Clean Air Act of 1970 (the "Clean Air Act") provides for the regulation, largely through state implementation of federal requirements, of emissions of air pollutants from certain facilities and operations. As originally enacted, the Clean Air Act sets guidelines for emissions standards for major pollutants (i.e., sulfur dioxide and nitrogen oxide) from newly built sources. In late 1990, Congress passed the Clean Air Act Amendments (the "1990 Amendments"). The 1990 Amendments attempt to reduce emissions from existing sources, particularly previously exempted older power plants. We believe that all of our operating plants are in compliance with federal performance standards mandated for such plants under the Clean Air Act and the 1990 Amendments.

### **Clean Water Act**

The Federal Clean Water Act (the "Clean Water Act") establishes rules regulating the discharge of pollutants into waters of the United States. We are required to obtain a wastewater and storm water discharge permit for wastewater and runoff, respectively, from certain of our facilities. We believe that, with respect to our geothermal operations, we are exempt from newly promulgated federal storm water requirements. We believe that we are in material compliance with applicable discharge requirements of the Clean Water Act.

### **Resource Conservation and Recovery Act**

The Resource Conservation and Recovery Act ("RCRA") regulates the generation, treatment, storage, handling, transportation and disposal of solid and hazardous waste. We believe that we are exempt from solid waste requirements under RCRA. However, particularly with respect to its solid waste disposal practices at the power generation facilities and steam fields located at The Geysers, we are subject to certain solid waste

requirements under applicable California laws. We believe that our operations are in material compliance with such laws.

### **Comprehensive Environmental Response, Compensation, and Liability Act**

The Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA" or "Superfund"), requires cleanup of sites from which there has been a release or threatened release of hazardous substances and authorizes the United States Environmental Protection Agency to take any necessary response action at Superfund sites, including ordering potentially responsible parties ("PRPs") liable for the release to take or pay for such actions. PRPs are broadly defined under CERCLA to include past and present owners and operators of, as well as generators of wastes sent to, a site. As of the present time, we are not subject to liability for any Superfund matters. However, we generate certain wastes, including hazardous wastes, and send certain of our wastes to third party waste disposal sites. As a result, there can be no assurance that we will not incur liability under CERCLA in the future.

## **RISK FACTORS**

SEE "RISK FACTORS" SECTION STARTING ON PAGE F-23 UNDER "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" INCLUDED IN APPENDIX F TO THIS REPORT.

## **EMPLOYEES**

As of December 31, 2000, we employed 1,883 people, of whom 33 were represented by collective bargaining agreements. We have never experienced a work stoppage or strike, and we consider relations with our employees to be good.

## **ITEM 2. PROPERTIES**

Our principal executive office located in San Jose, California is held under leases that expire through 2011, and we also lease regional offices in Pleasanton, California; Houston, Texas; Boston, Massachusetts and Northbrook, Illinois. We hold additional leases for our Construction Management office in Folsom, California, our Turbine Maintenance Group office in LaPorte, Texas, our Plant Optimization Group office in Fort Collins, Colorado, our c\*Power office in Pleasanton, California, our Project Development office in Tampa, Florida, our Government Affairs office in Washington, D.C. and our Natural Gas Operations offices in Houston, TX, Denver, Colorado and Calgary, Alberta.

We have leasehold interests in 105 leases comprising 21,217 acres of federal, state and private geothermal resource lands in The Geysers area in northern California. In the Glass Mountain and Medicine Lake areas in northern California, we hold leasehold interests in 18 leases comprising approximately 25,028 acres of federal geothermal resource lands.

In general, under these leases, we have the exclusive right to drill for, produce and sell geothermal resources from these properties and the right to use the surface for all related purposes. Each lease requires the payment of annual rent until commercial quantities of geothermal resources are established. After such time, the leases require the payment of minimum advance royalties or other payments until production commences, at which time production royalties are payable. Such royalties and other payments are payable to landowners, state and federal agencies and others, and vary widely as to the particular lease. The leases are generally for initial terms varying from 10 to 20 years or for so long as geothermal resources are produced and sold. Certain of the leases contain drilling or other exploratory work requirements. In certain cases, if a requirement is not fulfilled, the lease may be terminated and in other cases additional payments may be required. We believe that our leases are valid and that we have complied with all the requirements and conditions material to the continued effectiveness of the leases. A number of our leases for undeveloped properties may expire in any given year. Before leases expire, we perform geological evaluations in an effort to determine the resource potential of the underlying properties. We cannot assure that we will decide to renew any expiring leases.

Based on independent petroleum engineering reports of Netherland, Sewell & Associates, Inc., McDaniel & Associates Consultants, Ltd. and Gilbert Laustsen Jung Associates, Ltd., as of December 31, 2000, utilizing year end product prices and costs held constant, our proved oil and natural gas reserve volumes, in thousands of barrels ("MBbls") and billion cubic feet ("Bcf") and associated future net reserves, undiscounted and discounted at 10% ("PV 10") before future income taxes, are as follows:

AS OF DECEMBER 31, 2000				
	OIL (MBBLS)	GAS (BCF)	UNDISCOUNTED	PV 10
			(IN THOUSANDS)	(IN THOUSANDS)
UNITED STATES				
Proved developed.....	2,568	268	\$2,760,126	\$1,387,418
Proved undeveloped.....	971	65	580,099	303,961
Total.....	3,539	333	\$3,340,225	\$1,691,379
CANADA				
Proved developed.....	3,612	102	\$1,070,526	\$ 665,951
Proved undeveloped.....	311	16	178,096	95,059
Total.....	3,923	118	\$1,248,622	\$ 761,010

Proved oil and natural gas reserves are the estimated quantities of crude oil, natural gas and natural gas liquids which geological and engineering data demonstrate with reasonable certainty to be recoverable in future years from known reservoirs under existing economic and operating conditions. Estimated future development costs associated with proved non-producing and proved undeveloped reserves for 2000 total approximately \$69.2 million.

The following table sets forth our interest in undeveloped acreage, developed acreage and productive wells in which we own a working interest as of December 31, 2000. Productive wells are wells in which we have a working interest and are capable of producing oil or natural gas. Gross represents the total number of acres or wells in which we own a working interest. Net represents our proportionate working interest resulting from our ownership in the gross acres or wells.

	UNDEVELOPED ACRES		DEVELOPED ACRES		PRODUCTIVE WELLS	
	GROSS	NET	GROSS	NET	GROSS	NET
UNITED STATES						
Arkansas.....	--	--	8,823	3,967	35	15
California.....	30,143	23,755	77,308	73,261	155	130
Colorado.....	24,078	18,813	28,721	16,803	39	39
Louisiana.....	42,558	41,542	28,323	27,860	37	13
Mississippi.....	350	277	10,125	4,584	16	4
Montana.....	9,890	7,458	1,280	640	2	1
Oklahoma.....	4,765	953	29,878	13,938	88	20
Texas.....	17,481	7,123	21,587	9,815	134	49
Wyoming.....	47,936	35,584	--	--	--	--
Offshore Louisiana.....	6,250	6,250	8,750	8,750	5	5
Offshore Texas.....	--	--	5,760	3,142	10	5
Total.....	183,451	141,755	220,555	162,760	521	281
CANADA.....						
	385,725	225,577	492,055	205,768	2,268	311

We own the Texas City, Clear Lake and Pasadena Power Plants, which lease an aggregate of 48 acres. We own 40 gross acres and 38 net acres in Edinburg, Texas where we are constructing the Magic Valley Power Plant. We own 77 acres in Sutter County, California, on which the Greenleaf 1 Power Plant is located. We own 78 acres in Dane County, Wisconsin, on which the RockGen Energy Center is being constructed. We own 49 acres in Zion, Illinois, on which the Zion Energy Center will be constructed. We own 40 acres in

Iberville Parish, Louisiana, on which the Carville Energy Center is being constructed. See "Description of Facilities" for a description of the other leased or owned properties in which we have an interest. We believe that our properties are adequate for our current operations.

### **ITEM 3. LEGAL PROCEEDINGS**

An action was filed against Lockport Energy Associates, L.P. and the New York Public Service Commission ("NYPSC") in August 1997 by New York State Electricity and Gas Company ("NYSEG") in the Federal District Court for the Northern District of New York. NYSEG requested the Court to direct NYPSC and the Federal Energy Regulatory Commission (the "FERC") to modify contract rates to be paid to the Lockport Power Plant. In October 1997, NYPSC filed a cross-claim alleging that the FERC violated the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and the Federal Power Act by failing to reform the NYSEG contract that was previously approved by the NYPSC. On September 29, 2000, the New York Federal District Court dismissed NYSEG's complaint and NYPSC's cross-claim. The Court stated that FERC has no authority to alter or waive its regulations or exemptions to alter the terms of the applicable power purchase agreements and that Qualifying Facilities are entitled to the benefit of their bargain, even if at the expense of NYSEG and its ratepayers. NYSEG has filed an appeal with respect to this decision. In any event, the Company retains the right to require The Brooklyn Union Gas Company to purchase its interest in the Lockport Power Plant for \$18.9 million, less equity distributions received by us, at any time before December 19, 2001.

The Company is involved in various other claims and legal actions arising out of the normal course of business. The Company does not expect that the outcome of these proceedings will have a material adverse effect on the Company's financial position or results of operations.

### **ITEM 4. SUBMISSION OF MATTERS TO A VOTE OF SECURITY HOLDERS**

None.

### **ITEM 5. MARKET FOR REGISTRANT'S COMMON EQUITY AND RELATED STOCKHOLDER MATTERS**

Retirement Savings Plan. Effective September 1999, Calpine Corporation amended its Retirement Savings Plan to add a Calpine Common Stock Fund as one of the investment options for employee contributions to the Plan. As the result of this amendment, the exemption from registration under the Securities Act of 1933 for both the plan participation interests and the shares of Common Stock previously afforded by Section 3(a)(2) of the Securities Act ceased to be available. In April 2000, Calpine filed with the Securities and Exchange Commission a registration statement on Form S-8 registering both the plan participation interest and shares of Common Stock for future issuance under the Plan. While Calpine believes that many of the sales made prior to such registration would qualify as exempt transactions under Section 4(2) of the Securities Act, it has not undertaken an evaluation of the eligibility of each Plan participant to purchase securities in a private placement, and expects that such an evaluation would show that not all of the Plan participants who purchased unregistered securities would qualify.

Since the plan amendment, through December 2000, Calpine estimates that (i) as of December 31, 2000, the market value of the plan participation interests sold was \$53,550,819 and (ii) Calpine has sold to participants 1,402,221 shares of Common Stock, in each case without the registration of the securities under the Securities Act. Because employee contributions that are directed to the Calpine Common Stock Fund are used by the Plan's trustee to purchase shares of Common Stock in the open market, Calpine does not receive any proceeds from the sale of the shares. Calpine is prepared to rescind any sale of plan participation interests or common stock made prior to the registration of such plan participation interests and common stock if requested by a participant who did not qualify for a private placement.

SkyGen Acquisition. On October 12, 2000, in connection with the acquisition of SkyGen, the Company privately placed 2,117,742 shares of its Common Stock with the stockholders of SkyGen as part of the purchase price paid by the Company for SkyGen. The private placement was made in reliance on

Regulation D under the Securities Act of 1933 on the basis that each of such stockholders was an "accredited investor" within the meaning of Rule 501(a) under the Securities Act of 1933.

PSM Acquisition. On December 13, 2000, in connection with the acquisition of PSM, the Company privately placed 281,189 shares of its Common Stock with the members of PSM as part of the purchase price paid by the Company for PSM, including such member's membership interests in PSM. The private placement was made in reliance on Regulation D under the Securities Act of 1933 on the basis that each of such members was an "accredited investor" within the meaning of Rule 501(a) under the Securities Act of 1933, with the exception of one such member who was otherwise qualified under Regulation D.

EMI Acquisition. On December 15, 2000, in connection with the acquisition of EMI, the Company privately placed 1,102,601 shares of its Common Stock with the limited partners of EMI as part of the purchase price paid by the Company for EMI, including such limited partners' interests in the Tiverton, Rumford or Dighton subsidiaries of EMI. The private placement was made in reliance on Regulation D under the Securities Act of 1933 on the basis that each of such limited partners was an "accredited investor" within the meaning of Rule 501(a) under the Securities Act of 1933.

#### **ITEM 6. SELECTED FINANCIAL DATA**

The information required hereunder is set forth under "Selected Consolidated Financial Data" included in the Consolidated Financial Statements that are a part of this report.

#### **ITEM 7. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS**

The information required hereunder is set forth under "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Consolidated Financial Statements that are a part of this report.

#### **ITEM 7A. QUANTITATIVE AND QUALITATIVE DISCLOSURE ABOUT MARKET RISK**

The information required hereunder is set forth under "Management's Discussion and Analysis of Financial Condition and Results of Operations -- Financial Market Risks" included in the Consolidated Financial Statements that are a part of this report.

#### **ITEM 8. FINANCIAL STATEMENTS AND SUPPLEMENTARY DATA**

The information required hereunder is set forth under "Report of Independent Public Accountants," "Consolidated Balance Sheets," "Consolidated Statements of Operations," "Consolidated Statements of Stockholders' Equity," "Consolidated Statements of Cash Flows," and "Notes to Consolidated Financial Statements" included in the Consolidated Financial Statements that are a part of this report. Other financial information and schedules are included in the Consolidated Financial Statements that are a part of this report.

#### **ITEM 9. CHANGES IN AND DISAGREEMENTS WITH ACCOUNTANTS ON ACCOUNTING AND FINANCIAL DISCLOSURE**

None.

#### **ITEM 10. EXECUTIVE OFFICERS, DIRECTORS AND KEY EMPLOYEES**

Incorporated by reference to Proxy Statement relating to the 2001 Annual Meeting of Shareholders to be filed.

#### **ITEM 11. EXECUTIVE COMPENSATION**

Incorporated by reference to Proxy Statement relating to the 2001 Annual Meeting of Shareholders to be filed.

## ITEM 12. SECURITY OWNERSHIP OF CERTAIN BENEFICIAL OWNERS AND MANAGEMENT

Incorporated by reference to Proxy Statement relating to the 2001 Annual Meeting of Shareholders to be filed.

## ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS

Incorporated by reference to Proxy Statement relating to the 2001 Annual Meeting of Shareholders to be filed.

## ITEM 14. EXHIBITS, FINANCIAL STATEMENT SCHEDULES AND REPORTS ON FORM 8-K

### (a)-1. FINANCIAL STATEMENTS AND OTHER INFORMATION

The following items appear in Appendix F of this report:

Selected Consolidated Financial Data Management's Discussion and Analysis of Financial Condition and Results of Operations  
Report of Independent Public Accountants Consolidated Balance Sheets, December 31, 2000 and 1999 Consolidated Statements of Operations  
for the Years Ended December 31, 2000, 1999 and 1998  
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2000, 1999 and 1998 Consolidated Statements of Cash  
Flows for the Years Ended December 31, 2000, 1999 and 1998  
Notes to Consolidated Financial Statements for the Years Ended December 31, 2000, 1999 and 1998

### (a)-2. FINANCIAL STATEMENT SCHEDULES

#### Schedule II -- Valuation and Qualifying Accounts

### (b) REPORTS ON FORM 8-K

The registrant filed the following report on Form 8-K during the quarter ended December 31, 2000:

DATE OF REPORT -----	DATE FILED -----	ITEM REPORTED -----
October 26, 2000	October 27, 2000	5, 7

### (c) EXHIBITS

The following exhibits are filed herewith unless otherwise indicated:

EXHIBIT NUMBER -----	DESCRIPTION -----
3.1.1	Amended and Restated Certificate of Incorporation of Calpine Corporation, a Delaware corporation.(*)
3.1.2	Certificate of Correction of Calpine Corporation.(*)
3.1.3	Certificate of Designation of Series A Participating Preferred Stock of Calpine Corporation.(*)
3.1.4	Amended Certificate of Designation of Series A Participating Preferred Stock of Calpine Corporation.(*)
3.2	Amended and Restated Bylaws of Calpine Corporation, a Delaware corporation.(d)
4.1.1	Indenture dated as of February 17, 1994 between the Company and State Street Bank and Trust Company (successor trustee to Shawmut Bank of Connecticut, National Association), as Trustee, including form of Notes.(a)
4.1.2	First Supplemental Indenture dated as of July 31, 2000 between the Company and State Street Bank and Trust Company (successor trustee to Shawmut Bank Connecticut, National Association), as Trustee.(*)

EXHIBIT NUMBER -----	DESCRIPTION -----
4.2.1	Indenture dated as of May 16, 1996 between the Company and Fleet National Bank, as Trustee, including form of Notes.(c)
4.2.2	First Supplemental Indenture dated as of August 1, 2000 between the Company and State Street Bank and Trust Company (successor trustee to Fleet National Bank), as Trustee.(*)
4.3.1	Indenture dated as of July 8, 1997 between the Company and The Bank of New York, as Trustee, including form of Notes.(e)
4.3.2	Supplemental Indenture dated as of September 10, 1997 between the Company and The Bank of New York, as Trustee.(g)
4.3.3	Second Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.4.1	Indenture dated as of March 31, 1998 between the Company and The Bank of New York, as Trustee, including form of Notes.(g)
4.4.2	Supplemental Indenture dated as of July 24, 1998 between the Company and The Bank of New York, as Trustee.(g)
4.4.3	Second Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.5.1	Indenture dated as of March 29, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.5.2	First Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.6.1	Indenture dated as of March 29, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.6.2	First Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.7.1	Indenture dated as of August 10, 2000 between the Company and Wilmington Trust Company, as Trustee.(m)
4.7.2	First Supplemental Indenture dated as of September 28, 2000 between the Company and Wilmington Trust Company, as Trustee.(*)
4.8	Rights Agreement, dated as of June 5, 1997, between Calpine Corporation and First Chicago Trust Company of New York, as Rights Agent.(l)
4.9	HIGH TIDES I.
4.9.1	Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, filed October 4, 1999.(i)
4.9.2	Corrected Certificate of Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, dated September 29, 1999.(i)
4.9.3	Declaration of Trust of Calpine Capital Trust, dated as of October 4, 1999, among Calpine Corporation, as Depositor, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein.(i)
4.9.4	Indenture, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(i)
4.9.5	Remarketing Agreement, dated November 2, 1999, among Calpine Corporation, Calpine Capital Trust, The Bank of New York, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(i)

EXHIBIT NUMBER -----	DESCRIPTION -----
4.9.6	Amended and Restated Declaration of Trust of Calpine Capital Trust, dated as of November 2, 1999, among Calpine Corporation, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, and The Bank of New York, as Property Trustee, and the Administrative Trustees named therein, including form of Preferred Security and form of Common Security.(i)
4.9.7	Preferred Securities Guarantee Agreement, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Guarantee Trustee.(i)
4.10	HIGH TIDES II.
4.10.1	Certificate of Trust of Calpine Capital Trust II, a Delaware statutory trust, filed January 25, 2000.(n)
4.10.2	Declaration of Trust of Calpine Capital Trust II, dated as of January 24, 2000, among Calpine Corporation, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein.(n)
4.10.3	Indenture, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(n)
4.10.4	Remarketing Agreement, dated as of January 31, 2000, among Calpine Corporation, Calpine Capital Trust II, The Bank of New York, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(n)
4.10.5	Registration Rights Agreement, dated January 31, 2000, among Calpine Corporation, Calpine Capital Trust II, Credit Suisse First Boston Corporation and ING Barings LLC.(n)
4.10.6	Amended and Restated Declaration of Trust of Calpine Capital Trust II, dated as of January 31, 2000, among Calpine Corporation, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein, including form of Preferred Security and form of Common Security.(n)
4.10.7	Preferred Securities Guarantee Agreement, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Guarantee Trustee.(n)
4.11	HIGH TIDES III.
4.11.1	Amended and Restated Certificate of Trust of Calpine Capital Trust III, a Delaware statutory trust, filed July 19, 2000.(o)
4.11.2	Declaration of Trust of Calpine Capital Trust III dated June 28, 2000, among the Company, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee and the Administrative Trustees named therein.(o)
4.11.3	Amendment No. 1 to the Declaration of Trust of Calpine Capital Trust III dated July 19, 2000, among the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein.(o)
4.11.4	Indenture dated as of August 9, 2000, between the Company and Wilmington Trust Company, as Trustee.(o)
4.11.5	Remarketing Agreement dated as of August 9, 2000, among the Company, Calpine Capital Trust III, Wilmington Trust Company, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(o)
4.11.6	Registration Rights Agreement dated as August 9, 2000, between the Company, Calpine Capital Trust III, Credit Suisse First Boston Corporation, ING Barings LLC and CIBC World Markets Corp.(o)

EXHIBIT NUMBER -----	DESCRIPTION -----
4.11.7	Amended and Restated Declaration of Trust of Calpine Capital Trust III dated as of August 9, 2000, the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein, including the form of Preferred Security and form of Common Security.(o)
4.11.8	Preferred Securities Guarantee Agreement dated as of August 9, 2000, between the Company, as Guarantor, and Wilmington Trust Company, as Guarantee Trustee.(o)
4.12	PASS THROUGH CERTIFICATES.
4.12.1	Pass Through Trust Agreement dated as of December 19, 2000, among Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of Certificate.(*)
4.12.2	Participation Agreement dated as of December 19, 2000, among the Company, Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership, PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee.(*)
4.12.3	Appendix A -- Definitions and Rules of Interpretation.(*)
4.12.4	Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000, between PMCC Calpine New England Investment LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, including the forms of Lessor Notes.(*)
4.12.5	Calpine Guaranty and Payment Agreement (Tiverton) dated as of December 19, 2000, by Calpine, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(*)
4.12.6	Calpine Guaranty and Payment Agreement (Rumford) dated as of December 19, 2000, by Calpine, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(*)
10.1	Purchase Agreements.
10.1.1	Purchase and Sale Agreement dated March 27, 1997 for the purchase and sale of shares of Enron/Dominion Cogen Corp. Common Stock among Enron Power Corporation and Calpine Corporation.(f)
10.1.2	Stock Purchase and Redemption Agreement dated March 31, 1998, among Dominion Cogen, Inc., Dominion Energy, Inc. and Calpine Finance.(f)
10.2	Financing Agreements.
10.2.1	Calpine Construction Finance Company Financing Agreement ("CCFC I"), dated as of October 20, 1999.(j)
10.2.2	Calpine Construction Finance Company Financing Agreement ("CCFC II"), dated as of October 16, 2000.(p)(*)
10.2.3	Second Amended and Restated Credit Agreement dated as of May 23, 2000, among the Company, Bayerische Landesbank, as Co-Arranger and Syndication Agent, The Bank of Nova Scotia, as Lead Arranger and Administrative Agent, and the Lenders named therein.(m)
10.3	Other Agreements.
10.3.1	Calpine Corporation Stock Option Program and forms of agreements there under.(a)

EXHIBIT NUMBER -----	DESCRIPTION -----
10.3.2	Calpine Corporation 1996 Stock Incentive Plan and forms of agreements there under.(b)
10.3.3	Calpine Corporation Employee Stock Purchase Plan and forms of agreements there under.(b)
10.3.4	Amended and Restated Employment Agreement between Calpine Corporation and Mr. Peter Cartwright.(b)
10.3.5	Executive Vice President Employment Agreement between Calpine Corporation and Ms. Ann B. Curtis.(k)
10.3.6	Senior Vice President Employment Agreement between Calpine Corporation and Mr. Ron A. Walter.(k)
10.3.7	Senior Vice President Employment Agreement between Calpine Corporation and Mr. Robert D. Kelly.(k)
10.3.8	Executive Vice President Employment Agreement between Calpine Corporation and Mr. Thomas R. Mason.(k)
10.4	Form of Indemnification Agreement for directors and officers.(b)
12.1	Statement on Computation of Ratio of Earnings to Fixed Charges.(*)
21	Subsidiaries of the Company.(*)
23.1	Consent of Arthur Andersen LLP, Independent Public Accountants.(*)
23.2	Consent of Netherland, Sewell & Associates, Inc., independent engineer.(*)
23.3	Consent of McDaniel & Associates Consultants, Ltd., independent engineer.(*)
23.4	Consent of Gilbert Laustsen Jung Associates, Ltd., independent engineer.(*)
24	Power of Attorney of Officers and Directors of Calpine Corporation (set forth on the signature pages of this report).(*)

- 
- (a) Incorporated by reference to Registrant's Registration Statement on Form S-1 (Registration Statement No. 33-73160).
- (b) Incorporated by reference to Registrant's Registration Statement on Form S-1/A (Registration Statement No. 333-07497).
- (c) Incorporated by reference to Registrant's Registration Statement on Form S-4 (Registration Statement No. 333-06259).
- (d) Incorporated by reference to Registrant's Quarterly Report on Form 10-Q dated March 31, 1996 and filed on May 14, 1996.
- (e) Incorporated by reference to Registrant's Quarterly Report on Form 10-Q dated June 30, 1997 and filed on August 14, 1997.
- (f) Incorporated by reference to Registrant's Current Report on Form 8-K dated March 31, 1998 and filed on April 14, 1998.
- (g) Incorporated by reference to Registrant's Registration Statement on Form S-4 (Registration Statement No. 333-61047).
- (h) Incorporated by reference to Registrant's Registration Statement on Form S-3/A (Registration Statement No. 333-72583).
- (i) Incorporated by reference to Registrant's Registration Statement on Form S-3/A (Registration Statement No. 333-87427).
- (j) Incorporated by reference to Registrant's Annual Report on Form 10-K dated December 31, 1999 and filed on February 29, 2000. Approximately 200 pages of this exhibit have been omitted pursuant to a request for confidential treatment. The omitted language has been filed separately with the Securities and Exchange Commission.
- (k) Incorporated by reference to Registrant's Form 10-Q/A dated September 30, 1999 and filed on November 17, 1999.

(l) Incorporated by reference to Registrant's Registration Statement on Form 8-A, amended by Calpine's Registration Statement on Form 8-A/A (Registration Statement No. 001-12079).

(m) Incorporated by reference to Registrant's Current Report on Form 8-K dated July 25, 2000 and filed on August 9, 2000.

(n) Incorporated by reference to Registrant's Registration Statement on Form S-3 (Registration Statement No. 333-33736).

(o) Incorporated by reference to Registrant's Registration Statement on Form S-3 (Registration Statement No. 333-47068).

(p) Approximately 71 pages of this exhibit have been omitted pursuant to a request for confidential treatment. The omitted language has been filed separately with the Securities and Exchange Commission.

(q) Incorporated by reference to Registrant's Registration Statement on Form S-4 (Registration Statement No. 333-41261).

(\*) Filed herewith.

## SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, the Registrant has duly caused this Report to be signed on its behalf by the undersigned thereunto duly authorized.

### CALPINE CORPORATION

Date: March 14, 2001

By: /s/ ANN B. CURTIS

-----  
Ann B. Curtis  
Executive Vice President and  
Director  
(Principal Financial Officer)

### POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS: That the undersigned officers and directors of Calpine Corporation do hereby constitute and appoint Peter Cartwright and Ann B. Curtis, and each of them, the lawful attorney and agent or attorneys and agents with power and authority to do any and all acts and things and to execute any and all instruments which said attorneys and agents, or either of them, determine may be necessary or advisable or required to enable Calpine Corporation to comply with the Securities and Exchange Act of 1934, as amended, and any rules or regulations or requirements of the Securities and Exchange Commission in connection with this Form 10-K Annual Report. Without limiting the generality of the foregoing power and authority, the powers granted include the power and authority to sign the names of the undersigned officers and directors in the capacities indicated below to this Form 10-K Annual Report or amendments or supplements thereto, and each of the undersigned hereby ratifies and confirms all that said attorneys and agents, or either of them, shall do or cause to be done by virtue hereof. This Power of Attorney may be signed in several counterparts.

IN WITNESS WHEREOF, each of the undersigned has executed this Power of Attorney as of the date indicated opposite the name.

Pursuant to the requirements of the Securities Exchange Act of 1934, the Report has been signed below by the following persons on behalf of the Registrant and in the capacities and on the dates indicated.

SIGNATURE -----	TITLE -----	DATE -----
/s/ PETER CARTWRIGHT ----- Peter Cartwright	Chairman, President, Chief Executive and Director (Principal Executive Officer)	March 14, 2001
/s/ ANN B. CURTIS ----- Ann B. Curtis	Executive Vice President and Director (Principal Financial Officer)	March 14, 2001
/s/ CHARLES B. CLARK, JR. ----- Charles B. Clark, Jr.	Vice President and Corporate Controller (Principal Accounting Officer)	March 14, 2001
/s/ JEFFREY E. GARTEN ----- Jeffrey E. Garten	Director	March 14, 2001
/s/ SUSAN C. SCHWAB ----- Susan C. Schwab	Director	March 14, 2001

SIGNATURE -----	TITLE -----	DATE ----
----- /s/ GEORGE J. STATHAKIS ----- George J. Stathakis	Director	March 14, 2001
----- /s/ JOHN O. WILSON ----- John O. Wilson	Director	March 14, 2001
----- /s/ V. ORVILLE WRIGHT ----- V. Orville Wright	Director	March 14, 2001
----- Michael Polsky	Director	

**CALPINE CORPORATION AND SUBSIDIARIES**

**INDEX TO CONSOLIDATED FINANCIAL STATEMENTS  
AND OTHER INFORMATION**

DECEMBER 31, 2000

Selected Consolidated Financial Data.....	F-2
Management's Discussion and Analysis of Financial Condition and Results of Operations.....	F-4
Report of Independent Public Accountants.....	F-33
Consolidated Balance Sheets December 31, 2000 and 1999.....	F-34
Consolidated Statements of Operations for the Years Ended December 31, 2000, 1999 and 1998.....	F-35
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 2000, 1999 and 1998.....	F-36
Consolidated Statements of Cash Flows for the Years Ended December 31, 2000, 1999 and 1998.....	F-37
Notes to Consolidated Financial Statements for the Years Ended December 31, 2000, 1999 and 1998.....	F-38

**CALPINE CORPORATION AND SUBSIDIARIES**

**SELECTED CONSOLIDATED FINANCIAL DATA**  
(IN THOUSANDS, EXCEPT EARNINGS PER SHARE AND RATIO DATA)

	YEARS ENDED DECEMBER 31,				
	1996	1997	1998	1999	2000
STATEMENT OF OPERATIONS DATA:					
REVENUE:					
Electricity and steam sales.....	\$ 199,464	\$ 237,277	\$ 507,897	\$ 760,325	\$1,702,320
Service contract revenue.....	6,455	10,177	20,249	43,773	480,234
Income from unconsolidated investments in power projects.....	6,537	15,819	25,240	36,593	24,639
Interest income on loans to power projects.....	2,098	13,048	2,562	1,226	4,827
Other revenue.....	--	--	--	5,818	70,773
Total revenue.....	214,554	276,321	555,948	847,735	2,282,793
Cost of revenue(1).....	132,762	156,343	378,926	561,850	1,558,676
Gross profit.....	81,792	119,978	177,022	285,885	724,117
Project development expenses.....	3,867	7,537	7,165	10,712	27,556
General and administrative expenses(1).....	11,134	15,254	23,181	48,671	94,113
Income from operations.....	66,791	97,187	146,676	226,502	602,448
Interest expense.....	45,294	61,466	86,726	91,162	56,700
Distributions on trust preferred securities.....	--	--	--	2,565	44,210
Other income.....	(6,259)	(17,438)	(13,423)	(25,441)	(42,100)
Income before provision for income taxes.....	27,756	53,159	73,373	158,216	543,638
Provision for income taxes.....	9,064	18,460	27,054	61,973	218,951
Income before extraordinary charge.....	18,692	34,699	46,319	96,243	324,687
Extraordinary charge, net of tax benefit of \$ --, \$ --, \$441, \$793 and \$796.....	--	--	641	1,150	1,235
Net income.....	\$ 18,692	\$ 34,699	\$ 45,678	\$ 95,093	\$ 323,452
Basic earnings per common share:					
Weighted average shares of common stock outstanding....	103,221	159,569	160,969	209,314	264,799
Income before extraordinary charge.....	\$ 0.18	\$ 0.22	\$ 0.29	\$ 0.46	\$ 1.23
Extraordinary charge.....	\$ --	\$ --	\$ (0.01)	\$ (0.01)	\$ (0.01)
Net income.....	\$ 0.18	\$ 0.22	\$ 0.28	\$ 0.45	\$ 1.22
Diluted earnings per common share:					
Weighted average shares of common stock outstanding before dilutive effect of certain trust preferred securities.....	119,030	168,128	169,311	222,644	280,776
Income before extraordinary charge and dilutive effect of certain trust preferred securities.....	\$ 0.16	\$ 0.21	\$ 0.27	\$ 0.43	\$ 1.16
Dilutive effect of certain trust preferred securities(2).....	\$ --	\$ --	\$ --	\$ --	\$ (0.05)
Income before extraordinary charge.....	\$ 0.16	\$ 0.21	\$ 0.27	\$ 0.43	\$ 1.11
Extraordinary charge.....	\$ --	\$ --	\$ --	\$ --	\$ (0.01)
Net income.....	\$ 0.16	\$ 0.21	\$ 0.27	\$ 0.43	\$ 1.10
OTHER FINANCIAL DATA AND RATIOS:					
EBITDA(3).....	\$ 110,703	\$ 172,026	\$ 241,633	\$ 351,528	\$ 825,925
EBITDA to Consolidated Interest Expense(4).....	2.29x	2.60x	2.61x	3.35x	6.66x
Total debt to EBITDA.....	5.43x	4.98x	4.43x	5.84x	5.44x
Ratio of earnings to fixed charges(5).....	1.46x	1.72x	1.69x	1.77x	2.04x
BALANCE SHEET DATA:					
Cash and cash equivalents.....	\$ 95,970	\$ 48,513	\$ 96,532	\$ 349,371	\$ 588,698
Property, plant and equipment, net.....	648,208	736,339	1,094,303	2,908,056	7,459,055
Investment in power projects.....	13,936	222,542	221,509	243,225	205,621
Total assets.....	1,031,397	1,380,915	1,728,946	3,991,606	9,737,257
Short-term debt.....	37,492	112,966	5,450	47,470	61,558
Long-term debt.....	563,640	742,893	1,065,940	2,006,190	4,430,357
Total debt.....	601,132	855,859	1,071,390	2,053,660	4,491,915
Company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts.....	--	--	--	270,713	1,122,490
Minority interests.....	--	--	--	61,705	37,576
Stockholders' equity.....	203,127	239,956	286,966	964,632	2,236,774

(The information contained in the Selected Consolidated Financial Data is derived from the audited Consolidated Financial Statements of Calpine Corporation and Subsidiaries.)

(1) Certain expenses for the years 1996 through 1999 have been reclassified from general and administrative expenses to plant operating expenses to conform with the 2000 presentation.

(2) Includes the effect of the assumed conversion of certain trust preferred securities. For the year 2000, the assumed conversion calculation adds 31,746 shares of common stock and \$20,841 to the net income results, representing the after tax distribution expense on certain trust preferred securities avoided upon conversion.

(3) EBITDA is defined as net income less income from unconsolidated investments, plus cash received from unconsolidated investments, plus provision for tax, plus interest expense, plus one-third of operating lease expenses, plus depreciation and amortization, plus distributions on trust preferred securities. EBITDA is presented not as a measure of operating results, but rather as a measure of our ability to service debt. EBITDA should not be construed as an alternative to either (i) income from operations (determined in accordance with generally accepted accounting principles) or (ii) cash flows from operating activities (determined in accordance with generally accepted accounting principles). Prior to 2000, EBITDA had been calculated according to an indenture definition. EBITDA for 1996 - 1999 has been restated to conform to the definition set forth above.

(4) Consolidated Interest Expense is defined as total interest expense plus one-third of all operating lease obligations and distributions on trust preferred securities.

(5) For purposes of computing our consolidated ratio of earnings to fixed charges, earnings consist of pretax income before adjustment for minority interests in our consolidated subsidiaries or income or loss from equity investees, plus fixed charges, amortization of capitalized interest, and distributed income of equity investees, reduced by interest capitalized, distributions on our company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts ("HIGH TIDES") and the minority interest in pretax income of subsidiaries that have not incurred fixed charges. Fixed charges consist of interest expensed and capitalized (including amortized premiums, discounts and capitalized expenses related to indebtedness), an estimate of the interest within rental expense and the distributions on our HIGH TIDES.

## CALPINE CORPORATION AND SUBSIDIARIES

### MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

Except for historical financial information contained herein, the matters discussed in this annual report may be considered "forward-looking" statements within the meaning of Section 27A of the Securities Act of 1933, as amended, and Section 21E of the Securities Exchange Act of 1934, as amended, including statements regarding the intent, belief or current expectations of Calpine Corporation ("the Company") and its management. Prospective investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties that could materially affect actual results such as, but not limited to, (i) changes in government regulations, including pending changes in California, and anticipated deregulation of the electric energy industry, (ii) commercial operations of new plants that may be delayed or prevented because of various development and construction risks, such as a failure to obtain financing and the necessary permits to operate or the failure of third-party contractors to perform their contractual obligations, (iii) cost estimates are preliminary and actual costs may be higher than estimated, (iv) the assurance that the Company will develop additional plants, (v) a competitor's development of a lower-cost generating gas-fired power plant, (vi) the risks associated with marketing and selling power from power plants in the newly competitive energy market, (vii) the risks associated with marketing and selling combustion turbine parts and components in the competitive combustion turbine parts market, (viii) the risks associated with engineering, designing and manufacturing combustion turbine parts and components, (ix) delivery and performance risks associated with combustion turbine parts and components attributable to production, quality control, suppliers and transportation, or (x) the successful exploitation of an oil or gas resource that ultimately depends upon the geology of the resource, the total amount and cost to develop recoverable reserves, and operational factors relating to the extraction of natural gas. Prospective investors are also cautioned that the California energy market remains uncertain. The Company's management is working closely with a number of parties to resolve the current uncertainty. This is an ongoing process and, therefore, the outcome cannot be predicted. It is possible that any such outcome will include changes in government regulations, business and contractual relationships or other factors that could materially affect the Company. However, management believes that a final resolution will not have a material adverse impact on the Company. Prospective investors are also referred to the other risks identified from time to time in the Company's reports and registration statements filed with the Securities and Exchange Commission.

#### OVERVIEW

Calpine is engaged in the development, acquisition, ownership, and operation of power generation facilities and the sale of electricity and steam principally in the United States. At March 8, 2001, we had interests in 50 operating power plants predominantly in the United States, representing 5,849 megawatts of net capacity.

On January 11, 2000, we announced our plans to expand our presence into the Florida wholesale power market. Our plans are to invest approximately \$850 million in power generation facilities and manage these development activities in the Southeast from a new office in Tampa, Florida. We will develop two natural gas-fired energy centers, the 590 megawatt Osprey Energy Center, to be located in the City of Auburndale adjacent to an existing Calpine power facility, and the 1,239 megawatt Blue Heron Energy Center, to be located outside of Vero Beach. Construction for the proposed facilities is planned for 2001 and 2002, respectively, with the Osprey Energy Center to commence commercial operation in the fall of 2003, followed by the Blue Heron Energy Center in mid 2004.

On January 14, 2000, we acquired a 296 megawatt net interest in the Aries Power Plant, a 591 megawatt natural gas-fired plant currently under construction near Pleasant Hill, Missouri, from a subsidiary of Aquila Energy Corporation. Construction started in the fall of 1999 and commercial operation is scheduled to begin in late 2001. The majority of the plant's output will be sold to Missouri Public Service through May 2005. Thereafter, power will be sold into the Southwest Power Pool.

On January 18, 2000, we entered into an agreement to provide the Sacramento Municipal Utility District ("SMUD") with a five-year supply of electricity from our 547 megawatt Sutter Power Plant. The plant is currently under construction near Yuba City, California. We will provide 150 megawatts of electricity to SMUD's customer base beginning with the plant's startup in mid 2001.

On January 26, 2000, we completed a private offering under Rule 144A of the Securities Act of 1933 of 6,000,000 5 1/2% Remarkable Term Income Deferrable Equity Securities ("trust preferred securities" or "HIGH TIDES") issued by a subsidiary trust at \$50.00 each, raising \$300.0 million of aggregate gross proceeds. On February 10, 2000, we privately placed an additional 1,200,000 5 1/2% HIGH TIDES pursuant to the exercise of the purchasers' option generating additional gross proceeds of \$60.0 million.

On January 28, 2000, we acquired the development rights for the Hermiston Power Project, a 630 megawatt gas-fired cogeneration power facility located near Hermiston, Oregon, from Ida-West Energy Company and TransCanada Pipelines. Construction of the facility commenced in the summer of 2000 and we expect that commercial operation will commence in mid 2002.

On February 2, 2000, we announced plans to build, own and operate the Decatur Energy Center, a 794 megawatt gas-fired cogeneration energy center at Solutia Inc.'s Decatur, Alabama chemical facility. Under a 20-year contract, Solutia will lease a portion of the facility to meet its electricity needs and purchase its steam requirements from us. Excess power from the facility will be sold into the Southeastern Wholesale Power Market under a variety of short, medium, and long-term contracts. We will also build a new intrastate natural gas pipeline to fuel the energy center. Construction began in September 2000 and commercial operation is expected to commence in mid 2002.

On February 4, 2000, we acquired 100% of the stock of Western Gas Resources California ("Western") from Western Gas Resources, Inc. for \$14.9 million. Western's assets include the 130-mile Steelhead natural gas pipeline and the remaining interest in the Sacramento River Gas System natural gas pipeline, now 100% owned by us.

On February 8, 2000, we announced that the Towantic Energy Center received approval through a town-wide referendum to purchase the town-owned land on which the facility will be built. The referendum also approved a Tax Stabilization Agreement that will even out the property taxes paid to the town of Oxford, Connecticut over a 22-year period.

On February 9, 2000, we announced that the California Energy Commission approved plans to construct the Delta Energy Center in Pittsburg, California. The Delta Energy Center, an 874 megawatt gas-fired energy center located at the Dow Chemical facility, is the first facility that will be developed, owned and operated under a joint venture with Bechtel Enterprises, and will provide power to Pittsburg, California and to the greater San Francisco Bay Area. We have a 437 megawatt net interest in this facility.

On February 22, 2000, we announced plans to build, own and operate the Lone Oak Energy Center, a 915 megawatt gas-fired cogeneration facility located in Lowndes County, Mississippi. We anticipate that construction will commence in mid 2001 and that commercial operation of the facility will commence in the spring of 2003.

On February 24, 2000, we announced plans to build, own and operate the Hillabee Energy Center, a 770 megawatt gas-fired cogeneration facility located in Tallapoosa County, Alabama. We anticipate that construction will commence in mid 2001 and that commercial operation of the facility will commence in mid 2003.

On March 6, 2000, we announced that we entered into a partnership agreement with Cleco Midstream Resources, an affiliate of Pineville, Louisiana-based Cleco Corporation, to participate in the Acadia Energy Center. The partners plan to build, own and operate the 1,239 megawatt natural gas-fired energy center near Eunice, Louisiana. We have a 620 megawatt net interest in this facility. Construction commenced in mid 2000 and commercial operation for the energy center is expected in May 2002.

On March 23, 2000, we announced plans to build, own and operate the Wawayanda Energy Center, a 630 megawatt natural gas-fired facility to be located near Middletown, New York. We anticipate that construction will begin in early 2002 and commercial operation will begin in early 2004.

On March 30, 2000, we purchased a 78.5%, or 394 megawatt, interest in the 502 megawatt Hidalgo Energy Center, located in Edinburg, Texas, from Duke Energy North America for \$235 million. The purchase included a cash payment of \$134 million and the assumption of a \$101 million capital lease obligation. The facility began commercial operation on June 14, 2000. The Hidalgo Energy Center sells power under our system approach into the Electric Reliability Council of Texas' wholesale market and potentially may sell into northern Mexico in the future.

On March 30, 2000, we announced a 50 megawatt expansion of the natural gas-fired, cogeneration power plant located in Morris, Illinois. We also announced the signing of a power sales agreement to deliver approximately 100 megawatts of capacity from the Morris Power Plant to Commonwealth Edison Company through the end of 2000. The majority of the electricity and all of the steam produced by the plant are sold to Equistar Chemicals, L.P. under a long-term agreement that expires in 2023.

On April 20, 2000, we announced plans to construct the Calgary Energy Centre. Scheduled to begin commercial operation in early 2003, the 300 megawatt combined cycle, natural gas-fired facility was the first independent power project announced in the Calgary area, and represents our first investment in the Canadian power industry.

On May 16, 2000, we announced the establishment of a new business unit, Calpine c\*Power, to serve the rapidly growing worldwide demand for highly reliable critical power. Highly reliable power adds to our growing line of high-value energy products, which includes green power, ancillary services and peaking power.

On May 22, 2000, we announced plans to purchase 36 F-class turbines from Orlando, Florida-based Siemens Westinghouse Power Corporation. The agreement includes long-term service programs and performance enhancements on existing equipment. In 2003 and 2004, Siemens Westinghouse will be obligated to deliver a total of 36 turbines to us. When operated in a combined cycle configuration, the 36 new turbines equate to approximately 9,800 additional megawatts of electricity generation potential.

On May 23, 2000, we announced the acquisition of development rights to build, own and operate the 700 megawatt natural gas-fired Fremont Energy Center near Fremont, Ohio. Construction is scheduled to begin in mid 2001 and we expect commercial operation to commence in mid 2003.

On May 23, 2000, we entered into an amended and restated \$400 million, three-year revolving line of credit led by The Bank of Nova Scotia, replacing an expiring \$100 million credit facility. The amended and restated facility will be used for working capital and other general corporate purposes.

On May 31, 2000, we completed the acquisition of the remaining 50% interest in the 105 megawatt Kennedy International Airport Power Plant ("KIAC") in Queens, New York, and the 40 megawatt Stony Brook Power Plant located at the State University of New York at Stony Brook on Long Island from Statoil Energy, Inc. We paid approximately \$71 million in cash and assumed a capital lease obligation relating to the Stony Brook Power Plant. We initially acquired a 50% interest in both facilities in December 1997.

On June 8, 2000, we effected a two-for-one split of our common stock for stockholders of record as of May 29, 2000.

On June 15, 2000, we announced that we acquired the Freestone Energy Center from New Orleans, Louisiana-based Entergy Corp. Freestone is a 1,052 megawatt natural gas-fired energy center located in Freestone County, Texas, near Fairfield, about 80 miles southeast of Dallas. The technologically advanced energy center is currently under construction, with a two-phased commercial start-up beginning in June 2002. We paid approximately \$61.0 million in cash and assumed certain liabilities. This represented payment for the land and development rights for the Freestone Energy Center, previous progress payments made for four General Electric gas turbines, two steam turbines and related equipment, and development expenditures incurred to date.

On June 27, 2000, we announced plans to build, own and operate a natural gas-fired cogeneration energy center at the BP Amoco chemical facility in Decatur, Alabama. The proposed Morgan Energy Center will generate approximately 790 megawatts of electricity in addition to supplying steam for BP Amoco's facility. Construction began in September 2000 and we expect commercial operation to commence in December 2002.

On June 29, 2000, we announced that we secured the rights to develop, build, own and operate the Teayawa Energy Center, a 608 megawatt natural gas-fired power generating facility near the town of Thermal in Riverside County, California through a development agreement with Adair International Oil and Gas, Inc. The Teayawa Energy Center will be sited on the Torres Martinez Desert Cahuilla Indians' land through a long-term lease agreement with the Torres Martinez. Commercial operation is expected in early 2004.

On June 30, 2000, we completed the acquisition from Edison Mission Energy of the remaining 50% ownership interest in a 153 megawatt natural gas-fired, combined cycle cogeneration facility located in Auburndale, Fla. We paid approximately \$22.0 million in cash and assumed certain liabilities, including project level debt. Related to the project level debt was the assumption of an interest rate swap agreement with a notional amount of \$121.5 million at December 31, 2000, which effectively converts the project level debt's floating rate to a fixed rate of 6.52% per annum. We acquired an initial 50% ownership interest in the Auburndale Power Plant in October 1997.

On July 5, 2000, we completed three acquisitions of natural gas reserves for \$206.5 million, including the acquisition of Calgary-based Quintana Minerals Canada Corp. ("QMCC"), three fields in the Gulf of Mexico and natural gas assets in the Piceance Basin, Colorado and onshore Gulf Coast. These acquisitions increased our proven reserves to 430 bcfe, which at full production, can fuel 800 to 900 megawatts of combined cycle gas-fired power generation.

On July 6, 2000, we announced the addition of 100 megawatts of peaking capacity to the natural gas-fired, cogeneration facility located in Auburndale, Florida.

On July 18, 2000, we announced plans to purchase from GE Power Systems 21 model 7FB turbines which will produce an additional 5,250 megawatts of electricity when operated in combined cycle mode. We will take delivery of 12 turbines in 2003, with the remainder of the contract to be filled in 2004.

On July 19, 2000, we announced we will develop, construct and own a natural gas-fired, combined cycle power generation facility in Haywood County, Tennessee. The proposed Haywood Energy Center represents our fourth project that will interconnect with the Tennessee Valley Authority. The 915 megawatt facility is scheduled to begin commercial operation in late 2004.

On July 20, 2000, we completed the acquisition of the Oneta Energy Center from Panda Energy, International, Inc. Oneta is a 1,138 megawatt natural gas-fired energy center under construction in Coweta, Oklahoma, southeast of Tulsa. Under our agreement with Panda, we may be obligated to make certain contingent payments during the operation of the Oneta facility. We also acquired from Panda 24 General Electric 7 FA gas turbines and 12 steam turbines, of which 16 gas turbines and 8 steam turbines were subsequently repurchased by another party in partnership with Panda.

On July 21, 2000, we signed a memorandum of understanding to purchase 85 heat recovery steam generators ("HRSG's") from St. Louis, Missouri-based Nooter/Eriksen. We will begin taking delivery of the HRSG's in 2001, with the bulk of the contract to be filled through 2004.

On July 24, 2000, we announced plans to enter into a \$2.5 billion revolving construction credit facility, through our wholly owned subsidiary Calpine Construction Finance Company II, LLC ("CCFC II"), with a consortium of banks, including The Bank of Nova Scotia and Credit Suisse First Boston as lead arrangers. We signed this agreement during the fourth quarter of 2000.

On August 1 and 2, 2000, we announced the completion of consent solicitations to effect certain amendments to six Indentures governing certain outstanding Calpine public debt securities which are due in the years 2004 - 2009. Supplemental Indentures effecting such amendments were executed by Calpine and the respective Trustees.

On August 9, 2000, we completed a public offering of 23,000,000 shares of our common stock at \$34.75 per share. The gross proceeds were \$799.3 million.

On August 9, 2000, we, through our wholly-owned subsidiary, Calpine Capital Trust III, completed a private offering, under Rule 144A of the Securities Act of 1933, of 10,350,000 5% HIGH TIDES at a price of \$50.00 per share. The gross proceeds from the offering were \$517.5 million.

On August 10, 2000, we completed a public offering of \$250.0 million of our 8 1/4% Senior Notes due 2005 and \$750.0 million of our 8 5/8% Senior Notes due 2010. The 8 1/4% Senior Notes mature on August 15, 2005 and interest is payable semi-annually. The 8 5/8% Senior Notes mature on August 15, 2010 and interest is payable semi-annually.

On August 16, 2000, we acquired the remaining 80% interest in the Agnews Power Plant, a 29 megawatt natural gas-fired, combined cycle facility located in San Jose, California from GATX Capital Corporation for a total purchase price of \$4.9 million. We first acquired a 20% equity interest in the Agnews Power Plant in 1990.

On August 31, 2000, we announced that we acquired the remaining 45% equity interest in the Aidlin Power Plant from an affiliate of Sumitomo Corporation for a total purchase price of \$6.4 million. We initially acquired a 5% equity interest in the Aidlin Power Plant in 1989, representing our first megawatt of generation. That interest was increased to 55% with the acquisition of two other partners' interests in 1999. Located in The Geysers region of northern California, Aidlin is a 20 megawatt power plant.

On September 1, 2000, we completed a leveraged lease financing transaction to provide the term financing for both Phase I and Phase II of the Pasadena, Texas cogeneration project. Under the terms of the lease, we received \$400.0 million in gross proceeds and recorded a deferred gain of approximately \$65.0 million.

On September 21, 2000, we announced a five year power sales agreement with Imperial Irrigation District ("IID"). Beginning May 2002, we will deliver 150 megawatts of electricity from our new 555 megawatt South Point Power Plant to IID's southern California electric customers.

On October 12, 2000, we completed the acquisition of Northbrook, Illinois-based SkyGen Energy LLC ("SkyGen") from Michael Polsky and Wisvest Corporation ("Wisvest"), an affiliate of Wisconsin Energy Corp. The total purchase price of \$359.1 million included \$294.2 million in cash and 2,117,742 shares of our common stock (which were valued in the aggregate at \$64.9 million at the signing of the Letter of Intent). Additionally, we agreed to the assumption of certain recourse and non-recourse obligations of SkyGen, the assumption of certain contingent obligations of Wisvest and Wisconsin Energy Corp. on behalf of SkyGen, and the obligation to make certain additional contingent payments for completion of certain project development milestones. Under the terms of the agreement, we acquired three operating facilities, five facilities under construction, 12 late-stage development projects and 16 project stage development projects. In addition, we assumed purchase rights and progress payments for 34 General Electric 7 FA gas turbines to power these projects.

On October 16, 2000, we jointly announced with EOG Resources, Inc. ("EOG") the signing of a one year marketing agreement that links the daily price of natural gas to the price of electricity. EOG agreed to sell 10 million cubic feet of natural gas per day directly to us. The transaction became effective January 1, 2001 and will terminate December 31, 2001.

On October 17, 2000, we announced plans to enter into a 400 megawatt long-term power supply agreement with Pacific Gas & Electric Company ("PG&E") that will provide competitively priced electricity for PG&E's northern California customers. Electricity deliveries will begin July 1, 2001 and end December 31, 2003.

On October 17, 2000, we announced that we presented plans, with Tampa, Florida-based Seminole Electric Cooperative, Inc. ("Seminole"), to the Florida Public Service Commission under which our proposed Osprey Energy Center will supply electric power under contract to help meet Seminole's member systems' power needs.

On October 20, 2000, we jointly announced with Cleco Corporation, a regional energy services company headquartered in Pineville, Louisiana, the signing of a 20-year contract with Aquila Energy, a wholly owned subsidiary of UtiliCorp United, for 580 megawatts of the output of the jointly owned Acadia Energy Center currently under construction in Acadia Parish, Louisiana. We have a 50% interest in Acadia Power Partners LLC, which owns the 1,239 megawatt combined cycle plant currently under construction. The remaining 50% interest is held by Cleco Midstream Resources LLC, a wholly owned subsidiary of Cleco. Under terms of a tolling agreement, starting July 1, 2002, Aquila Energy will supply the natural gas needed to generate 580 megawatts of electricity and will own and market the produced power.

On October 23, 2000, we announced that we entered into a project development agreement to build, own and operate a 1,100 megawatt natural gas-fired energy center to be located on the Ohio River in Hamilton Township, Lawrence County, Ohio. The proposed Lawrence Energy Center will represent a \$510 million investment, with a target commercial operation date of December 2004.

On October 31, 2000, we announced that we entered into a long-term, natural gas transportation and storage agreement with Kinder Morgan Texas Pipeline, Inc. ("KMTP"), a subsidiary of Kinder Morgan, Inc. We will have access to up to 375,000 MMBtu of firm natural gas transportation service per day from KMTP for a period of 10 years. The agreement began on January 1, 2001.

On October 31, 2000, we announced with Aquila Energy, a wholly-owned subsidiary of UtiliCorp United, the completion of a \$270 million construction and leverage lease financing of the Aries Power Plant, a 591 megawatt gas-fired power plant under construction in Pleasant Hill, Missouri. The majority of the plant's capacity and electrical output has already been sold under a four year contract (June 2001 - May 2005) to Missouri Public Service, a division of UtiliCorp. Under the terms of separate tolling contracts, we, together with Aquila, will purchase the balance of the plant's capacity and output, remarketing it into the Southwest Power Pool and Southeast Electric Reliability Counsel regional power markets. The marketing and fuel supply responsibilities will be handled by Aquila.

On November 14, 2000, we effected a two-for-one split of our common stock for stockholders of record as of November 6, 2000.

On November 15, 2000, we announced that our wholly owned subsidiary, SkyGen, entered into an agreement to supply CP&L Energy ("CP&L") additional power produced from the Broad River Energy Center expansion project. This expansion, the second phase of construction of the Broad River Energy Center, involves the installation of two additional combustion turbines capable of producing an additional 360 megawatts of peaking power. Construction is expected to be completed in the spring of 2001. The output will be sold to CP&L under long-term power purchase agreements.

On November 15, 2000, we acquired TriGas Exploration, Inc. ("TriGas"), a Calgary-based oil and gas company, for a total purchase price of \$101.1 million. The purchase price included cash payments of \$79.6 million, as well as assumed net indebtedness of \$21.5 million. The acquisition provides us with natural gas reserves to fuel our proposed Calgary Energy Centre, and a 26.6% working interest in the East Crossfield Gas Plant, extensive pipelines and gathering systems and a significant undeveloped land base with development potential.

On December 12, 2000, we announced that we are considering plans to develop and operate a new energy-efficient electric generating facility in an effort to meet a portion of the fast-growing local and regional electricity needs in northern California. We are preparing technical studies for the proposed 1,065 megawatt facility. The proposed East Altamont Energy Center will be located in the northeastern corner of Alameda County, and situated in an area dominated by major regional high voltage transmission lines, a natural gas compressor station, wind power generators, and the substantial pumping stations associated with the California Aqueduct and the Delta-Mendota Canal. Upon completion of licensing through the California Energy Commission, construction would begin in June 2002, with commercial operation beginning in June 2004.

On December 13, 2000, we completed the acquisition of Boca Raton, Florida-based Power Systems Mfg. LLC ("PSM"), an industry leader in combustion turbine component engineering, design and manufacturing, for a total purchase price of \$16.3 million. The purchase price included cash payments of \$5.6 million and

281,189 shares of Calpine common stock (which were valued at \$10.7 million at the closing of the agreement). Additionally, the agreement provides for five equal installments of cash payments totaling \$26.7 million, beginning in January 2002, contingent upon future PSM performance. PSM will operate as a subsidiary of Calpine and will continue to sell its products to the combustion turbine market.

On December 15, 2000, we completed the acquisition of strategic power assets from Dartmouth, Massachusetts-based Energy Management, Inc. ("EMI") for a total purchase price of \$145.0 million and the assumption of project financings. The purchase price included cash payments of \$100.0 million and 1,102,601 shares of Calpine common stock (which were valued in the aggregate at \$45.0 million at the closing of the agreement). Under the terms of the agreement, we acquired the remaining interest in three recently constructed combined cycle power generating facilities located in Dighton, Massachusetts, Tiverton, Rhode Island, and Rumford, Maine, as well as Calpine-EMI Marketing LLC, a joint marketing venture between Calpine and EMI.

On December 18, 2000, we announced with PG&E Corporation an agreement under which we will acquire the Otay Mesa Generating Project in San Diego County. In accordance with the terms of the agreement, we will build, own and operate the 618 megawatt generating facility, and PG&E Corporation's National Energy Group will contract for up to 250 megawatts of the project's output. Construction is expected to begin in the fall of 2001.

On December 19, 2000, we completed leveraged lease transactions in which we sold the Tiverton, Rhode Island and Rumford, Maine facilities (purchased from EMI) to a single owner lessor for \$466.7 million, which then leased the facilities back to our Tiverton and Rumford subsidiaries. We have fully and unconditionally guaranteed all of the obligations of the Tiverton and Rumford subsidiaries under the leases and other lease documents related to their lease of the facilities from the owner lessor. The owner lessor paid the purchase price for the facilities through an equity investment and by issuing notes. The notes were purchased by a pass through trust created by the Tiverton and Rumford subsidiaries. The purchase of the notes was financed by the private placement under Rule 144A of the Securities Act of 1933 by the pass through trust of \$366.0 million in 9.0% pass through certificates due July 15, 2018.

On December 22, 2000, we completed a leveraged lease financing transaction of our West Ford Flat and Bear Canyon projects. Under the terms of the agreement, the facilities were incorporated into Calpine's Geothermal lease facility, which we originally entered into on May 7, 1999. We received \$81.0 million in gross proceeds and recorded a deferred loss of approximately \$8.1 million, which is being amortized as an increase of operating lease expense over the remaining life of the lease.

#### **TRANSACTIONS ANNOUNCED OR CONSUMMATED SUBSEQUENT TO DECEMBER 31, 2000, AND RECENT DEVELOPMENTS**

On January 11, 2001, we jointly announced with Western Hub Properties LLC ("WHP") that WHP's wholly owned subsidiary, Lodi Gas Storage, LLC, entered into a long-term firm agreement to supply Calpine with storage services at WHP's Lodi Gas Storage facility near Lodi, California. The storage arrangement can provide up to 4 billion cubic feet (bcf) of working gas inventory and daily deliverability equal to approximately 20 percent of our western region peak day gas requirements in 2002. The Lodi Gas Storage Project, located approximately 50 miles east of San Francisco, is slated to begin construction in February of 2001, and to begin operation early in the fourth quarter of 2001.

On January 17, 2001, our wholly owned subsidiary, SkyGen, announced plans to build, own and operate an 850 megawatt natural gas-fired cogeneration facility in Augusta, Georgia. The proposed Augusta Energy Center will be fueled by clean natural gas and will supply energy to DSM Chemicals North America, Inc. for use in its production processes. Construction is expected to begin in the third quarter of 2001.

On January 26, 2001, we announced the acquisition of the development rights from Cogentrix, an independent power company based in North Carolina, for the 577 megawatt Washington Parish Energy Center, located near Bogalusa, Louisiana. We are managing construction of the facility, which began in January 2001.

On February 8, 2001 we announced plans to acquire all of the common shares of Encal Energy Ltd. ("Encal"), a Calgary, Alberta-based natural gas and petroleum exploration and development company, through a stock-for-stock exchange in which Encal shareholders will receive Cdn. \$12.00 per share in Calpine common equivalent shares based on an exchange ratio to be determined prior to closing. The aggregate value of the transaction, for which we expect to use pooling of interests accounting, is approximately \$1.2 billion, including the assumed net indebtedness of Encal. Upon completion of the acquisition, we will gain approximately 1.0 trillion cubic feet equivalent of proved and probable natural gas reserves, net of royalties. This transaction also provides access to firm gas transportation capacity from western Canada to California and the eastern U.S., and an accomplished management team capable of leading our business expansion in Canada. With the addition of Encal's assets, which currently produce approximately 230 million cubic feet of gas equivalent ("mmcf") per day, net of royalties, our net production is expected to increase to 390 mmcf per day in North America, enough to fuel approximately 2,300 megawatts of our power fleet. We expect to close this transaction during the second quarter of 2001.

On February 12, 2001, we announced that the Florida Public Service Commission approved a joint application filed by Calpine and Seminole Electric Cooperative, Inc., under which we will build a 590 megawatt combined cycle power generating facility, the Osprey Energy Center, to supply electric power to help meet Seminole's members' power needs.

On February 13, 2001, we announced that our wholly owned subsidiary, SkyGen, entered into an agreement to supply Alliant Energy's Wisconsin Power & Light Co. ("WP&L") 453 megawatts of electric capacity and energy from the proposed 600 megawatt RiverGen Energy Center, which will be located next to WP&L's existing power plant near Beloit, Wisconsin. The power sales agreement is for a term of ten years. Construction of the RiverGen Energy Center is expected to begin during the fourth quarter of 2001, with commercial operation scheduled for late 2003.

On February 15, 2001, we completed a public offering of \$1.15 billion of our 8 1/2% Senior Notes due 2011. The Senior Notes due 2011 bear interest at 8 1/2% per year, payable semi-annually and mature on February 15, 2011.

**Recent Developments in the California Power Market.** The deregulation of the California power market has produced significant unanticipated results in the past year. The deregulation froze the rates that utilities can charge their retail and business customers in California and prohibited the utilities from buying power on a forward basis, while wholesale power prices were not subjected to limits.

In the past year, a series of factors have reduced the supply of power to California, which has resulted in wholesale power prices that have been significantly higher than historical levels. Several factors contributed to this increase. These included:

- significantly increased volatility in prices and supplies of natural gas;
- an unusually dry fall and winter in the Pacific Northwest, which reduced the amount of available hydroelectric power from that region (typically, California imports a portion of its power from this source);
- the large number of power generating facilities in California nearing the end of their useful lives, resulting in increased downtime (either for repairs or because they have exhausted their air pollution credits and replacement credits have become too costly to acquire on the secondary market); and
- continued obstacles to new power plant construction in California, which deprived the market of new power sources that could have, in part, ameliorated the adverse effects of the foregoing factors.

As a result of this situation, two major California utilities that are subject to the retail rate freeze, including Pacific Gas & Electric Company ("PG&E"), have faced wholesale prices that far exceed the retail prices they are permitted to charge. This has led to significant underrecovery of costs by these utilities; and they have been widely reported to be facing the prospect of insolvency. As a consequence, these utilities have defaulted under a variety of contractual obligations, including payment obligations to power generators. PG&E

has defaulted on payment obligations to us (See Notes 15 and 19 of the Notes to Consolidated Financial Statements).

We have historically sold power to PG&E, which is one of the California utilities that is subject to the rate freeze. We are currently selling power to PG&E pursuant to long-term qualifying facility ("QF") contracts, which are subject to federal regulation under the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA") (16 U.S.C. sec. 796 et seq.). The QF contracts provide that the California Public Utilities Commission ("CPUC") determines the appropriate utility "avoided cost" to be used to set energy payments for certain QF contracts, including those for all of our QF plants in California which sell power to PG&E. Section 390 of the California Public Utility Code provided QFs the option to elect to receive energy payments based on the California Power Exchange ("PX") market clearing price. In mid-2000, our QF facilities elected this option and were paid based upon the PX zonal day ahead clearing price ("PX Price") from summer 2000 until January 19, 2001, when the PX ceased operating a day ahead market. Since that time, the CPUC has ordered that the price to be paid for energy deliveries by QFs electing the PX Price shall be based on a natural gas cost-based "transition formula." The CPUC has conducted proceedings (R. 99-11-022) to determine whether the PX Price was the appropriate price for the energy component upon which to base payments to QFs which had elected the PX based pricing option. It is possible that the CPUC could order a payment adjustment based on a different energy price determination. We believe that the PX Price was the appropriate price for energy payments but there can be no assurance that this will be the outcome of the CPUC proceedings. Legislation has recently been introduced in the California legislature (SB 47X) that would establish a fixed price for the QF contracts for a 5 year period and would eliminate any PX Price adjustment prior to December 31, 2000. There can be no assurances that this legislation will be enacted.

We have continued to honor our contractual obligations to PG&E under our QF contracts. To date, we have refrained from pursuing our collection remedies with respect to PG&E's default, however, we have been actively involved with the California utilities, the California legislature, and other interested parties to develop legislation designed to stabilize energy prices through the application of a long-term energy pricing methodology (for a five-year period) in place of the short-term pricing methodology currently utilized under the QF contracts, as discussed above. We also expect further legislation to enable the California utilities to finance over a longer term the difference between the wholesale prices that have been paid and the retail prices they received during last fall and into this winter. We believe that this should further enhance PG&E's ability to make payment of all past due amounts. However, management cannot predict the timing or ultimate outcome of the legislative process or the payment of amounts due under our contracts.

As this situation has deteriorated, California has taken steps to restore a predictable and reliable power market to the State. Recently, California adopted legislation permitting it to issue long-term revenue bonds to provide funding for wholesale purchases of power. The bonds will be repaid with the proceeds of payments by retail customers over time. The California Department of Water Resources ("DWR") sought bids for long-term power supply contracts. We successfully bid in that auction, and announced, as indicated below, that we have signed three significant long-term power supply contracts with DWR.

On February 7, 2001, we announced the signing of a 10-year, \$4.6 billion fixed-price contract with DWR to provide electricity to the State of California. We committed to sell up to 1,000 megawatts of electricity, with initial deliveries of 200 megawatts starting October 1, 2001, and increasing to 1,000 megawatts by January 1, 2004. This contract will continue through 2011. The electricity will be sold directly to DWR on a 24-hour, 7-day-a-week basis.

On February 28, 2001, we announced the signing of two long-term power sales contracts with DWR. Under the terms of the first contract, a \$5.2 billion, 10-year, fixed-price contract, we commit to sell up to 1,000 megawatts of generation. Initial deliveries are scheduled to begin July 1, 2001 with 200 megawatts and increase to 1,000 megawatts by as early as July 2002. Under the terms of the second contract, a 20-year contract totaling up to \$3.1 billion, we will supply DWR with up to 495 megawatts of peaking generation, beginning with 90 megawatts as early as August 2001, and increasing up to 495 megawatts as early as August 2002.

On March 13, 2001, we announced the signing of a two-month deal to provide 555 megawatts of electricity to DWR effective immediately through May 15, 2001.

FERC Investigation into California Wholesale Markets. Beginning in May 2000, wholesale energy prices in the California markets increased to levels well above 1999 levels. In response, on June 28, 2000, the ISO Board of Governors reduced the price cap applicable to the ISO's wholesale energy and ancillary services markets from \$750/MWh to \$500/MWh. The ISO subsequently reduced the price cap to \$250/MWh on August 1, 2000. During this period, however, the California Power Exchange Corporation ("PX") maintained a separate price cap set at a much higher level applicable to the "day-ahead" and "day-of" markets administered by the PX. On August 23, 2000, the FERC denied a complaint filed August 2, 2000 by San Diego Gas & Electric Company ("SDG&E") that sought to extend the ISO's \$250 price cap to all California energy and ancillary service markets, not just the markets administered by the ISO. However, in its order denying the relief sought by SDG&E, the FERC instructed its staff to initiate an investigation of the California power markets and to report its findings to the FERC and held further hearing procedures in abeyance pending the outcome of this investigation.

On November 1, 2000, the FERC released a Staff Report detailing the results of the Staff investigation, together with an "Order Proposing Remedies for California Wholesale Markets" ("November 1 Order"). In the November 1 Order, the FERC found that the California power market structure and market rules were seriously flawed, and that these flaws, together with short supply relative to demand, resulted in unusually high energy prices. The November 1 Order proposed specific remedies to the identified market flaws, including: (a) imposition of a so-called "soft" price cap at \$150/MWh to be applied to both the PX and ISO markets, which would allow bids above \$150/MWh to be accepted, but will subject such bids to certain reporting obligations requiring sellers to provide cost data and/or identify applicable opportunity costs and specifying that such bids may not set the overall market clearing price, (b) elimination of the requirement that the California utilities sell into and buy from the PX, (c) establishment of independent non-stakeholder governing boards for the ISO and the PX, and (d) establishment of penalty charges for scheduling deviations outside of a prescribed range. In the November 1 Order the FERC established October 2, 2000, the date 60 days after the filing of the SDG&E complaint, as the "refund effective date." Under the November 1 Order, rates charged for service after that date through December 31, 2002 will remain subject to refund if determined by the FERC not to be just and reasonable. While the FERC concluded that the Federal Power Act and prior court decisions interpreting that act strongly suggested that refunds would not be permissible for charges in the period prior to October 2, 2000, it noted that it was willing to explore proposals for equitable relief with respect to charges made in that period. All of the Company's receivables from PG&E relate to energy generated by QF facilities. Under FERC regulations, QF contracts are exempt from regulation under the Federal Power Act, which is the legislation that provides the authority for the FERC to compel refunds or frame other equitable relief with respect to the California wholesale markets. See "Government Regulation -- Federal Energy Regulation -- Federal Power Act Regulation." Therefore, the Company believes that any refund or other equitable remedy that the FERC may impose with respect to the California wholesale markets will not affect the Company's ability to pursue payment by PG&E of all past due amounts as described above.

On December 15, 2000, the FERC issued a subsequent order that affirmed in large measure the November 1 Order (the "December 15 Order"). Various parties have filed requests for administrative rehearing and for judicial review of aspects of the FERC's December 15 Order. The outcome of these proceedings, and the extent to which the FERC or a reviewing court may revise aspects of the December 15 Order or the extent to which these proceedings may result in a refund of or reduction in the amounts charged by the Company's subsidiaries for power sold in the ISO and PX markets, cannot be determined at this time.

## SELECTED OPERATING INFORMATION

Set forth below is certain selected operating information for our power plants and steam fields, for which results are consolidated in our statements of operations. Results vary for the twelve months ended December 31, 2000, as compared to the same period in 1999 and 1998, primarily due to the consolidation of acquisitions, favorable energy pricing, and increased production. Electricity revenue is composed of fixed capacity payments, which are not related to production, and variable energy payments, which are related to production. Capacity revenues include, besides traditional capacity payments, other revenues such as Reliability Must Run and Ancillary Service revenues. The information set forth under thermal and other revenue consists of the results for the Thermal Power Company Steam Fields prior to the acquisition of the PG&E power plants on May 7, 1999, in addition to host thermal sales and other revenue. As a result of this acquisition, steam output was used to produce electricity, whereas this output was previously sold to third parties.

	YEARS ENDED DECEMBER 31,				
	1996	1997	1998	1999	2000
	(DOLLARS IN THOUSANDS, EXCEPT PRODUCTION AND PRICING DATA)				
POWER PLANTS:					
Electricity and steam revenues:					
Energy.....	\$ 97,997	\$ 116,577	\$ 334,549	\$ 458,593	\$ 1,219,495
Capacity.....	\$ 63,549	\$ 75,588	\$ 123,380	\$ 247,620	\$ 383,528
Thermal and Other.....	\$ 37,918	\$ 45,112	\$ 49,968	\$ 54,112	\$ 99,297
Megawatt hours produced.....	1,985,404	2,158,008	9,864,080	14,802,709	22,749,588
Average energy price per megawatt hour.....	\$ 49.36	\$ 54.02	\$ 33.92	\$ 30.98	\$ 53.61

## RESULTS OF OPERATIONS

### YEAR ENDED DECEMBER 31, 2000 COMPARED TO YEAR ENDED DECEMBER 31, 1999

Revenue -- Total revenue increased 169% to \$2,282.8 million in 2000 compared to \$847.7 million in 1999, primarily due to the impact of recognition of a full year's income from various assets that were acquired in 1999, recognition of a partial year's income from various assets that were acquired in 2000, increased production, and favorable energy pricing.

Electricity and steam sales increased 124% to \$1,702.3 million in 2000 compared to \$760.3 million in 1999. Approximately \$269.4 million of the increase was generated by a full year's activity of our geothermal facilities, which we initially acquired in May 1999. The facilities that we acquired as part of the Cogeneration Corporation of America, Inc. ("CGCA") acquisition in December 1999 contributed \$107.2 million in 2000. Additionally, commencement of commercial operations at our Hidalgo facility and of our Pasadena expansion generated approximately \$147.1 million. Our acquisitions of KIAC, Stony Brook, Auburndale, and Agnews during 2000, contributed an additional \$113.5 million to the overall increase in revenues. The balance was primarily due to increased production and favorable energy pricing in various markets, particularly California.

Service contract revenue increased 996% to \$480.2 million in 2000 compared to \$43.8 million in 1999. The \$436.4 million increase was primarily due to increased electric energy and gas hedging and related activity associated with purchased power and gas sold to third parties.

Income from unconsolidated investments in power projects decreased 33% to \$24.6 million in 2000 compared to \$36.6 million in 1999. Approximately \$5.2 million of the decrease is primarily attributable to the consolidation of KIAC, Stony Brook, Auburndale, and Agnews' results in electricity and steam sales as a result of our purchase of these facilities during 2000. We also recorded \$8.8 million less equity income from Sumas, and \$1.2 million less from our investment in Bayonne. These amounts were partially offset by \$4.7 million of revenue that we recorded in connection with our investment in the Grays Ferry facility that we acquired in December 1999.

Interest income on loans to power projects increased 300% to \$4.8 million in 2000 compared to \$1.2 million in 1999. Revenue recognized during 2000 related substantially to interest on loans to the Dighton, Tiverton, and Rumford projects before we purchased the remaining interests in the projects in December 2000. In 1999, we recorded \$1.2 million of income from our 20% investment in Sheridan California Energy, Inc. We no longer recognize this revenue following our purchase of the remaining 80% interest through the acquisition of Sheridan Energy, Inc., the parent of Sheridan California Energy, Inc., in October 1999.

Other revenue was \$70.8 million in 2000 compared to \$5.8 million in 1999. This primarily represents revenues derived from the sale of natural gas to third parties. The increase is attributable to the acquisition of Sheridan Energy, Inc. in October 1999, in addition to several strategic gas acquisitions during 2000, including Quintana and TriGas.

Cost of revenue -- Cost of revenue increased to \$1,558.7 million in 2000 compared to \$561.9 million in 1999, an increase of \$996.8 million, or 177%.

Fuel expenses increased by \$344.2 million to \$612.9 million in 2000 compared to \$268.7 million in 1999 due primarily to the incremental effect of acquisitions made in 1999 such as the CogenAmerica facilities which reflect a full year of activity in 2000, and due to acquisitions made in 2000. Additionally, we incurred significantly higher gas prices during 2000.

Plant operating expenses increased by \$97.5 million to \$220.2 million in 2000 compared to \$122.7 million in 1999 due primarily to the incremental effect of acquisitions made in 1999 such as the CogenAmerica facilities and the geothermal facilities which reflect a full year of activity in 2000, and due to acquisitions made in 2000.

Depreciation expense increased by \$71.5 million to \$154.3 million in 2000 compared to \$82.8 million in 1999 primarily due to an approximate \$39.2 million increase in depreciation expense relating to our natural gas production. The remainder is substantially the result of the incremental effect of acquisitions that we made during 1999 and 2000.

Production royalties increased by \$18.5 million to \$32.3 million in 2000 compared to \$13.8 million in 1999 primarily due to royalties paid to third parties in connection with geothermal energy generation.

Operating lease expenses increased by \$35.8 million to \$69.4 million in 2000 compared to \$33.6 million in 1999. Approximately \$15.0 million was due to the lease associated with our acquisition of the remaining 50% interest in KIAC in May 2000. Another \$8.7 million was due to the inclusion of a full year's operations of our geothermal facilities, \$5.0 million was attributable to the Pasadena sales-leaseback that we entered into in September 2000, and \$6.4 million was due to the higher contingent lease payments at our Watsonville facility.

Service contract expenses increased by \$429.3 million to \$469.5 million in 2000 compared to \$40.2 million in 1999 due to costs associated with increased electric energy and gas hedging and related activity associated with power and gas purchased from third parties.

Project development expense increased by \$16.9 million, or 158%, in 2000 to \$27.6 million compared to \$10.7 million in 1999 due to heavier activities in identifying and obtaining acquisition and project development opportunities resulting from a larger number of development projects. For additional information, see "Item 1 -- Business -- Project Development and Acquisitions."

General and administrative expenses -- In 2000, general and administrative expenses were \$94.1 million compared to \$48.7 million in 1999. The increase of 93% or \$45.4 million is largely attributable to our acquisitions and continued organic growth in personnel and associated overhead costs necessary to support the overall growth of our operations and construction programs.

Interest expense -- Interest expense before capitalization of interest was \$263.7 million in 2000 compared to \$138.5 million in 1999, an increase of \$125.2 million due to higher debt balances in 2000. Total debt increased by approximately \$2.4 billion due primarily to our public offering of \$1 billion of senior notes in

August 2000 and due to debt acquired in connection with various acquisitions such as capital leases associated with our Hidalgo, Agnews, and Stony Brook acquisitions. After capitalization of interest on our significant construction program (see "Item 1 -- Business -- Project Development and Acquisitions"), our interest expense decreased by approximately \$34.5 million in 2000 to \$56.7 million from \$91.2 million in 1999.

Distributions on Trust Preferred Securities -- Distributions on trust preferred securities increased to \$44.2 million in 2000 from \$2.6 million in 1999, due to a full year of distributions on our HIGH TIDES issuance of November 1999, in addition to HIGH TIDES II and III issuances in January and August 2000, respectively.

Interest income -- In 2000, interest income was \$39.9 million compared to \$24.1 million in 1999. The increase of 66% or \$15.8 million is attributable to higher average cash balances in 2000 owing to the public offerings of senior notes and common stock in August 2000, and due to the public offerings of HIGH TIDES in January and August of 2000.

Other income, net -- In 2000, other income was \$4.9 million compared to \$1.3 million in 1999. Approximately \$2.0 million relates to the income recorded from interest rate swaps that were extinguished in connection with the repayment of Pasadena project level debt in September 2000, and \$1.3 million pertains to a business interruption insurance recovery at our Texas City project.

Provision for income taxes -- The effective income tax rate was approximately 40% in 2000 compared to approximately 39% in 1999. In 2000 our provision for federal and state income taxes totaled \$219.0 million versus \$62.0 million in 1999, an increase of \$157.0 million, which is due primarily to higher taxable income in 2000.

### **YEAR ENDED DECEMBER 31, 1999 COMPARED TO YEAR ENDED DECEMBER 31, 1998**

Revenue -- Total revenue increased 52% to \$847.7 million in 1999 compared to \$555.9 million in 1998, primarily due to the impact of recognizing a full year's income from various assets that were acquired in 1998 and of recognizing a partial year's income from various assets that were acquired in 1999, as described below.

Electricity and steam sales increased 50% to \$760.3 million in 1999 compared to \$507.9 million in 1998. Geothermal revenues at the Geysers accounted for \$123.2 million, or roughly half, of the total increase of \$252.4 million. This was primarily due to the purchase of 14 geothermal power plants from PG&E on May 7, 1999 and, to a much lesser extent, due to the purchases of: (1) an additional 50% stake in the Aidlin Power Plant in August, 1999 after which we consolidated the plant into our financial results; and (2) the Calistoga Power Plant on October 19, 1999. In 1999 our geothermal steamfield sales of steam declined by \$3.0 million compared to 1998, due to consolidation of steamfield and power plant operations at the Geysers under Calpine ownership in May 1999, after which we stopped recording revenues from geothermal steamfield sales to third parties.

The remainder of the increase in electricity and steam sales is attributable to our gas fired power plants. In California, the Gilroy Power Plant increased its revenue in 1999 by \$27.9 million over 1998 by both (1) doubling its production, mostly as a result of the expiration of PG&E's curtailment rights on December 31, 1998 and (2) restructuring its power purchase agreement with PG&E, effective as of September 1, 1999. Also, the Pittsburg Power Plant in California increased its revenue by \$12.6 million in 1999 versus 1998. We acquired the project on July 21, 1998 and did not have a full year of operations in 1998. In Texas, the Texas City and Clear Lake Power Plants, which were consolidated into our financial statements following the acquisition of the remaining 50% interest of Texas Cogeneration Company ("TCC") on March 31, 1998, benefited by a full year of operations in 1999 versus only nine months on a consolidated basis in 1998, and together they recorded an additional \$39.0 million of revenue in 1999 versus in 1998. And finally the Pasadena Power Plant, which commenced operation in July 1998, had \$43.6 million of additional revenue in 1999 compared to 1998 due to a full year of operations in 1999.

Service contract revenue increased 117% to \$43.8 million in 1999 compared to \$20.2 million in 1998. The \$23.6 million increase was primarily due to an increase in recorded sales of purchased power to third parties and to an increase in sales of purchased gas to third parties.

Income from unconsolidated investments in power projects increased 45% to \$36.6 million in 1999 compared to \$25.2 million in 1998. The increase of \$11.4 million is primarily attributable to an increase of equity income from the Sumas Power Plant. In 1999 we recorded \$21.8 million versus \$11.7 million in 1998, an increase of \$10.1 million. Additionally, as a group, our equity income projects on the East Coast, Lockport Power Plant, Stony Brook Power Plant, Kennedy International Airport Power Plant, Gordonsville Power Plant, Auburndale Power Plant, and Bayonne Power Plant, increased by \$4.2 million. This was offset by a \$2.9 million reduction in equity income attributable to our Clear Lake and Texas City Power Plants, which were unconsolidated investments for part of 1998 until our purchase of the remaining 50% interest in TCC on March 31, 1998.

Interest income on loans to power projects decreased 54% to \$1.2 million in 1999 compared to \$2.6 million in 1998. In 1999 we no longer received interest income associated with the TCC investment following our purchase of the remaining 50% interest in TCC on March 31, 1998. In 1999, we recorded \$1.2 million of income from our 20% investment in Sheridan California Energy, Inc. We no longer recognize this revenue following our purchase of the remaining 80% interest through the acquisition of Sheridan Energy, the parent of Sheridan California Energy, Inc., on October 1, 1999.

Other revenue was \$5.8 million in 1999 compared to none in 1998. In 1999 we recorded \$5.3 million of oil and gas revenue following our acquisition of Sheridan Energy on October 1, 1999.

Cost of revenue -- Cost of revenue increased to \$561.9 million in 1999 compared to \$378.9 million in 1998, an increase of \$183.0 million, or 48%.

Fuel expenses increased by \$87.1 million to \$268.7 million in 1999 compared to \$181.6 million in 1998 due primarily to: (1) a full year of consolidated operations in 1999 for the Clear Lake and Texas City Power Plants versus only nine months in 1998; (2) a full year of operations in 1999 versus a partial year in 1998 for the Pasadena Power Plant, which commenced commercial operations in July, 1998; (3) a full year of operations in 1999 versus a partial year in 1998 for the Pittsburg Power Plant, which we acquired on July 21, 1998; and (4) higher production in 1999 compared to 1998, and therefore higher fuel expense, at our Gilroy and King City Power Plants due to the expiration of PG&E's curtailment rights on December 31, 1998 and April 28, 1999 respectively.

Plant operating expenses increased by \$44.6 million to \$122.7 million in 1999 compared to \$78.1 million in 1998 due primarily to higher geothermal plant operating expense in 1999 following our purchase of 14 geothermal power plants from PG&E on May 7, 1999 and our purchase of geothermal steam field assets from Unocal Corporation on March 19, 1999.

Depreciation expense increased by \$8.8 million to \$82.8 million in 1999 compared to \$74.0 million in 1998 primarily due to a full year of operations in 1999 versus partial years in 1998 for the Texas City, Clear Lake and Pasadena Power Plants, as noted above, and also due to our purchase of Sheridan Energy on October 1, 1999.

Production royalties increased by \$3.1 million to \$13.8 million in 1999 compared to \$10.7 million in 1998 due to our purchase of geothermal steam field assets from Unocal Corporation on March 19, 1999.

Operating lease expenses increased by \$16.5 million to \$33.6 million in 1999 compared to \$17.1 million in 1998. Of the increase, \$10.8 million is due to the sale-leaseback in May 1999 of the 14 geothermal power plants acquired from PG&E in May 1999 and the Sonoma Power Plant, which we acquired in July 1998. We later added the Calistoga Power Plant, which we acquired in October 1999, to that lease. The remainder of the increase is primarily due to recording a full year of expense in 1999 versus a partial year in 1998 for the Greenleaf 1 and 2 Power Plants, which were leased commencing in August 1998.

Service contract expenses increased by \$22.8 million to \$40.2 million in 1999 compared to \$17.4 million in 1998 due to higher recorded purchases of electricity and gas that were sold to third parties.

Gross profit -- Gross profit increased by \$108.9 million, or 62%, to \$285.9 million in 1999 compared to \$177.0 million in 1998 due primarily to the purchase of geothermal steam field assets from Unocal Corporation on March 19, 1999 and 14 geothermal power plants from PG&E on May 7, 1999. Overall, the consolidated geothermal operations at the Geysers increased gross profit in 1999 by \$62.7 million compared to 1998. Also, contributing \$12.4 million to the increase is the Gilroy Power Plant, which benefited from the contract restructuring with PG&E. The Pasadena Power Plant, which benefited from a full year of operations in 1999, contributed an increase of \$17.0 million, and we also realized \$11.4 million in additional equity income from unconsolidated projects in 1999 compared to 1998 owing mostly to increased distributions from the Sumas Power Plant.

Project development expenses -- Project development expenses increased by \$3.5 million, or 49%, in 1999 to \$10.7 million compared to \$7.2 million in 1998 due to the overall heavier pace in development activities as described in "Business -- Project Development and Acquisitions."

General and administrative expenses -- In 1999 general and administrative expenses were \$48.7 million compared to \$23.2 million in 1998. The increase of 110% or \$25.5 million is largely attributable to the establishment of regional offices in Pleasanton, CA, and Boston, MA, the build-up of our Houston, TX regional office and the establishment of our construction management office in Sacramento, CA. In addition to higher headcount and salaries associated with our substantial growth, we incurred larger employee bonus expense owing to the record year we experienced in 1999. The increased general and administrative investment in 1999 reflects, in part, increased expenses designed to support our growth in 2000 and beyond.

Interest expense -- Interest expense before capitalization of interest was \$138.5 million in 1999 compared to \$93.7 million in 1998, an increase of \$44.8 million due to higher debt balances in 1999 (total debt increased by \$982.3 million due primarily to our public offering of \$600.0 million of senior notes on March 29, 1999). However, actual reported interest expense increased by a much smaller \$4.4 million, or 5%, in 1999 compared to 1998 because we capitalized substantially more interest in 1999 compared to 1998 due to our heavy power plant construction program. By the fourth quarter of 1999, we had nine construction projects underway. We capitalized \$47.3 million of interest expense in 1999 compared to \$7.0 million in 1998, which is an increase of \$40.3 million in capitalized interest expense.

Total interest expense on senior notes increased by \$46.1 million to \$121.8 million in 1999 compared to \$75.7 million in 1998. Although the average interest rate on the senior notes decreased by 0.4% in 1999 compared to 1998, interest expense increased because of the additional \$600.0 million of senior notes issued in March 1999. The proceeds of the senior notes issued in March of 1999 were used partially to retire \$120.6 million of debt related to the Gilroy Power Plant, and interest expense on the Gilroy debt decreased by \$6.7 million in 1999 compared to 1998. Additionally, we increased debt by \$97.8 million with the acquisition of Sheridan Energy on October 1, 1999 and due to Sheridan's purchase of certain gas reserves from Vintage Petroleum, Inc. on December 31, 1999. Interest on Sheridan debt was \$1.3 million in 1999. We also increased debt by \$239.4 million by acquiring CGCA on December 17, 1999. Interest expense from CGCA debt in 1999 following the acquisition was \$491,000.

Distributions on Trust Preferred Securities -- In October 1999 we completed a public offering by a subsidiary trust of 5,520,000 HIGH TIDES. The accrued distributions through December 31, 1999 were \$2.6 million.

Interest income -- In 1999, interest income was \$24.1 million compared to \$12.3 million in 1998. The increase of 96% or \$11.8 million is attributable to higher average cash balances in 1999 owing to the public offerings of senior notes and common stock in March, 1999, and due to the public offerings of common stock and HIGH TIDES in October 1999.

Other income, net -- In 1999, other income was \$1.3 million compared to \$1.1 million in 1998. In 1999 we recorded \$655,000 of income associated with an investment in Cheng Power Systems, Inc. and \$324,000 from the sale of excess nitrous oxide ("NOX") credits by the Bethpage Power Plant.

Provision for income taxes -- The effective income tax rate was approximately 39% in 1999 compared to approximately 37% in 1998. The rate increase in 1999 is primarily attributable to a higher average state tax

rate based on the mix of states in which we worked. In 1999 our provision for federal and state income taxes totaled \$62.0 million versus \$27.1 million in 1998, an increase of \$34.9 million, which is due primarily to higher taxable income in 1999.

## LIQUIDITY AND CAPITAL RESOURCES

To date, we have obtained cash from our operations, borrowings under our credit facilities and other working capital lines, sale of debt, trust preferred securities and equity, and proceeds from project financing. We utilized this cash to fund our operations, service debt obligations, fund the acquisition, development and construction of power generation facilities, finance capital expenditures and meet our other cash and liquidity needs. The following table summarizes our cash flow activities for the periods indicated:

	YEARS ENDED DECEMBER 31,		
	2000	1999	1998
	(IN THOUSANDS)		
Beginning cash and cash equivalents.....	\$ 349,371	\$ 96,532	\$ 48,513
Cash flows from:			
Operating activities.....	650,330	264,083	164,579
Investing activities.....	(3,554,159)	(1,490,417)	(400,003)
Financing activities.....	3,143,156	1,479,173	283,443
Net increase in cash and cash equivalents.....	239,327	252,839	48,019
Ending cash and cash equivalents.....	\$ 588,698	\$ 349,371	\$ 96,532

Operating activities for 2000 provided \$650.3 million, a 146% increase from 1999, consisting of approximately \$141.6 million of depreciation and amortization, \$323.5 million of net income, \$30.0 million of distributions from unconsolidated investments in power projects, \$62.6 million of deferred income taxes and a \$709.5 million net increase in operating liabilities. This was partially offset by a \$592.2 million net increase in operating assets and \$24.6 million of income from unconsolidated investments. The increase in cash provided from operating activities in 2000 is primarily due to higher net income derived from our acquisition activity, favorable pricing, and increased production in 1999 and 2000.

Investing activities for 2000 used \$3.6 billion, primarily due to \$3.0 billion for construction costs and capital expenditures including gas turbine-generator costs and associated capitalized interest, \$840.9 million for acquisitions (see Note 4 of the Notes to Consolidated Financial Statements for further discussion), \$141.1 million of advances to joint ventures, \$53.1 million of capitalized project development costs, including associated capitalized interest, \$184.5 million increase in notes receivables primarily due to our Delta Energy Center development partner and our long-term Gilroy restructuring receivables and \$15.6 million increase in restricted cash related to certain project financings. The increase in cash used in investing activities in 2000 is primarily due to increased construction and acquisition activity compared to 1999.

Financing activities for 2000 provided \$3.1 billion of cash consisting of \$1.0 billion proceeds from the issuance of our Senior Notes due 2005 and Senior Notes due 2010, \$2.2 billion in borrowings under various credit facilities and \$1.7 billion of proceeds from offerings of our common stock and HIGH TIDES. This was offset by \$1.7 billion of repayments on various credit facilities and \$52.7 million of financing costs. The increase in cash provided from financing activities in 2000 is primarily due to the debt and equity offerings issued during 2000, as well as the HIGH TIDES offerings.

As discussed in Note 19 of the Notes to Consolidated Financial Statements and under the caption "Item 1 -- Business -- Recent Developments", there is considerable uncertainty surrounding the California power market. Regardless of the resolution of the current situation, we do not believe that a possible uncollectibility of remaining receivables from PG&E would have a material adverse effect on our liquidity or cash flows. However, failure to collect a significant portion of the receivables could have a materially adverse effect on our Statement of Operations.

We continue to evaluate current and forecasted cash flow as a basis for financing operating requirements and capital expenditures. We believe that we will have sufficient liquidity from cash flow from operations,

borrowings available under the lines of credit, access to the capital markets and working capital to satisfy all obligations under outstanding indebtedness, to finance anticipated capital expenditures and to fund working capital requirements for the next twelve months.

#### Credit Facilities (see Note 7 of the Notes to Consolidated Financial Statements)

At December 31, 2000, we maintained a borrowing base in Canada of Cdn \$304.0 million (approximately US \$202.7 million at December 31, 2000) under three facilities. At December 31, 2000, we had US \$144.5 million outstanding under these facilities. The facilities bear interest at variable rates. The weighted average rate for each of the facilities in 2000 was 8.52%. Additionally, commitment fees of 0.25% accrue on any unused portion of these facilities.

At December 31, 2000, we through our wholly owned subsidiary CNGC, maintained a borrowing base of \$99.1 million with Bank One, Texas N.A. under two facilities. In August 2000, we repaid the outstanding balance of \$93.3 million and terminated the agreement. As of December 31, 1999, CNGC had total borrowings of \$97.8 million outstanding under this facility. The facility bore interest at variable rates. At December 31, 1999, the interest rate was 8.6%. The lines of credit were secured by CNGC's oil and gas properties.

At December 31, 2000, we had an amended and restated \$400.0 million, three-year revolving line of credit with a consortium of commercial lending institutions with the Bank of Nova Scotia as agent, which replaced an existing \$100.0 million credit facility. A maximum of \$200.0 million of the credit facility may be allocated to letters of credit. At December 31, 2000, we had \$40.0 million in borrowings and \$157.9 million of letters of credit outstanding under the amended and restated credit facility. At December 31, 1999, we had no borrowings and \$28,800 in letters of credit outstanding under this credit facility. The interest rate ranged from 7.88% to 9.75% during 2000.

#### Project Financing (see Note 8 of the Notes to Consolidated Financial Statements)

In November 1999, we entered into a credit agreement for \$1.0 billion through our wholly owned subsidiary Calpine Construction Finance Company L.P. with a consortium of banks with the lead arranger being The Bank of Nova Scotia and the lead arranger syndication agent being Credit Suisse First Boston. The non-recourse credit facility is utilized to finance the construction of the our diversified portfolio of gas-fired power plants currently under development. We currently intend to refinance this construction facility in the long-term capital markets prior to its four-year maturity. As of December 31, 2000, we had \$544.8 million in borrowings outstanding under the facility. Borrowings under this facility bear variable interest.

In October 2000, we entered into a credit agreement for \$2.5 billion through our wholly owned subsidiary Calpine Construction Finance Company II, LLC with a consortium of banks with the lead arrangers being The Bank of Nova Scotia and Credit Suisse First Boston. The non-recourse credit facility is utilized to finance the construction of our diversified portfolio of gas-fired power plants currently under development. We currently intend to refinance this construction facility in the long-term capital markets prior to its four-year maturity. As of December 31, 2000, we had \$156.8 million in borrowings outstanding under the facility. Borrowings under this facility bear variable interest.

As part of our acquisition of the Auburndale Power Plant, we assumed a facility that provides for project financing loans aggregating \$126.0 million. Amounts outstanding under the facility bear variable interest. The weighted average interest rate for this facility was 7.51% during 2000 and \$121.5 million was outstanding under the facility at December 31, 2000.

On December 17, 1999, we acquired 80% of the common stock of CGCA which owns 100% of the Newark and Parlin Power Plants ("Newark & Parlin"). At December 31, 2000 there was \$116.7 million outstanding on a fifteen year non-recourse term loan which is a joint and severable liability of Newark & Parlin. The interest rate on the outstanding principal is variable. As of December 31, 2000, \$116.7 million was outstanding under the facility. The weighted average interest rate during 2000 was 7.68%.

As part of our acquisition of SkyGen, we assumed a term loan for the Broad River Energy Center and a steam injection addition loan, with the latter expected to be converted to a term loan in 2001. Both the project loan and the steam injection addition loan mature on March 1, 2007. The construction loans require only variable interest payments through the conversion date, and blended payments of principal and interest following conversion to a term loan. As of December 31, 2000, \$115.9 million was outstanding under the facilities. The weighted average interest rate during 2000 was 8.02%.

As part of our acquisition of SkyGen, we entered into financing to construct the Pine Bluff Energy Center. As part of the related credit agreement, the lenders will provide a facility whereby the Company can borrow up to \$142.0 million to fund construction. Of this amount, \$32.0 million is secured by guarantees or letters of credit from the members or their affiliates. Upon completion of construction (the "Conversion Date"), equity contributions of \$32.0 million will be made to repay a portion of the construction loan and the balance of the construction loan will be converted to a term loan. The term loan will consist of three tranches: Tranche A in the amount of \$30.0 million with a maturity date of 8 1/2 years from the Conversion Date, Tranche B in the amount of \$45.0 million with a maturity date of 13 1/2 years from the Conversion Date, and Tranche C in the amount of \$35.0 million with a maturity date of 17 1/2 years from the Conversion Date. Interest on the construction loan is variable. For 2000, the interest rate averaged 8.22%. As of December 31, 2000, we had \$113.2 million in outstanding borrowings.

As part of our acquisition of SkyGen, we have entered into an arrangement with a syndicate of commercial banks to obtain financing to construct the Hog Bayou Energy Center. As part of the related credit agreement, the lenders will provide a facility to fund construction whereby we can borrow up to \$38.0 million under an equity bridge loan and \$104.6 million under a construction loan. The equity bridge loan matures on December 31, 2001 and the construction loan matures on December 31, 2002. As of December 31, 2000, we had borrowed \$38.0 million under the equity bridge loan and \$70.0 million under the construction loan. The facilities had a weighted average interest rate of 8.24% during 2000.

As part of our acquisition of SkyGen, we entered into financing for the construction of the RockGen Energy Center. As part of the related credit agreement, the lender provided a facility whereby we can borrow up to \$152.6 million to fund construction. Construction loans consist of a project loan of \$143.7 million and a steam injection addition loan of \$8.9 million. Upon completion of construction, the balance of the construction loans will be converted to a term loan. The term loan consists of two tranches: Tranche A in the amount of \$143.7 million, and Tranche B in the amount of \$8.9 million. Both the project loan and the steam injection addition loan mature on March 1, 2007. Interest on the construction loans is variable. As of December 31, 2000, we had borrowings of \$89.8 million. The weighted average interest rate during 2000 was 7.97%.

On December 17, 1999, we acquired 80% of the common stock of CGCA which owns 100% of Morris LLC ("Morris"). In 1997, Morris entered into a construction and term loan agreement to provide non-recourse project financing for a major portion of the Morris Project. The agreement provides \$85.6 million of 5 year term loan commitments and \$5.4 million in letter of credit commitments. As of December 31, 2000, \$85.6 million was outstanding as a term loan under the agreement and no amounts were pledged under the letter of credit. Interest on the term loan is variable. The weighted average interest rate during 2000 was 7.39%.

As part of our acquisition of SkyGen, we assumed a term loan for the DePere Energy Center, which had a weighted average interest rate of 7.68% during 2000. As of December 31, 2000, we had \$47.2 million of outstanding borrowings.

In December 2000, we acquired the remaining interest in the Dighton Power Plant. We assumed project financing for the plant. The weighted average interest rate during 2000 was 7.79%. At December 31, 2000 we had \$32.8 million of outstanding borrowings.

In August 1996, we entered into an agreement with Banque Nationale de Paris ("BNP") to finance the acquisition of the Gilroy Power Plant. In April 1999, we repaid the entire loan of \$120.6 million to BNP with a portion of the net proceeds from the offering of Senior Notes due 2006. We recorded an extraordinary loss of

\$1.2 million after taxes as a result of the repayment for the write-off of unamortized deferred financing cost associated with the BNP financing.

On January 4, 1999, we entered into a credit agreement with ING (U.S.) Capital LLC ("ING") to provide up to \$265.0 million of non-recourse project financing for the construction of the Pasadena facility expansion. On August 31, 2000, we repaid the outstanding balance of \$224.2 million under the credit agreement.

Capital Markets Offerings (see Notes 9, 11 and 14 of the Notes to Consolidated Financial Statements)

On February 10, 2000, we through our wholly-owned subsidiary, Calpine Capital Trust II, a statutory business trust created under Delaware law, completed a private offering of 7,200,000 HIGH TIDES at a value of \$50.00 per share. The gross proceeds from the offering were \$360.0 million.

On August 9, 2000, we completed a public offering of 23,000,000 shares of our common stock at \$34.75 per share. The gross proceeds from the offering were \$799.3 million.

On August 10, 2000, we completed a public offering of \$250.0 million of our 8 1/4% Senior Notes due 2005 and \$750.0 million of our 8 5/8% Senior Notes due 2010. The 8 1/4% Senior Notes mature on August 15, 2005 and interest is payable semi-annually. The 8 5/8% Senior Notes mature on August 15, 2010 and interest is payable semi-annually. Both issuances of the Senior Notes may be redeemed at any time prior to their respective stated maturity at a redemption price equal to 100% of the principal amount of the Senior Notes being redeemed plus accrued and unpaid interest plus a make-whole premium.

On August 9, 2000, we through our wholly-owned subsidiary, Calpine Capital Trust III, a statutory business trust created under Delaware law, completed a private offering of 10,350,000 HIGH TIDES at a price of \$50.00 per share. The gross proceeds from the offering were \$517.5 million. The net proceeds from the private offering were used by our subsidiary to invest in our convertible subordinated debentures, which represent substantially all of the subsidiary's assets.

#### Debt Maturities

At December 31, 2000, we also had \$105.0 million of outstanding 9 1/4% Senior Notes Due 2004, which mature on February 1, 2004, with interest payable semi-annually on February 1 and August 1 of each year. In addition, we had \$171.8 million of outstanding 10 1/2% Senior Notes Due 2006, which mature on May 15, 2006, with interest payable semi-annually on May 15 and November 15 of each year. During 1997, we issued \$275.0 million of 8 3/4% Senior Notes Due 2007, which mature on July 15, 2007, with interest payable semi-annually on January 15 and July 15 of each year. During 1998, we issued \$400.0 million of 7 7/8% Senior Notes Due 2008, which mature on April 1, 2008, with interest payable semi-annually on April 1 and October 1 of each year. During 1999, we issued \$350.0 million of 7 3/4% Senior Notes Due 2009, which mature on April 15, 2009, with interest payable semi-annually on April 15 and October 15 of each year. Also during 1999, we issued \$250.0 million of our 7 5/8% Senior Notes Due 2006, which mature on April 15, 2006, with interest payable semi-annually on April 15 and October 15.

The annual principal maturities of the borrowings under lines of credit, project financings, notes payable, senior notes and capital lease obligations as of December 31, 2000, are as follows (in thousands):

2001.....	\$ 61,558
2002.....	98,151
2003.....	615,616
2004.....	371,115
2005.....	283,938
Thereafter.....	3,061,538
	-----
Total.....	\$4,491,916
	=====

## **OUTLOOK**

Our strategy is to continue our rapid growth by capitalizing on the significant opportunities in the power industry, primarily through our active development and acquisition programs. In pursuing our proven growth strategy, we utilize our extensive management and technical expertise to implement a fully integrated approach to the acquisition, development and operation of power generation facilities. This approach uses our expertise in design, engineering, procurement, finance, construction management, fuel and resource acquisition, operations and power marketing, which we believe provide us with a competitive advantage. The key elements of our strategy are as follows:

- Development of new and expansion of existing power plants. We are actively pursuing the development of new and expansion of both baseload and peaking capacity at our existing highly efficient, low-cost, gas-fired power plants that replace old and inefficient generating facilities and meet the demand for new generation. Our strategy is to develop power plants in strategic geographic locations that enable us to leverage existing power generation assets and operate the power plants as integrated electric generation systems. This allows us to achieve significant operating synergies and efficiencies in fuel procurement, power marketing and operations and maintenance.

We currently have twenty-five projects under construction, representing an additional 14,028 megawatts of net capacity. Included in these twenty-five projects is an expansion of our Broad River Energy Center, which represents 360 megawatts. We have also announced plans to develop twenty-eight additional power generation projects, representing a net capacity of 15,142 megawatts. Included in these twenty-eight development projects are seven expansion projects: Pine Bluff Energy Center, DePere Energy Center, Auburndale and the California Peak (which encompasses expansions of the Gilroy Power Plant, the Watsonville Power Plant, the Greenleaf 2 Power Plant and the King City Power Plant.) These expansion projects represent 917 megawatts.

- Acquisition of power plants. Our strategy is to acquire power generating facilities that meet our stringent acquisition criteria and provide significant potential for revenue, cash flow and earnings growth, and that provide the opportunity to enhance the operating efficiencies of the plants. We have significantly expanded and diversified our project portfolio through the acquisition of power generation facilities through the completion of numerous acquisitions to date.

- Enhance the performance and efficiency of existing power projects. We continually seek to maximize the power generation potential of our operating assets and minimize our operating and maintenance expenses and fuel costs. This will become even more significant as our portfolio of power generation facilities expands to 74 power plants with a net capacity of 19,877 megawatts, after completion of our projects currently under construction. We focus on operating our plants as an integrated system of power generation, which enables us to minimize costs and maximize operating efficiencies. We believe that achieving and maintaining a low-cost of production will be increasingly important to compete effectively in the power generation industry.

## **RISK FACTORS**

We have substantial indebtedness that we may be unable to service and that restricts our activities. We have substantial debt that we incurred to finance the acquisition and development of power generation facilities. As of December 31, 2000, our total consolidated indebtedness was \$4.5 billion, our total consolidated assets were \$9.7 billion and our stockholders' equity was \$2.2 billion. Whether we will be able to meet our debt service obligations and to repay our outstanding indebtedness will be dependent primarily upon the performance of our power generation facilities.

This high level of indebtedness has important consequences, including:

- limiting our ability to borrow additional amounts for working capital, capital expenditures, debt service requirements, execution of our growth strategy, or other purposes,

- limiting our ability to use operating cash flow in other areas of our business because we must dedicate a substantial portion of these funds to service the debt,
- increasing our vulnerability to general adverse economic and industry conditions, and
- limiting our ability to capitalize on business opportunities and to react to competitive pressures and adverse changes in government regulation.

The operating and financial restrictions and covenants in certain of our existing debt agreements limit or prohibit our ability to:

- incur indebtedness,
- make prepayments of indebtedness in whole or in part,
- pay dividends,
- make investments,
- engage in transactions with affiliates,
- create liens,
- sell assets, and
- acquire facilities or other businesses.

Also, if our management or ownership changes, the indentures governing our senior notes may require us to make an offer to purchase our senior notes. We cannot assure you that we will have the financial resources necessary to purchase our senior notes in this event.

We believe that our cash flow from operations, together with other available sources of funds, including borrowings under our existing borrowing arrangements, will be adequate to pay principal and interest on our senior notes and other debt and to enable us to comply with the terms of our indentures and other debt agreements. If we are unable to comply with the terms of our indentures and other debt agreements and fail to generate sufficient cash flow from operations in the future, we may be required to refinance all or a portion of our senior notes and other debt or to obtain additional financing. However, we may be unable to refinance or obtain additional financing because of our high levels of debt and the debt incurrence restrictions under our indentures and other debt agreements. If cash flow is insufficient and refinancing or additional financing is unavailable, we may be forced to default on our senior notes and other debt obligations. In the event of a default under the terms of any of our indebtedness, the debt holders may accelerate the maturity of our obligations, which could cause defaults under our other obligations.

Our ability to repay our debt depends upon the performance of our subsidiaries. Almost all of our operations are conducted through our subsidiaries and other affiliates. As a result, we depend almost entirely upon their earnings and cash flow to service our indebtedness, including our ability to pay the interest on and principal of our senior notes. The project financing agreements of certain of our subsidiaries and other affiliates generally restrict their ability to pay dividends, make distributions or otherwise transfer funds to us prior to the payment of other obligations, including operating expenses, debt service and reserves.

Our subsidiaries and other affiliates are separate and distinct legal entities and have no obligation to pay any amounts due on our senior notes, and do not guarantee the payment of interest on or principal of these notes. The right of our senior note holders to receive any assets of any of our subsidiaries or other affiliates upon our liquidation or reorganization will be subordinated to the claims of any subsidiaries' or other affiliates' creditors (including trade creditors and holders of debt issued by our subsidiaries or affiliates). As of December 31, 2000, our subsidiaries had \$1.5 billion of project financing. We intend to utilize project financing, when appropriate in the future, and this financing will be effectively senior to our senior notes.

While the indentures impose limitations on our ability and the ability of our subsidiaries to incur additional indebtedness, the indentures do not limit the amount of project financing that our subsidiaries may incur to finance the acquisition and development of new power generation facilities.

We may be unable to secure additional financing in the future. Each power generation facility that we acquire or develop will require substantial capital investment. Our ability to arrange financing and the cost of the financing are dependent upon numerous factors. These factors include:

- general economic and capital market conditions,
- conditions in energy markets,
- regulatory developments,
- credit availability from banks or other lenders,
- investor confidence in the industry and in us,
- the continued success of our current power generation facilities, and
- provisions of tax and securities laws that are conducive to raising capital.

Financing for new facilities may not be available to us on acceptable terms in the future. We have financed our existing power generation facilities using a variety of leveraged financing structures, consisting of senior unsecured indebtedness, project financing and lease obligations. Most of our current construction costs are financed through one of our two Calpine Construction Finance Company ("CCFC") non-recourse debt facilities (see Note 8 of the Notes to Consolidated Financial Statements). As construction projects attain commercial operation, we intend to refinance construction debt borrowings under the CCFC facilities with corporate level long-term capital market financings. As of December 31, 2000, we had approximately \$4.5 billion of total consolidated indebtedness, \$1.5 billion of project financing, \$210.9 million of capital lease obligations, \$2.6 billion in senior notes and \$197.0 million of notes payable and borrowings under lines of credit. Each project financing and lease obligation is structured to be fully paid out of cash flow provided by the facility or facilities. In the event of a default under a financing agreement which we do not cure, the lenders or lessors would generally have rights to the facility and any related assets. In the event of foreclosure after a default, we might not retain any interest in the facility. While we intend to utilize non-recourse or lease financing when appropriate, market conditions and other factors may prevent similar financing for future facilities. We do not believe the existence of non-recourse or lease financing will significantly affect our ability to continue to borrow funds in the future in order to finance new facilities. However, it is possible that we may be unable to obtain the financing required to develop our power generation facilities on terms satisfactory to us.

We have from time to time guaranteed certain obligations of our subsidiaries and other affiliates. Our lenders or lessors may also require us to guarantee the indebtedness for future facilities. This would render our general corporate funds vulnerable in the event of a default by the facility or related subsidiary. Additionally, our indentures may restrict our ability to guarantee future debt, which could adversely affect our ability to fund new facilities. Our indentures do not limit the ability of our subsidiaries to incur non-recourse or lease financing for investment in new facilities.

Revenue under some of our power sales agreements may be reduced significantly upon their expiration or termination. Most of the electricity we generate from our existing portfolio is sold under long-term power sales agreements that expire at various times. When the terms of each of these power sales agreements expire, it is possible that the price paid to us for the generation of electricity may be reduced significantly, which would substantially reduce our revenue under such agreements.

Our power project development and acquisition activities may not be successful. The development of power generation facilities is subject to substantial risks. In connection with the development of a power generation facility, we must generally obtain:

- necessary power generation equipment,
- governmental permits and approvals,
- fuel supply and transportation agreements,

- sufficient equity capital and debt financing,
- electrical transmission agreements, and
- site agreements and construction contracts.

We may be unsuccessful in accomplishing any of these matters or in doing so on a timely basis. In addition, project development is subject to various environmental, engineering and construction risks relating to cost-overruns, delays and performance. Although we may attempt to minimize the financial risks in the development of a project by securing a favorable power sales agreement, obtaining all required governmental permits and approvals and arranging adequate financing prior to the commencement of construction, the development of a power project may require us to expend significant sums for preliminary engineering, permitting and legal and other expenses before we can determine whether a project is feasible, economically attractive or financeable. If we were unable to complete the development of a facility, we would generally not be able to recover our investment in the project. The process for obtaining initial environmental, siting and other governmental permits and approvals is complicated and lengthy, often taking more than one year, and is subject to significant uncertainties. We cannot assure you that we will be successful in the development of power generation facilities in the future.

We have grown substantially in recent years as a result of acquisitions of interests in power generation facilities and steam fields. We believe that although the domestic power industry is undergoing consolidation and that significant acquisition opportunities are available, we are likely to confront significant competition for acquisition opportunities. In addition, we may be unable to continue to identify attractive acquisition opportunities at favorable prices or, to the extent that any opportunities are identified, we may be unable to complete the acquisitions.

Our projects under construction may not commence operation as scheduled. The commencement of operation of a newly constructed power generation facility involves many risks, including:

- start-up problems,
- the breakdown or failure of equipment or processes, and
- performance below expected levels of output or efficiency.

New plants have no operating history and may employ recently developed and technologically complex equipment. Insurance is maintained to protect against certain risks, warranties are generally obtained for limited periods relating to the construction of each project and its equipment in varying degrees, and contractors and equipment suppliers are obligated to meet certain performance levels. The insurance, warranties or performance guarantees, however, may not be adequate to cover lost revenues or increased expenses. As a result, a project may be unable to fund principal and interest payments under its financing obligations and may operate at a loss. A default under such a financing obligation could result in losing our interest in a power generation facility.

In addition, power sales agreements entered into with a utility early in the development phase of a project may enable the utility to terminate the agreement, or to retain security posted as liquidated damages, if a project fails to achieve commercial operation or certain operating levels by specified dates or fails to make specified payments. In the event a termination right is exercised, the default provisions in a financing agreement may be triggered (rendering such debt immediately due and payable). As a result, the project may be rendered insolvent and we may lose our interest in the project.

Our power generation facilities may not operate as planned. Upon completion of our projects currently under construction, we will operate 69 of the 74 power plants in which we will have an interest. The continued operation of power generation facilities involves many risks, including the breakdown or failure of power generation equipment, transmission lines, pipelines or other equipment or processes and performance below expected levels of output or efficiency. Although from time to time our power generation facilities have experienced equipment breakdowns or failures, these breakdowns or failures have not had a significant effect on the operation of the facilities or on our results of operations. For calendar year 2000, our gas-fired and

geothermal power generation facilities have operated at an average availability of approximately 90% and 97%, respectively. Although our facilities contain various redundancies and back-up mechanisms, a breakdown or failure may prevent the affected facility from performing under applicable power sales agreements. In addition, although insurance is maintained to protect against operating risks, the proceeds of insurance may not be adequate to cover lost revenues or increased expenses. As a result, we could be unable to service principal and interest payments under our financing obligations which could result in losing our interest in the power generation facility.

Our geothermal energy reserves may be inadequate for our operations. The development and operation of geothermal energy resources are subject to substantial risks and uncertainties similar to those experienced in the development of oil and gas resources. The successful exploitation of a geothermal energy resource ultimately depends upon:

- the heat content of the extractable fluids,
- the geology of the reservoir,
- the total amount of recoverable reserves,
- operating expenses relating to the extraction of fluids,
- price levels relating to the extraction of fluids or power generated, and
- capital expenditure requirements relating primarily to the drilling of new wells.

In connection with each geothermal power plant, we estimate the productivity of the geothermal resource and the expected decline in productivity. The productivity of a geothermal resource may decline more than anticipated, resulting in insufficient reserves being available for sustained generation of the electrical power capacity desired. An incorrect estimate by us or an unexpected decline in productivity could lower our results of operations.

Geothermal reservoirs are highly complex. As a result, there exist numerous uncertainties in determining the extent of the reservoirs and the quantity and productivity of the steam reserves. Reservoir engineering is an inexact process of estimating underground accumulations of steam or fluids that cannot be measured in any precise way, and depends significantly on the quantity and accuracy of available data. As a result, the estimates of other reservoir specialists may differ materially from ours. Estimates of reserves are generally revised over time on the basis of the results of drilling, testing and production that occur after the original estimate was prepared. While we have extensive experience in the operation and development of geothermal energy resources and in preparing such estimates, we cannot assure you that we will be able to successfully manage the development and operation of our geothermal reservoirs or that we will accurately estimate the quantity or productivity of our steam reserves.

The current issues in the California power market could adversely affect our performance. As described within, the California power market is currently in a state of disarray. Two of the three major utilities in California have been widely reported to be facing the prospect of insolvency, including PG&E which is one of our customers and which has defaulted on payments to us. State and federal regulators and legislators, along with the major participants in the market and consumer groups, are attempting to resolve this situation, but the ultimate result of this effort is not yet known. We are actively involved in all aspects of this regulatory, legislative and contractual effort. While we cannot predict the outcome of this very fluid process, or the ultimate impact any such outcome will have upon us, management believes that the resolution of this problem will not have a material adverse effect on our results of operations or financial condition.

We depend on our electricity and thermal energy customers. A majority of our power generation facilities currently rely on one or more power sales agreements with one or more utilities or other customers for all or substantially all of such facility's revenue. In addition, sales of electricity to two utility customers during 2000, PG&E and Texas Utilities Electric Company, comprised approximately 27.4% and 8.1%, respectively, of our total revenue that year. The loss of any one power sales agreement with any of these customers could have a negative effect on our results of operations. In addition, any material failure by any customer to fulfill its

obligations under a power sales agreement could have a negative effect on the cash flow available to us and on our results of operations.

We are subject to complex government regulation which could adversely affect our operations. Our activities are subject to complex and stringent energy, environmental and other governmental laws and regulations. The construction and operation of power generation facilities require numerous permits, approvals and certificates from appropriate federal, state and local governmental agencies, as well as compliance with environmental protection legislation and other regulations. While we believe that we have obtained the requisite approvals for our existing operations and that our business is operated in accordance with applicable laws, we remain subject to a varied and complex body of laws and regulations that both public officials and private individuals may seek to enforce. Existing laws and regulations may be revised or reinterpreted, or new laws and regulations may become applicable to us that may have a negative effect on our business and results of operations. We may be unable to obtain all necessary licenses, permits, approvals and certificates for proposed projects, and completed facilities may not comply with all applicable permit conditions, statutes or regulations. In addition, regulatory compliance for the construction of new facilities is a costly and time-consuming process. Intricate and changing environmental and other regulatory requirements may necessitate substantial expenditures to obtain permits. If a project is unable to function as planned due to changing requirements or local opposition, it may create expensive delays or significant loss of value in a project.

Our operations are potentially subject to the provisions of various energy laws and regulations, including PURPA, the Public Utility Holding Company Act of 1935, as amended, ("PUHCA"), and state and local regulations. PUHCA provides for the extensive regulation of public utility holding companies and their subsidiaries. PURPA provides QFs (as defined under PURPA) and owners of QFs certain exemptions from certain federal and state regulations, including rate and financial regulations.

Under present federal law, we are not subject to regulation as a holding company under PUHCA, and will not be subject to such regulation as long as the plants in which we have an interest (1) qualify as QFs, (2) are subject to another exemption or waiver or (3) qualify as an Exempt Wholesale Generator ("EWG") under the Energy Policy Act of 1992. In order to be a QF, a facility must be not more than 50% owned by one or more electric utility companies or electric utility holding companies. In addition, a QF that is a cogeneration facility, such as the plants in which we currently have interests, must produce electricity as well as thermal energy for use in an industrial or commercial process in specified minimum proportions. The QF also must meet certain minimum energy efficiency standards. Generally, any geothermal power facility which produces up to 80 megawatts of electricity and meets PURPA ownership requirements is considered a QF.

If any of the plants in which we have an interest lose their QF status or if amendments to PURPA are enacted that substantially reduce the benefits currently afforded QFs, we could become a public utility holding company, which could subject us to significant federal, state and local regulation, including rate regulation. If we become a holding company, which could be deemed to occur prospectively or retroactively to the date that any of our plants loses its QF status, all our other power plants could lose QF status because, under FERC regulations, a QF cannot be owned by an electric utility or electric utility holding company. In addition, a loss of QF status could, depending on the particular power purchase agreement, allow the power purchaser to cease taking and paying for electricity or to seek refunds of past amounts paid and thus could cause the loss of some or all contract revenues or otherwise impair the value of a project. If a power purchaser were to cease taking and paying for electricity or seek to obtain refunds of past amounts paid, there can be no assurance that the costs incurred in connection with the project could be recovered through sales to other purchasers. Such events could adversely affect our ability to service our indebtedness, including our senior notes. See "Item

1. -- Business -- Government Regulation -- Federal Energy Regulation -- Federal Power Act Regulation."

Currently, Congress is considering proposed legislation that would amend PURPA by eliminating the requirement that utilities purchase electricity from QFs at prices based on avoided costs of energy. We do not know whether this legislation will be passed or, if passed, what form it may take. We cannot provide assurance that any legislation passed would not adversely affect our existing domestic projects.

In addition, many states are implementing or considering regulatory initiatives designed to increase competition in the domestic power generation industry and increase access to electric utilities' transmission and distribution systems for independent power producers and electricity consumers. In particular, the state of California has restructured its electric industry by providing for a phased-in competitive power generation industry, with a power pool (which had discontinued the bulk of its operation as of February 1, 2001) and an independent system operator, and for direct access to generation for all power purchasers outside the power exchange under certain circumstances. See "Item 1. -- Business -- Recent Developments -- California Power Market."

We may be unable to obtain an adequate supply of natural gas in the future. To date, our fuel acquisition strategy has included various combinations of our own gas reserves, gas prepayment contracts and short-, medium- and long-term supply contracts. In our gas supply arrangements, we attempt to match the fuel cost with the fuel component included in the facility's power sales agreements in order to minimize a project's exposure to fuel price risk. We believe that there will be adequate supplies of natural gas available at reasonable prices for each of our facilities when current gas supply agreements expire. However, gas supplies may not be available for the full term of the facilities' power sales agreements, and gas prices may increase significantly. If gas is not available, or if gas prices increase above the fuel component of the facilities' power sales agreements, there could be a negative impact on our results of operations.

Competition could adversely affect our performance. The power generation industry is characterized by intense competition, and we encounter competition from utilities, industrial companies and other independent power producers. In recent years, there has been increasing competition in an effort to obtain power sales agreements, and this competition has contributed to a reduction in electricity prices. In addition, many states are implementing or considering regulatory initiatives designed to increase competition in the domestic power industry. In California, the CPUC issued decisions that provide for direct access for all customers as of April 1, 1998. In Texas, recently enacted legislation phases-in a deregulated power market commencing January 1, 2001. Regulatory initiatives are also being considered in other states, including New York and states in New England. This competition has put pressure on electric utilities to lower their costs, including the cost of purchased electricity, and increasing competition in the supply of electricity in the future will increase this pressure. See "Item 1. -- Business -- Recent Developments -- California Power Market."

Our international investments may face uncertainties. We have an investment in geothermal steam fields located in Mexico and investments in oil and natural gas resources and power development projects in Canada and we may pursue additional international investments. International investments are subject to unique risks and uncertainties relating to the political, social and economic structures of the countries in which we invest. Risks specifically related to investments in non-United States projects may include:

- risks of fluctuations in currency valuation,
- currency inconvertibility,
- expropriation and confiscatory taxation,
- increased regulation, and
- approval requirements and governmental policies limiting returns to foreign investors.

We depend on our senior management. Our success is largely dependent on the skills, experience and efforts of our senior management. The loss of the services of one or more members of our senior management could have a negative effect on our business, financial results and future growth.

Seismic disturbances could damage our projects. Areas where we operate and are developing many of our geothermal and gas-fired projects are subject to frequent low-level seismic disturbances. More significant seismic disturbances are possible. Our existing power generation facilities are built to withstand relatively significant levels of seismic disturbances, and we believe we maintain adequate insurance protection. However, earthquake, property damage or business interruption insurance may be inadequate to cover all potential losses sustained in the event of serious seismic disturbances. Additionally, insurance may not continue to be available to us on commercially reasonable terms.

Our results are subject to quarterly and seasonal fluctuations. Our quarterly operating results have fluctuated in the past and may continue to do so in the future as a result of a number of factors, including:

- the timing and size of acquisitions,
- the completion of development projects,
- variations in levels of production, and
- seasonal variations in energy prices.

Additionally, because we receive the majority of capacity payments under some of our power sales agreements during the months of May through October, our revenues and results of operations are, to some extent, seasonal.

The price of our common stock is volatile. The market price for our common stock has been volatile in the past, and several factors could cause the price to fluctuate substantially in the future. These factors include:

- announcements of developments related to our business,
- fluctuations in our results of operations,
- sales of substantial amounts of our securities into the marketplace,
- general conditions in our industry, the power markets in which we participate, or the worldwide economy,
- an outbreak of war or hostilities,
- a shortfall in revenues or earnings compared to securities analysts' expectations,
- changes in analysts' recommendations or projections, and
- announcements of new acquisitions or development projects by us.

The market price of our common stock may fluctuate significantly in the future, and these fluctuations may be unrelated to our performance. General market price declines or market volatility in the future could adversely affect the price of our common stock, and the current market price may not be indicative of future market prices.

## **FINANCIAL MARKET RISKS**

From time to time, we use interest rate swap agreements to mitigate our exposure to interest rate fluctuations. We do not use derivative financial instruments for speculative or trading purposes. The following

table summarizes the fair market value of our existing interest rate swap agreements as of December 31, 2000 (dollars in thousands):

MATURITY DATE	NOTIONAL PRINCIPAL AMOUNT	WEIGHTED AVERAGE INTEREST RATE	FAIR MARKET VALUE
-----	-----	-----	-----
2001.....	\$ 59,934	7.4%	\$ (501)
2007.....	38,150	8.0%	(3,431)
2007.....	38,150	8.0%	(3,414)
2007.....	30,708	7.9%	(3,178)
2007.....	30,708	7.9%	(3,161)
2009.....	15,000	6.9%	(601)
2011.....	59,433	6.9%	(2,491)
2012.....	121,464	6.5%	(3,677)
2014.....	72,277	6.7%	(2,608)
2015.....	22,500	7.0%	(1,523)
2017.....	50,425	5.9%	868
2018.....	17,500	7.0%	(1,427)
	-----	---	-----
Total	\$556,249	7.0%	\$(25,144)
	=====	===	=====

Short-term investments. As of December 31, 2000, we have short-term investments of \$149.2 million. These short-term investments consist of highly liquid investments with maturities less than three months. We have the ability to hold these investments to maturity, and as a result, we would not expect the value of these investments to be affected to any significant degree by the effect of a sudden change in market interest rates.

Energy price fluctuations. We enter into derivative commodity instruments to reduce our exposure to the impact of price fluctuations, primarily electricity and natural gas prices. Such instruments include over-the-counter financial swaps and physical options with major energy derivative product specialists. All transactions are subject to our risk management policy which does not permit speculative positions. Financial swaps are accounted for under the hedge method of accounting. Current revenues and costs reflect the full effect of price movement on physical options. Cash flows from derivative instruments are recognized as incurred through changes in working capital.

The fair value gain (loss) of outstanding derivative commodity instruments and the change in fair value that would be expected from a ten percent adverse price change are shown in the table below (in thousands):

	FAIR VALUE	CHANGE IN FAIR VALUE FROM 10% ADVERSE PRICE CHANGE
	-----	-----
At December 31, 2000		
Refined Products.....	\$ (50)	\$ (35)
Electricity.....	(2,937)	(429)
Natural Gas.....	105,825	(71,964)
	-----	-----
Total(1).....	\$102,838	\$(72,428)
	=====	=====

(1) Total includes the fair market value of the physical options of \$1.2 million, excluded in Note 2 to the Consolidated Financial Statements.

All hedge positions offset physical positions exposed to the cash market. None of the offsetting physical positions are included in the above table.

The fair value of over-the-counter instruments is estimated based on quoted market prices of comparable contracts.

Price changes were calculated by assuming an across-the-board ten percent adverse price change regardless of term or historical relationship between the contract price of an instrument and the underlying commodity price. In the event of an actual ten percent change in prompt month prices, the fair value of Calpine's derivative portfolio would typically change less than that shown in the table due to lower volatility in out-month prices.

## **IMPACT OF RECENT ACCOUNTING PRONOUNCEMENTS**

In June 1999, the Financial Accounting Standards Board ("FASB") issued Statement of Financial Accounting Standards ("SFAS") No. 137, "Accounting for Derivative Instruments and Hedging Activities -- Deferral of the Effective Date of FASB Statement No. 133 -- an Amendment of FASB Statement No. 133." The Statement amends SFAS No. 133 to defer its effective date to all fiscal quarters of all fiscal years beginning after June 15, 2000. In June 2000, the FASB issued SFAS No. 138, "Accounting for Certain Derivative Instruments and Certain Hedging Activities -- An Amendment of FASB Statement No. 133." Calpine formally adopted these accounting requirements on January 1, 2001. Calpine currently holds four classes of derivative instruments that will be impacted by the new pronouncements -- interest rate swaps, foreign currency swaps, commodity financial instruments, and commodity contracts.

Upon adoption of SFAS No. 133, the fair values of derivative instruments designated as hedges will be recorded on the balance sheet as an asset or liability at their fair value. The difference between the carrying value of the derivative and its fair value at the date of adoption shall be recorded as a transition adjustment. In the case of the effective portion of a hedge, which previously addressed the variable cash flow exposure of a transaction, a transition adjustment will be recorded as a cumulative-effect-type adjustment to accumulated Other Comprehensive Income ("OCI"). In the case of the ineffective portion of a hedge, an adjustment will be calculated using the dollar offset method and charged to income or expense on the Income Statement as the effect of a change in accounting principle. The fair values of derivative instruments that are not designated as effective hedges and that do not meet the normal purchase or sale exception of SFAS No. 138 will be recorded on the balance sheet as an asset or liability at fair value and an adjustment will be charged to income or expense on the Income Statement as the effect of a change in accounting principle.

At the end of each quarter, the changes in fair values of derivative instruments designated as cash flow hedges will be recorded on the balance sheet as an asset or liability. In the case of the effective portion of a hedge, an adjustment will be recorded to OCI. In the case of the ineffective portion of a hedge, an adjustment will be calculated using the dollar offset method and charged to income or expense on the Income Statement. The changes in fair values of derivative instruments that are not designated as effective hedges and that do not meet the normal purchase or sale exception of SFAS No. 138 will be recorded on the balance sheet as an asset or liability and an offset will be charged to income or expense on the Income Statement.

At January 1, 2001, the FASB had not resolved Derivatives Implementation Group ("DIG") Issue 14-3, dealing with a proposed electric industry normal purchases and sales exception for capacity sales transactions. Calpine has assumed that the FASB will permit the use of this exception for capacity sales contracts that include all of the following characteristics:

- It is probable at inception and throughout the term of the individual contract that the contract -- if exercised by the holder -- will not settle net, as defined in SFAS No. 133, and will result in physical delivery.
- The electricity contract would not otherwise be considered an energy trading contract under the Emerging Issues Task Force Issue No. 98-10.
- The contract meets all other applicable criteria outlined in paragraph 10(b) of SFAS No. 133.

All capacity sales contracts and other commodity contracts currently held by Calpine meet the above criteria and are therefore subject to the FASB's final decision which is expected in early 2001. Pending the FASB's final decision, Calpine assumes that these contracts will be exempt from derivative accounting treatment under the normal purchases and sales exemption. See Note 2 of the Notes to Consolidated Financial Statements for the financial statement effects if Calpine had adopted SFAS No. 133 on December 31, 2000.

## **REPORT OF INDEPENDENT PUBLIC ACCOUNTANTS**

To The Board of Directors  
and Stockholders of Calpine Corporation:

We have audited the accompanying consolidated balance sheets of Calpine Corporation (a Delaware corporation) and subsidiaries as of December 31, 2000 and 1999, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 2000. These financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Calpine Corporation and subsidiaries as of December 31, 2000 and 1999, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 2000, in conformity with accounting principles generally accepted in the United States.

**ARTHUR ANDERSEN LLP**

San Jose, California  
March 14, 2001

**CALPINE CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS  
DECEMBER 31, 2000 AND 1999  
(IN THOUSANDS, EXCEPT SHARE AND PER SHARE AMOUNTS)**

**ASSETS**

	2000	1999
	-----	-----
Current assets:		
Cash and cash equivalents.....	\$ 588,698	\$ 349,371
Accounts receivable, net of allowance of \$11,078 and \$3,343.....	649,422	127,485
Inventories.....	36,883	16,417
Prepaid expenses.....	27,515	24,848
Other current assets.....	41,165	8,287
	-----	-----
Total current assets.....	1,343,683	526,408
	-----	-----
Property, plant and equipment, net.....	7,459,055	2,908,056
Investments in power projects.....	205,621	243,225
Project development costs.....	38,597	24,018
Notes receivable.....	217,927	23,548
Restricted cash.....	88,618	43,615
Deferred financing costs.....	139,631	54,215
Other assets.....	244,125	168,521
	-----	-----
Total assets.....	\$9,737,257	\$3,991,606
	=====	=====
<b>LIABILITIES &amp; STOCKHOLDERS' EQUITY</b>		
Current liabilities:		
Notes payable and borrowings under lines of credit, current portion.....	\$ 1,087	\$ 38,867
Accounts payable.....	765,613	84,353
Project financing, current portion.....	58,486	8,603
Capital lease obligation, current portion.....	1,985	--
Income taxes payable.....	63,409	8,835
Accrued payroll and related expenses.....	53,667	24,345
Accrued interest payable.....	75,865	37,058
Other current liabilities.....	149,080	73,250
	-----	-----
Total current liabilities.....	1,169,192	275,311
	-----	-----
Notes payable and borrowings under lines of credit, net of current portion.....	195,862	97,303
Project financing, net of current portion.....	1,473,869	357,137
Senior notes.....	2,551,750	1,551,750
Capital lease obligation, net of current portion.....	208,876	--
Deferred income taxes, net.....	567,292	291,458
Deferred lease incentive.....	60,676	64,245
Deferred revenue.....	92,511	33,876
Other liabilities.....	20,389	23,476
	-----	-----
Total liabilities.....	6,340,417	2,694,556
	-----	-----
Commitments and contingencies (see Note 18)		
Company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts.....	1,122,490	270,713
Minority interests.....	37,576	61,705
	-----	-----
Stockholders' equity:		
Preferred stock, \$.001 par value per share; authorized 10,000,000 shares; none issued and outstanding in 2000 and 1999.....	--	--
Common stock, \$.001 par value per share; authorized 500,000,000 shares in 2000 and 400,000,000 in 1999; issued and outstanding 283,715,058 shares in 2000 and 252,215,680 shares in 1999.....	284	252
Additional paid-in capital.....	1,700,505	751,215
Retained earnings.....	536,617	213,165
Accumulated other comprehensive loss.....	(632)	--
	-----	-----
Total stockholders' equity.....	2,236,774	964,632
	-----	-----
Total liabilities and stockholders' equity.....	\$9,737,257	\$3,991,606
	=====	=====

The accompanying notes are an integral part of these consolidated financial statements.



**CALPINE CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF OPERATIONS  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998  
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)**

	2000	1999	1998
	-----	-----	-----
Revenue:			
Electricity and steam sales.....	\$1,702,320	\$760,325	\$507,897
Service contract revenue.....	480,234	43,773	20,249
Income from unconsolidated investments in power projects.....	24,639	36,593	25,240
Interest income on loans to power projects.....	4,827	1,226	2,562
Other revenue.....	70,773	5,818	--
	-----	-----	-----
Total revenue.....	2,282,793	847,735	555,948
	-----	-----	-----
Cost of revenue:			
Fuel expenses.....	612,947	268,734	181,593
Plant operating expenses.....	220,222	122,707	78,085
Depreciation expense.....	154,263	82,812	73,988
Production royalties.....	32,325	13,767	10,714
Operating lease expenses.....	69,419	33,594	17,129
Service contract expenses.....	469,500	40,236	17,417
	-----	-----	-----
Total cost of revenue.....	1,558,676	561,850	378,926
	-----	-----	-----
Gross profit.....	724,117	285,885	177,022
Project development expenses.....	27,556	10,712	7,165
General and administrative expenses.....	94,113	48,671	23,181
	-----	-----	-----
Income from operations.....	602,448	226,502	146,676
Interest expense.....	56,700	91,162	86,726
Distributions on trust preferred securities.....	44,210	2,565	--
Interest income.....	(39,901)	(24,106)	(12,348)
Minority interest, net.....	2,684	--	--
Other income.....	(4,883)	(1,335)	(1,075)
	-----	-----	-----
Income before provision for income taxes.....	543,638	158,216	73,373
Provision for income taxes.....	218,951	61,973	27,054
	-----	-----	-----
Income before extraordinary charge.....	324,687	96,243	46,319
Extraordinary charge net of tax benefit of \$796, \$793 and \$441.....	1,235	1,150	641
	-----	-----	-----
Net income.....	\$ 323,452	\$ 95,093	\$ 45,678
	=====	=====	=====
Basic earnings per common share:			
Weighted average shares of common stock outstanding....	264,799	209,314	160,969
Income before extraordinary charge.....	\$ 1.23	\$ 0.46	\$ 0.29
Extraordinary charge.....	\$ (0.01)	\$ (0.01)	\$ (0.01)
Net income.....	\$ 1.22	\$ 0.45	\$ 0.28
Diluted earnings per common share:			
Weighted average shares of common stock outstanding before dilutive effect of certain trust preferred securities.....	280,776	222,644	169,311
Income before extraordinary charge and dilutive effect of certain trust preferred securities.....	\$ 1.16	\$ 0.43	\$ 0.27
Dilutive effect of certain trust preferred securities(1).....	\$ (0.05)	\$ --	\$ --
Income before extraordinary charge.....	\$ 1.11	\$ 0.43	\$ 0.27
Extraordinary charge.....	\$ (0.01)	\$ --	\$ --
Net income.....	\$ 1.10	\$ 0.43	\$ 0.27

(1) Includes the effect of the assumed conversion of certain trust preferred securities. For the twelve months ended December 31, 2000, the assumed conversion calculation adds 31,746 shares of common stock and \$20,841 to the net income results, representing the after tax distribution expense on certain trust preferred securities avoided upon conversion.

The accompanying notes are an integral part of these consolidated financial statements.

**CALPINE CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF STOCKHOLDERS' EQUITY  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998  
(IN THOUSANDS, EXCEPT SHARE AMOUNTS)**

	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS	ACCUMULATED OTHER COMPREHENSIVE LOSS	TOTAL STOCKHOLDERS' EQUITY	COMPREHENSIVE INCOME (LOSS)
Balance, December 31, 1997.....	\$160	\$ 167,402	\$ 72,394	\$ --	\$ 239,956	
Issuance of 807,008 shares of common stock, net of issuance costs.....	1	1,109	--	--	1,110	
Tax benefit from stock options exercised and other.....	--	222	--	--	222	
Comprehensive Income:						
Net income.....	--	--	45,678	--	45,678	\$ 45,678
Other comprehensive income.....	--	--	--	--	--	--
Total comprehensive income.....	--	--	--	--	--	\$ 45,678
Balance, December 31, 1998.....	161	168,733	118,072	--	286,966	
Issuance of 90,923,032 shares of common stock, net of issuance costs.....	91	576,505	--	--	576,596	
Tax benefit from stock options exercised and other.....	--	5,977	--	--	5,977	
Comprehensive Income:						
Net income.....	--	--	95,093	--	95,093	\$ 95,093
Other comprehensive income.....	--	--	--	--	--	--
Total comprehensive income.....	--	--	--	--	--	\$ 95,093
Balance, December 31, 1999.....	252	751,215	213,165	--	964,632	
Issuance of 27,997,846 shares of common stock, net of issuance costs.....	28	782,068	--	--	782,096	
Issuance of 3,501,532 shares of common stock for acquisitions.....	4	120,591	--	--	120,595	
Tax benefit from stock options exercised and other.....	--	46,631	--	--	46,631	
Comprehensive Income:						
Net income.....	--	--	323,452	--	323,452	\$323,452
Currency translation adjustment.....	--	--	--	(632)	(632)	(632)
Total comprehensive income.....	--	--	--	--	--	\$322,820
Balance, December 31, 2000.....	\$284	\$1,700,505	\$536,617	\$(632)	\$2,236,774	

The accompanying notes are an integral part of these consolidated financial statements.

**CALPINE CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED STATEMENTS OF CASH FLOWS  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998  
(IN THOUSANDS)**

	2000	1999	1998
	-----	-----	-----
Cash flows from operating activities:			
Net income.....	\$ 323,452	\$ 95,093	\$ 45,678
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization.....	141,594	87,210	74,285
Deferred income taxes, net.....	62,623	47,944	13,554
Income from unconsolidated investments in power projects.....	(24,639)	(36,593)	(25,240)
Distributions from unconsolidated power projects.....	29,979	43,318	27,717
Loss on sale of assets.....	--	1,058	--
Change in operating assets and liabilities, net of effects of acquisitions:			
Accounts receivable.....	(477,126)	(17,258)	10,172
Notes receivable.....	(46,066)	(13,919)	--
Other current assets.....	(25,324)	(8,555)	24,012
Other assets.....	(43,654)	(9,153)	(28,968)
Accounts payable and accrued expenses.....	662,635	74,867	17,484
Other liabilities.....	46,856	71	5,885
Net cash provided by operating activities.....	----- 650,330	----- 264,083	----- 164,579
Cash flows from investing activities:			
Purchases of property, plant and equipment.....	(2,967,495)	(946,701)	(101,039)
Proceeds from sale and leaseback of plant.....	642,205	71,236	559
Acquisitions, net of cash acquired.....	(840,928)	(540,587)	(305,263)
Advances to joint ventures.....	(141,106)	(48,066)	(2,952)
Decrease (increase) in notes receivable.....	(184,535)	1,270	18,967
Maturities of collateral securities.....	6,445	1,850	6,030
Project development costs.....	(53,129)	(30,635)	(17,435)
Decrease (increase) in restricted cash.....	(15,616)	1,216	1,130
Net cash used in investing activities.....	----- (3,554,159)	----- (1,490,417)	----- (400,003)
Cash flows from financing activities:			
Borrowings from project financing.....	1,183,603	155,760	57,874
Repayments of project financing.....	(580,111)	(123,386)	(162,145)
Proceeds from notes payable and borrowings under lines of credit.....	1,051,225	163,675	--
Repayments of notes payable and borrowings under lines of credit.....	(1,117,946)	(129,721)	--
Proceeds from issuance of Senior Notes.....	1,000,000	600,000	400,000
Repurchase of Senior Notes.....	--	--	(8,250)
Proceeds from Company-obligated mandatorily convertible preferred securities of a subsidiary trust.....	877,500	276,000	--
Proceeds from equity offerings, net of issuance costs....	773,249	597,368	--
Proceeds from issuance of common stock.....	10,935	2,939	1,110
Write-off of deferred financing costs.....	2,031	1,943	--
Financing costs.....	(52,725)	(65,405)	(5,146)
Other.....	(4,605)	--	--
Net cash provided by financing activities.....	----- 3,143,156	----- 1,479,173	----- 283,443
Net increase in cash and cash equivalents.....	239,327	252,839	48,019
Cash and cash equivalents, beginning of year.....	349,371	96,532	48,513
Cash and cash equivalents, end of year.....	----- \$ 588,698	----- \$ 349,371	----- \$ 96,532
Cash paid during the year for:			
Interest.....	\$ 224,866	\$ 117,376	\$ 71,971
Income taxes.....	\$ 142,659	\$ 16,116	\$ 2,167

The accompanying notes are an integral part of these consolidated financial statements.

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

#### 1. ORGANIZATION AND OPERATIONS OF THE COMPANY

Calpine Corporation ("Calpine"), a Delaware corporation, and subsidiaries (collectively, the "Company") is engaged in the generation of electricity in the United States and Canada. In pursuing this single business strategy, the Company is involved in the development, acquisition, ownership and operation of power generation facilities and the sale of electricity and its by-product, thermal energy, primarily in the form of steam. The Company has ownership interests in and operates gas-fired cogeneration facilities, gas fields, gathering systems and gas pipelines, geothermal steam fields and geothermal power generation facilities in the United States and Canada. Each of the generation facilities produces and markets electricity for sale to utilities and other third party purchasers. Thermal energy produced by the gas-fired cogeneration facilities is primarily sold to governmental and industrial users.

#### 2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

**Principles of Consolidation** -- The accompanying consolidated financial statements include accounts of the Company. Wholly-owned and majority-owned subsidiaries are consolidated. Less-than-majority-owned subsidiaries and subsidiaries for which control is deemed to be temporary, are accounted for using the equity method. In the case of the Company's interest in the Lost Pines I project, the proportionate consolidation method is used. For equity method investments, the Company's share of income is calculated according to the Company's equity ownership or according to the terms of the appropriate partnership agreement (see Note 6). All significant intercompany accounts and transactions are eliminated in consolidation. Prior to the Company's acquisition of Unocal's interest in its Geysers geothermal properties on March 19, 1999, the Company used the proportionate consolidation method to account for Thermal Power Company's ("TPC's") 25% ownership in jointly owned geothermal properties.

**Use of Estimates in Preparation of Financial Statements** -- The preparation of financial statements in conformity with generally accepted accounting principles in the United States requires management to make estimates and assumptions that affect the reported amounts of assets and liabilities, and disclosure of contingent assets and liabilities at the date of the financial statements and the reported amounts of revenues and expenses during the reporting period. Actual results could differ from those estimates. The most significant estimates with regard to these financial statements relate to future development costs and useful lives of the generation facilities (see Note 3).

**Fair Value of Financial Instruments** -- The carrying value of accounts receivable, marketable securities, accounts and other payables approximate their respective fair values due to their short maturities. See Note 9 for disclosures regarding the fair value of the Senior Notes.

**Cash and Cash Equivalents** -- The Company considers all highly liquid investments with an original maturity of three months or less to be cash equivalents. The carrying amount of these instruments approximates fair value because of their short maturity.

**Inventories** -- Operating supplies are valued at the lower of cost or market. Cost for large replacement parts estimated to be used within one year is determined using the specific identification method. For the remaining supplies and spare parts, cost is generally determined using the weighted average cost method.

**Project Development Costs** -- The Company capitalizes project development costs once it is determined that it is probable that such costs will be realized through the ultimate construction of a power plant. These costs include professional services, salaries, permits and other costs directly related to the development of a new project. Outside services and other third party costs are capitalized for acquisition projects. Upon commencement of construction, these costs are transferred to construction in progress in property, plant and equipment, net. Upon the start-up of plant operations, these costs are generally transferred to property, plant

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

and equipment and amortized over the estimated useful life of the project. Capitalized project costs are charged to expense if the Company determines that the project is impaired.

**Restricted Cash** -- The Company is required to maintain cash balances that are restricted by provisions of certain of its debt agreements, lease agreements and by regulatory agencies. The Company's debt agreements specify restrictions based on debt service payments and drilling costs. Regulatory agencies require cash to be restricted to ensure that funds will be available to restore property to its original condition. Restricted cash is invested in accounts earning market rates; therefore, the carrying value approximates fair value. Such cash is excluded from cash and cash equivalents for the purposes of the consolidated statements of cash flows.

**Deferred Financing Costs** -- The deferred financing costs related to the Company's Senior Notes are amortized over the life of the related debt, ranging from 5 to 10 years using the effective interest rate method (See Note 9). The deferred financing costs associated with the two Calpine Construction Finance Company facilities are amortized over the 4-year facility lives using the straight-line method (See Note 8). Costs incurred in connection with obtaining other financing are deferred and amortized over the remaining life of the related debt, generally ranging from 1 to 20 years.

**Long-Lived Assets** -- In accordance with Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 121, "Accounting for the Impairment of Long-Lived Assets and for Long-Lived Assets to be Disposed of," the Company evaluates the impairment of long-lived assets, including goodwill, based on the projection of undiscounted cash flows whenever events or changes in circumstances indicate that the carrying amounts of such assets may not be recoverable. In the event such cash flows are not expected to be sufficient to recover the recorded value of the assets, the assets are written down to their estimated fair values.

**Major Maintenance** -- For major gas turbine generator refurbishments, the Company defers the costs and amortizes them over 3 to 6 years. Geothermal steam turbine refurbishments are expensed as incurred. These two methods are the Company's primary accounting methods for major maintenance. Additionally, the Company accrues in advance for certain non-annual planned maintenance.

**Trust Preferred Securities** -- During 1999 and 2000, the Company issued trust preferred securities, which are treated as a minority interest in the balance sheet and reflected as "Company-obligated mandatorily redeemable convertible preferred securities of subsidiary trusts." The distributions are reflected on the income statement as "distributions on trust preferred securities." Financing costs related to these issuances are netted with the principal amounts and are accreted over the securities' 30-year maturity by the straight-line method (See Note 11).

**Revenue Recognition** -- The Company is first and foremost an electric generation company, operating a portfolio of mostly wholly-owned plants but also some plants in which its ownership interest is 50% or less and which are accounted for under the equity method. In conjunction with its electric generation business, the Company also produces, as a by-product, thermal energy for sale to customers, principally steam hosts at its cogeneration sites. In addition the Company acquires and produces natural gas for its own consumption and sells the balance and small amounts of oil to third parties. To protect and enhance the profit potential of its electric generation plants, the Company's Calpine Energy Services, LP ("CES") subsidiary enters into electric and gas hedging, balancing and related transactions in which purchased electricity and gas is resold to third parties. CES acts as a principal, takes title to the commodities purchased for resale and assumes the risks and rewards of ownership, and therefore, in accordance with Staff Accounting Bulletin No. 101 and the Emerging Issues Task Force ("EITF") Issue No. 99-19, CES recognizes revenue on a gross basis, except in the case of qualifying hedge transactions, in which case the net gain or loss from the hedging instrument is recorded in income against the underlying hedged item when the effects of the hedged item are recognized.

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

Hedged items typically included sales to third parties of natural gas produced, purchases of natural gas to fuel power plants, and sales of generated electricity. Finally, the Company, through Power Systems Mfg., LLC ("PSM"), designs and manufactures spare parts for gas turbines and also generates small amounts of revenue from occasional loans to power projects and by providing operation and maintenance services to unconsolidated power plants. Further details of the Company's revenue recognition policy for each type of revenue transaction is provided below:

**Electricity and Steam Sales** -- Electrical energy revenue is recognized upon transmission to the customer, and capacity and ancillary revenue is recognized when contractually earned. In accordance with EITF Issue No. 91-6, revenues from contracts entered into or acquired since May 1992 are recognized at the lesser of amounts billable under the contract or amounts recognizable at an average rate over the term of the contract. The Company's power sales agreements related to Calpine Geysers Company ("CGC") were entered into prior to May 1992. Had the Company applied the methodology described above to the CGC power sales agreements, the revenues recorded for the years ended December 31, 2000, 1999 and 1998 would have been approximately \$8.1 million lower, \$24.2 million higher and \$4.7 million lower, respectively. Net gains or losses from qualified hedges of electricity positions are included in electricity and steam sales.

Calpine Gilroy Cogen, LP ("Gilroy") had a long-term power purchase agreement ("PPA") with Pacific Gas and Electric Company ("PG&E") for the sale of energy through 2018. The terms of the PPA provided for 120 megawatts of firm capacity and up to 10 megawatts of as-delivered capacity. On December 2, 1999, the California Public Utilities Commission approved the restructuring of the PPA between Gilroy and PG&E. Under the terms of the restructuring, PG&E and Gilroy are each released from performance under the PPA effective November 1, 2002. Under the restructured contract, in addition to the normal capacity revenue for the period, Gilroy will earn from September 1999 to October 2002 restructured capacity revenue it would have earned over the November 2002 through March 2018 time period, for which PG&E issues notes to the Company. At December 31, 2000, Gilroy had \$62.3 million of such notes receivable from PG&E. These notes will be paid by PG&E during February 2003 to September 2014 (See Notes 15 and 19 for further discussion).

**Service Contract Revenue** -- The Company recognizes revenue from power and gas hedging, balancing and related activities through its wholly owned subsidiary, CES. Revenue generated from CES through sales of purchased power and purchased gas to third parties is recorded as service contract revenue when delivery occurs or a position is settled.

The Company also performs operations and maintenance services for some of the projects in which it has an interest. Revenue from investees is recognized as service contract revenue on these contracts when the services are performed.

**Income from Unconsolidated Investments in Power Projects** -- The Company uses the equity method to recognize as revenue its pro rata share of the net income or loss of the unconsolidated investment until such time, if applicable, as the Company's investment is reduced to zero, at which time equity income is generally recognized only upon receipt of cash distributions from the investee.

**Interest Income on Loans to Power Projects** -- The Company recognizes as revenue interest income on loans to power projects in which it invests as the interest is earned and realizable.

**Other Revenues** -- Revenue from the sale of crude oil is recognized upon the passage of title, net of royalties and net of gains or losses from qualified hedges. Revenue from natural gas production is recognized using the sales method, net of royalties and net of gains or losses from qualified hedges.

The Company recognizes revenue from its PSM subsidiary as products are delivered to the customer for smaller orders and on the Percentage of Completion method for certain special large orders under which work is performed over an extended time period.

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

**Concentrations of Credit Risk** -- Financial instruments which potentially subject the Company to concentrations of credit risk consist primarily of cash, accounts receivable and notes receivable. The Company's cash accounts are generally held in FDIC insured banks. The Company's accounts and notes receivable are concentrated within entities engaged in the energy industry, mainly within the United States (see Note 15). The Company generally does not require collateral for accounts receivable.

**Derivative Financial Instruments** -- The Company engages in activities to manage risks associated with changes in interest rates. The Company has entered into swap agreements to reduce exposure to interest rate fluctuations. The instruments' cash flows mirror those of the underlying exposure. Unrealized gains and losses relating to the instruments are being deferred over the lives of the contracts. The premiums paid on the instruments, as measured at inception, are being amortized over their respective lives as components of interest expense. Any gains or losses realized upon the early termination of these instruments are being amortized over the respective lives of the underlying transaction or recognized immediately if the transaction is terminated earlier than initially anticipated. Gains and losses on any instruments not meeting the above criteria would be recognized in income in the current period. Subsequent gains or losses on the related financial instrument are recognized in income in each period until the instrument matures, is terminated or is sold. Cash flows from swap contracts accounted for as hedges are classified in the same category as the item being hedged.

**Energy Marketing Operations** -- The Company, through its wholly owned subsidiary CES, markets energy services to utilities, wholesalers, and end users. CES provides these services by entering into contracts to purchase or supply electricity and natural gas, primarily, at specified delivery points and specified future dates. In some cases, CES utilizes financial instruments to manage its exposure to electricity and natural gas price fluctuations, and to a lesser degree, price fluctuations of oil and refined products. On December 31, 2000, CES held swap contracts with several entities in order to hedge these price fluctuations.

At December 31, 2000, the Company had positions with a net fair value of \$104.0 million to protect the Company against the risks of fluctuating market prices. The Company actively manages its positions, and it is the Company's policy to not have any speculative positions. Net gains and losses related to commodity swap contracts are recognized when realized. The Company's credit risk associated with power and fuel contracts results from the risk-of-loss on non-performance by counter parties. The Company reviews and assesses counter party risk to limit any material impact to its financial position and results of operations. The Company does not anticipate non-performance by the counterparties.

**New Accounting Pronouncements** -- In June 1999, the FASB issued SFAS No. 137, "Accounting for Derivative Instruments and Hedging Activities -- Deferral of the Effective Date of FASB Statement No. 133 -- an Amendment of FASB Statement No. 133." The Statement amends SFAS No. 133 to defer its effective date to all fiscal quarters of all fiscal years beginning after June 15, 2000. In June 2000, the FASB issued SFAS No. 138, "Accounting for Certain Derivative Instruments and Certain Hedging Activities -- An Amendment of FASB Statement No. 133." The Company formally adopted these accounting requirements on January 1, 2001. The Company currently holds four classes of derivative instruments that will be impacted by the new pronouncements -- interest rate swaps, foreign currency swaps, commodity financial instruments, and commodity contracts.

Upon adoption of SFAS No. 133, the fair values of derivative instruments designated as hedges will be recorded on the balance sheet as an asset or liability at their fair value. The difference between the carrying value of the derivative and its fair value at the date of adoption shall be recorded as a transition adjustment. In the case of the effective portion of a hedge, which previously addressed the variable cash flow exposure of a transaction, a transition adjustment will be recorded as a cumulative-effect-type adjustment to accumulated Other Comprehensive Income ("OCI"). In the case of the ineffective portion of a hedge, an adjustment will be calculated using the dollar offset method and charged to income or expense on the Income Statement as

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

the effect of a change in accounting principle. The fair values of derivative instruments that are not designated as effective hedges and that do not meet the normal purchase or sale exception of SFAS No. 138 will be recorded on the balance sheet as an asset or liability at fair value and an adjustment will be charged to income or expense on the Income Statement as the effect of a change in accounting principle.

At the end of each quarter, the changes in fair values of derivative instruments designated as cash flow hedges will be recorded on the balance sheet as an asset or liability. In the case of the effective portion of a hedge, an adjustment will be recorded to OCI. In the case of the ineffective portion of a hedge, an adjustment will be calculated using the dollar offset method and charged to income or expense on the Income Statement. The changes in fair values of derivative instruments that are not designated as effective hedges and that do not meet the normal purchase or sale exception of SFAS No. 138 will be recorded on the balance sheet as an asset or liability and an offset will be charged to income or expense on the Income Statement."

At January 1, 2001, the FASB had not resolved Derivatives Implementation Group ("DIG") Issue 14-3, dealing with a proposed electric industry normal purchases and sales exception for capacity sales transactions. The Company has assumed that the FASB will permit the use of this exception for capacity sales contracts that include all of the following characteristics:

- It is probable at inception and throughout the term of the individual contract that the contract -- if exercised by the holder -- will not settle net, as defined in SFAS No. 133, and will result in physical delivery.
- The electricity contract would not otherwise be considered an energy trading contract under the EITF Issue No. 98-10.
- The contract meets all other applicable criteria outlined in paragraph 10(b) of SFAS No. 133.

All capacity sales contracts and other commodity contracts currently held by the Company meet the above criteria and are therefore subject to the FASB's final decision which is expected in early 2001. Pending the FASB's final decision, the Company assumes that these contracts will be exempt from derivative accounting treatment under the normal purchases and sales exemption. Had the Company not made this assumption, total assets would have increased by \$9.6 million, total liabilities would have increased by \$8.5 million and net income would have increased by \$1.1 million. The effect on the income statement would be reported as a cumulative effect of change in accounting principle. The table below reflects the amounts (in thousands), by derivative instrument that would be recorded as assets, liabilities, expense, and OCI if the Company adopted SFAS No. 133 on December 31, 2000.

	INTEREST RATE SWAPS	COMMODITY FINANCIAL INSTRUMENTS
	-----	-----
Current Derivative Asset.....	\$ --	\$704,218
Long-Term Derivative Asset.....	868	120,206
	-----	-----
Total Assets.....	\$ 868	\$824,424
	=====	=====
Current Derivative Liability.....	501	669,428
Long-Term Derivative Liability.....	25,510	68,420
Deferred Tax Liability.....	(9,856)	33,938
	-----	-----
Total Liabilities.....	\$ 16,155	\$771,786
	=====	=====
Other Comprehensive Income.....	\$ (15,287)	\$ 52,638

Reclassifications -- Certain prior years' amounts in the Consolidated Financial Statements have been reclassified to conform to the 2000 presentation.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**3. PROPERTY, PLANT AND EQUIPMENT, NET, AND CAPITALIZED INTEREST**

Property, plant and equipment, net, are stated at cost less accumulated depreciation and amortization.

The Company capitalizes costs incurred in connection with the development of geothermal properties, including costs of drilling wells and overhead directly related to development activities, together with the costs of production equipment, the related facilities and the operating power plants. Proceeds from the sale of geothermal properties are applied against capitalized costs, with no gain or loss recognized.

Geothermal costs, including an estimate of future costs to be incurred, costs to optimize the productivity of the assets, and the estimated costs to dismantle, are amortized by the units of production method based on the estimated total productive output over the estimated useful lives of the related steam fields. Depreciation of the buildings and roads is computed using the straight-line method over their estimated useful lives. It is reasonably possible that the estimate of useful lives, total units of production or total capital costs to be amortized using the units of production method could differ materially in the near term from the amounts assumed in arriving at current depreciation expense. These estimates are affected by such factors as the ability of the Company to continue selling electricity to customers at estimated prices, changes in prices of alternative sources of energy such as hydro-generation and gas, and changes in the regulatory environment.

Gas-fired power production facilities include cogeneration plants and related equipment and are stated at cost. Depreciation is recorded utilizing the straight-line method over the estimated original useful life of up to 38 years, exclusive of the estimated salvage value, typically 10%. The value of the above-market or below-market pricing provided in power sales agreements and fuel supply contracts acquired is recorded in property, plant and equipment, net and is amortized over the above-market or below-market pricing period in the power sales agreement or fuel supply contract with lives ranging from month-to-month to 28 years. When assets are disposed of, the cost and related accumulated depreciation are removed from the accounts, and the resulting gains or losses are included in results of operations.

The Company follows the successful efforts method of accounting for oil and natural gas operations. Under the successful efforts method, capitalized costs relating to proved properties are amortized using the units-of-production method based on estimated proven reserves. The cost of unsuccessful exploration wells is charged to operations.

As of December 31, 2000 and 1999, the components of property, plant and equipment, net are as follows (in thousands):

	2000	1999
	-----	-----
Geothermal properties.....	\$ 334,585	\$ 366,059
Oil and gas properties.....	625,178	214,794
Buildings, machinery and equipment.....	1,927,803	1,215,063
Power sales agreements.....	159,337	145,957
Gas contracts.....	132,748	122,593
Other.....	178,861	78,735
	-----	-----
	3,358,512	2,143,201
Less: accumulated depreciation and amortization.....	(328,461)	(227,059)
	-----	-----
	3,030,051	1,916,142
Land.....	12,578	3,419
Construction in progress.....	4,416,426	988,495
	-----	-----
Property, plant and equipment, net.....	\$7,459,055	\$2,908,056
	=====	=====

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

Construction in progress is primarily attributable to gas-fired projects under construction. Upon commencement of plant operations, these costs are transferred to Buildings, Machinery and Equipment.

Capitalized Interest -- The Company capitalizes interest on capital invested in projects during the advanced stages of development and the construction period. For the years ended December 31, 2000 and 1999, the Company recorded net interest expense of \$56.7 million and \$91.2 million, respectively, after capitalizing \$171.0 million and \$39.7 million of interest on general corporate funds used for construction in 2000 and 1999, respectively, and after \$36.0 million and \$7.6 million of interest capitalized on funds borrowed for specific construction projects in 2000 and 1999, respectively. Upon commencement of plant operations, capitalized interest is amortized over the estimated useful life of the plant. The increase in the amount of interest capitalized during the year ended December 31, 2000 reflects the significant increase in the Company's power plant construction program.

#### 4. ACQUISITIONS

The following acquisitions were consummated during the year ended December 31, 1999. All business combinations made during 1999 were accounted for as purchases.

##### **Unocal Transaction**

On March 19, 1999, the Company acquired Unocal Corporation's Geysers geothermal steam fields in northern California for approximately \$102.2 million. The steam fields fuel the Company's power plants located at the Geysers, California. See below.

##### **PG&E Transactions**

On May 7, 1999, the Company completed the acquisition of 12 Sonoma County and 2 Lake County power plants, located at the Geysers, California from PG&E for approximately \$212.8 million. These plants have a combined capacity of approximately 657 megawatts of electricity.

##### **Aidlin Transaction**

On August 31, 1999, the Company completed the acquisition of an additional 50% interest in the Aidlin Power Plant from Edison Mission Energy and General Electric Capital Corporation for a total purchase price of \$7.2 million. The Company previously owned a 5% interest in the project.

##### **Calistoga and Silverado Transactions**

On October 19, 1999, the Company purchased the Calistoga Power Plant, the Silverado steam fields and related assets from FPL Energy and Caithness Corporation for \$77.9 million.

##### **Calpine Natural Gas Company Transaction**

On October 1, 1999, the Company completed the acquisition of Sheridan Energy Inc. ("Sheridan"), a natural gas exploration and production company, through a \$38.8 million cash tender offer. The Company purchased the outstanding shares of Sheridan's common stock for \$5.50 per share. In addition, the Company redeemed \$11.9 million of outstanding preferred stock of Sheridan. Sheridan's oil and gas properties are primarily located in Northern California and the Gulf Coast region. Previously, the Company had acquired a 20% interest in Sheridan California Energy, Inc. from Sheridan for \$14.9 million. As a result of the two aforementioned acquisitions, the Company now owns all of the assets of Sheridan and included the results in its Consolidated Financial Statements at December 31, 1999. The Company subsequently renamed Sheridan as Calpine Natural Gas Company ("CNGC"). The Company accounted for its investment in Sheridan under

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

the equity method until October 1, 1999. From October 1, 1999 through December 31, 1999, the results of CNGC's operations are consolidated.

#### **Cogeneration Corporation of America Transaction**

On December 17, 1999, the Company completed the acquisition of 80% of the common stock of Cogeneration Corporation of America, Inc. ("CGCA") for approximately \$137.3 million with the remaining 20% being owned by NRG Energy Inc., a subsidiary of Xcel Energy, Inc. As a result of this acquisition the Company received an ownership interest in six natural gas-fired facilities totaling approximately 461 megawatts of capacity and has assumed operations of five of the plants.

#### **Vintage Transaction**

On December 31, 1999, but effective as of November 1, 1999, the Company acquired proven natural gas reserves and certain leasehold acreage from Vintage Petroleum, Inc. ("Vintage") of Tulsa, Oklahoma for approximately \$71.5 million. The Company added the remaining 58.8% working interest in the Rio Vista Gas Unit and certain development acreage to its northern California gas portfolio. This new production utilizes the Company's Sacramento Basin gas pipeline system. The Company initially acquired a 40.7% working interest in the Rio Vista Gas Unit in October 1999 through its Sheridan acquisition.

The following acquisitions were consummated during the year ended December 31, 2000. All business combinations made during 2000 were accounted for as purchases.

#### **Western Transaction**

On February 4, 2000, the Company acquired 100% of the stock of Western Gas Resources California ("Western") from Western Gas Resources, Inc. for \$14.9 million. Western's assets include the 130-mile Steelhead natural gas pipeline and the remaining interest in the Sacramento River Gas System natural gas pipeline, now 100% owned by Calpine.

#### **Hidalgo Transaction**

On March 30, 2000, the Company purchased a 78.5% interest in the 502 megawatt Hidalgo Energy Center which was under construction in Edinburg, Texas, from Duke Energy North America for \$235 million. The purchase included a cash payment of \$134 million and the assumption of a \$101 million capital lease obligation. The Hidalgo Energy Center sells power into the Electric Reliability Council of Texas' ("ERCOT") wholesale market. Construction of the facility began in February 1999, and commercial operation was achieved in June 2000.

#### **KIAC and Stony Brook Transaction**

On May 31, 2000, Calpine acquired the remaining 50% interests in the 105 megawatt Kennedy International Airport Power Plant ("KIAC") in Queens, N.Y. and the 40 megawatt Stony Brook Power Plant located at the State University of New York at Stony Brook on Long Island from Statoil Energy, Inc. The Company paid approximately \$71 million in cash and assumed a capital lease obligation relating to the Stony Brook Power Plant. The Company initially acquired a 50% interest in both facilities in December 1997.

#### **Freestone Transaction**

On June 15, 2000, the Company announced that it had acquired the Freestone Energy Center from Energy Corporation. Freestone is a 1,052 megawatt natural gas-fired energy center under development in Freestone County, Texas. The technologically advanced energy center is currently under construction, with a

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

two-phased commercial start-up beginning in June 2002. The Company paid approximately \$61.0 million in cash and assumed certain liabilities. This represented payment for the land and development rights for the Freestone Energy Center, previous progress payments made for four General Electric gas turbines, two steam turbines and related equipment, and development expenditures incurred to date.

#### **Auburndale Transaction**

On June 30, 2000, the Company acquired from Edison Mission Energy the remaining 50% ownership interest in a 153 megawatt natural gas-fired, combined cycle cogeneration facility located in Auburndale, Fla. The Company paid approximately \$22.0 million in cash and assumed certain liabilities, including project level debt. Related to the project level debt was the assumption of an interest rate swap agreement with a notional amount of \$121.5 million at December 31, 2000, which effectively converts the project level debt's floating rate to a fixed rate of 6.52% per annum. The Company acquired an initial 50% ownership interest in the Auburndale Power Plant in October 1997.

#### **Canadian Natural Gas Reserves Transaction**

On July 5, 2000, the Company completed three acquisitions of natural gas reserves for \$206.5 million, including the acquisition of Calgary-based Quintana Minerals Canada Corp. ("QMCC"), three fields in the Gulf of Mexico and natural gas assets in the Piceance Basin, Colorado and onshore Gulf Coast.

#### **Oneta Transaction**

On July 20, 2000, the Company completed the acquisition of the 1,138 megawatt natural gas-fired Oneta Energy Center, under development in Coseta, Oklahoma, from Panda Energy International, Inc.

#### **Agnews Transaction**

On August 16, 2000, the Company acquired the remaining 80% interest in the Agnews Power Plant, a 29 megawatt natural gas-fired, combined cycle facility located in San Jose, California from GATX Capital Corporation for a total purchase price of \$4.9 million. The Company first acquired a 20% equity interest in the Agnews Power Plant in 1990.

#### **Aidlin Transaction**

On August 31, 2000, the Company acquired the remaining 45% equity interest in the Aidlin Power Plant from an affiliate of Sumitomo Corporation for a total purchase price of \$6.4 million. The Company initially acquired a 5% equity interest in the Aidlin Power Plant in 1989, representing Calpine's first megawatt of generation. That interest was increased to 55% with the acquisition of two other partners' interests in 1999. Located in The Geysers region of northern California, Aidlin is a 20 megawatt power plant.

#### **SkyGen Energy Transaction**

On October 12, 2000, the Company completed the acquisition of Northbrook, Illinois-based SkyGen Energy LLC ("SkyGen") from Michael Polsky and Wisvest Corporation ("Wisvest"), an affiliate of Wisconsin Energy Corp for a total purchase price of \$359.1 million. The purchase price included cash payments of \$294.2 million and 2,117,742 shares of Calpine common stock (which were valued in the aggregate at \$64.9 million at signing of the letter of intent).

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

#### TriGas Transaction

On November 15, 2000, the Company acquired TriGas Exploration Inc. ("TriGas"), the Calgary-based oil and gas company, for a total purchase price of \$101.1 million. The purchase price included cash payments of \$79.6 million, as well as assumed net indebtedness of \$21.5 million. The acquisition provided Calpine with natural gas reserves to fuel its proposed Calgary Energy Centre, and a 26.6% working interest in the East Crossfield Gas Plant, extensive pipelines and gathering systems and a significant undeveloped land base with development potential.

#### PSM Transaction

On December 13, 2000, the Company completed the acquisition of Boca Raton, Florida-based PSM for a total purchase price of \$16.3 million. The purchase price included cash payments of \$5.6 million and 281,189 shares of Calpine common stock (which were valued in the aggregate at \$10.7 million at the closing of the agreement). Additionally, the agreement provides for five equal installments of cash payments, totaling \$26.7 million, beginning in January 2002, contingent upon future PSM performance. PSM specializes in the design and manufacturing of turbine hot section blades, vanes, combustors and low emissions combustion components.

#### EMI Transaction

On December 15, 2000, the Company completed the acquisition of strategic power assets from Dartmouth, Massachusetts-based Energy Management, Inc. ("EMI") for a total purchase price of \$145.0 million. The purchase price included cash payments of \$100.0 million and 1,102,601 shares of Calpine common stock (which were valued in the aggregate at \$45.0 million at the closing of the agreement). Under the terms of the agreement, the Company acquired the remaining interest in three recently constructed combined-cycle power generating facilities located in Dighton, Massachusetts, Tiverton, Rhode Island, and Rumford, Maine, as well as Calpine-EMI Marketing LLC, a joint marketing venture between Calpine and EMI.

#### Pro Forma Effects of Acquisitions

The table below reflects unaudited pro forma combined results of the Company, Unocal, the power plants acquired from PG&E, Sheridan, Calistoga, CogenAmerica, Vintage, KIAC, Stony Brook, Auburndale, QMCC, Agnews, Aidlin, SkyGen, TriGas, PSM, and EMI as if the acquisitions had taken place at the beginning of fiscal year 2000 and 1999 (in thousands, except per share amounts):

	2000	1999
Total revenue.....	\$2,497,559	\$1,241,805
Income before extraordinary charge.....	\$ 340,354	\$ 131,919
Net income.....	\$ 339,119	\$ 130,769
Net income per basic share.....	\$ 1.28	\$ 0.62
Net income per diluted share.....	\$ 1.15	\$ 0.59

In management's opinion, these unaudited pro forma amounts are not necessarily indicative of what the actual combined results of operations might have been if the acquisitions had been effective at the beginning of fiscal year 2000 and 1999. In addition, they are not intended to be a projection of future results and do not reflect all the synergies that might be achieved from combined operations.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**5. SALE AND LEASEBACK TRANSACTIONS**

On May 7, 1999, the Company entered into a sale and leaseback transaction of its 12 Sonoma County and 2 Lake County power plants, located at the Geysers, California, as well as the Sonoma power plant acquired from the Sacramento Municipal Utility District in 1998. Under the terms of the lease, the Company received \$18.5 million in net proceeds and recorded a deferred gain of \$15.2 million, which is being amortized as a reduction of operating lease expense over the remaining life of the lease.

On November 5, 1999, the Company entered into a sale and leaseback transaction of its Calistoga plant. Under the terms of the lease, the Company received \$52.8 million in net proceeds and did not record a deferred gain or loss.

On September 1, 2000, the Company completed a leveraged lease financing transaction to provide the term financing for both Phase I and Phase II of the Pasadena, Texas Cogeneration project. Under the terms of the lease, the Company received \$400.0 million in gross proceeds and recorded a deferred gain of approximately \$65.0 million, which is being amortized as a reduction of operating lease expense over the remaining life of the lease.

On December 19, 2000, the Company completed leveraged lease transactions in which the Company sold the Tiverton and Rumford facilities (purchased from EMI) to a single owner lessor for \$466.7 million, which then leased the facilities back to the Tiverton and Rumford subsidiaries. The Company guaranteed the obligations of the Tiverton and Rumford subsidiaries under the leases. To finance the transaction, a trust was established to issue \$366.0 million of 9.0% pass through certificates due July 15, 2018, which was effected by a private placement by the trust under Rule 144A of the Securities Act of 1933. The Company recorded a deferred gain of approximately \$1.7 million, which is being amortized as a reduction of operating lease expense over the remaining life of the lease. In connection with this transaction, the Company issued letters of credit. At December 31, 2000, \$52.1 million in letters of credit were outstanding.

On December 22, 2000, the Company completed a leveraged lease financing transaction of its West Ford Flat and Bear Canyon projects. Under the terms of the agreement, the facilities were incorporated into the Company's Geothermal lease facility, which the Company originally entered into on May 7, 1999. The Company received \$81.0 million in gross proceeds and recorded a deferred loss of approximately \$8.1 million, which is being amortized as an increase of operating lease expense over the remaining life of the lease.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**6. INVESTMENTS IN POWER PROJECTS**

Investments, which are accounted for under the equity method, are as follows (in thousands):

	OWNERSHIP INTEREST AS OF	DECEMBER 31,	
	DECEMBER 31, 2000	2000	1999
Sumas Power Plant.....	(1)	\$ --	\$ --
Acadia Power Plant.....	50.0%	108,529	--
Grays Ferry Power Plant.....	40.0%	30,257	21,875
Aries Power Plant.....	50.0%	22,350	--
Gordonsville Power Plant.....	50.0%	18,060	16,496
Lockport Power Plant.....	11.4%	14,722	12,406
Bayonne Power Plant.....	7.5%	8,385	8,490
Tiverton Power Plant(2).....	100.0%	--	44,853
Rumford Power Plant(2).....	100.0%	--	44,316
Kennedy International Airport Power Plant(2).....	100.0%	--	37,880
Stony Brook Power Plant(2).....	100.0%	--	21,477
Auburndale Power Plant(2).....	100.0%	--	19,565
Dighton Power Plant(2).....	100.0%	--	14,875
Other.....	--	3,318	992
		-----	-----
Total Investments in Power Projects.....		\$205,621	\$243,225
		=====	=====

(1) See Footnote (1) below detailing the Company's income and distributions from investments in unconsolidated power projects.

(2) The Company acquired the remaining interests in these facilities in 2000 and thereafter consolidated the operations.

The combined unaudited results of operations and financial position of the Company's equity method affiliates are summarized below (in thousands):

	DECEMBER 31,		
	2000	1999	1998
Condensed Statement of Operations:			
Revenue.....	\$ 617,914	\$ 562,401	\$ 495,123
Gross profit.....	217,777	245,314	214,382
Income from continuing operations.....	161,852	214,520	199,601
Net income.....	80,812	113,837	108,563
Company's share of net income.....	24,639	36,593	25,240
Condensed Balance Sheet:			
Current assets.....	130,316	167,107	134,794
Non-current assets.....	1,424,672	1,306,325	1,240,172
Total assets.....	1,554,988	1,473,432	1,374,966
Current liabilities.....	175,764	121,214	110,957
Non-current liabilities.....	951,013	1,087,329	994,570
Total liabilities.....	1,126,777	1,208,543	1,105,527

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

The following details the Company's income and distributions from investments in unconsolidated power projects (in thousands):

	INCOME FROM UNCONSOLIDATED INVESTMENTS IN POWER PROJECTS			DISTRIBUTIONS		
	FOR THE YEARS ENDED DECEMBER 31,					
	2000	1999	1998	2000	1999	1998
Sumas Power Plant(1).....	\$12,951	\$21,779	\$11,699	\$12,951	\$21,779	\$11,699
Grays Ferry.....	4,737	(3)	--	4,500	--	--
Lockport Power Plant.....	4,391	4,255	3,628	3,752	3,741	3,297
Gordonsville Power Plant.....	4,514	4,299	3,807	2,950	4,000	3,125
Bayonne Power Plant.....	2,196	3,426	2,446	2,301	2,808	2,701
Stony Brook Power Plant.....	(994)	857	252	1,820	370	--
Auburndale Power Plant.....	599	(712)	(1,377)	1,350	3,250	2,475
Kennedy International Airport Power Plant.....	(2,769)	1,968	1,159	--	3,350	4,100
Other.....	(986)	724	3,626	355	4,020	320
<b>Total.....</b>	<b>\$24,639</b>	<b>\$36,593</b>	<b>\$25,240</b>	<b>\$29,979</b>	<b>\$43,318</b>	<b>\$27,717</b>

(1) On December 31, 1998, the Partnership agreement governing Sumas Cogeneration Company, L.P. ("Sumas") was amended changing the distributions schedule for the Company from the previously amended agreement dated September 30, 1997. From January 1, 1998 through December, 2000, the Company recorded income equal to the amount of cash received from partnership distributions. The Company received distributions at a rate of 70% of project cashflow until December, 2000 when a cumulative 24.5% pre-tax rate of return was earned on its original investment. As a result, the Company's equity interest in the partnership has been reduced to 0.1%.

The Company provides for deferred taxes to the extent that distributions exceed earnings.

**7. NOTES PAYABLE AND BORROWINGS UNDER LINES OF CREDIT**

The components of notes payable and borrowings under lines of credit are (in thousands):

	BORROWINGS OUTSTANDING DECEMBER 31,		LETTERS OF CREDIT OUTSTANDING DECEMBER 31,	
	2000	1999	2000	1999
Corporate Revolving Line of Credit.....	\$ 40,000	\$ --	\$157,900	\$28,800
Calpine Canada Note Payable and Borrowings under Line of Credit.....	144,500	--	48	--
Calpine Natural Gas Company Line of Credit.....	--	97,750	--	--
Other.....	12,449	38,420	10,810	10,810
<b>Total Notes Payable and borrowings under lines of credit.....</b>	<b>\$196,949</b>	<b>\$136,170</b>	<b>\$168,758</b>	<b>\$39,610</b>
<b>Less: Notes Payable and borrowings under lines of credit, current portion.....</b>	<b>1,087</b>	<b>38,867</b>		
<b>Notes Payable and borrowings under lines of credit, net of current portion.....</b>	<b>\$195,862</b>	<b>\$ 97,303</b>		

In May 2000, Calpine entered into an amended and restated \$400.0 million, three-year revolving line of credit with a consortium of commercial lending institutions with the Bank of Nova Scotia as agent, which replaced an existing \$100.0 million credit facility. A maximum of \$200.0 million of the credit facility may be allocated to letters of credit. At December 31, 2000, the Company had \$40.0 million in borrowings and

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

\$157.9 million of letters of credit outstanding under the amended and restated credit facility. At December 31, 1999, the Company had no borrowings and \$28,800 in letters of credit outstanding under this credit facility. Borrowings bear variable interest and interest is paid on the last day of each interest period for such loans, at least quarterly. The credit facility specifies that the Company maintain certain covenants, with which the Company was in compliance as of December 31, 2000 and 1999. Commitment fees related to this line of credit are charged based on the unused credit. The interest rate ranged from 7.88% to 9.75% during 2000.

The Company, through its wholly owned Canadian subsidiaries, maintains a borrowing base in Canada of Cdn. \$304.0 million (approximately US \$202.7 million at December 31, 2000) under three facilities. At December 31, 2000, the Company had US \$144.5 million outstanding under these facilities. The facilities bear interest at variable rates. The weighted average rate for each of the facilities in 2000 was 8.52%. Additionally, commitment fees of 0.25% accrue on any unused portion of these facilities. The lines of credit are secured by the Company's oil and gas reserves in Canada. As of December 31, 2000, the Company was in compliance with all covenants required under these facilities.

In 1999, the Company, through its wholly owned subsidiary CNGC, maintained a borrowing base of \$99.1 million with Bank One, Texas N.A. under two facilities. In August 2000, the Company repaid the outstanding balance of \$93.3 million and terminated the agreement. As of December 31, 1999, CNGC had total borrowings of \$97.8 million outstanding under this facility. The facility bore interest at variable rates. At December 31, 1999, the interest rate was 8.6%. The lines of credit were secured by CNGC's oil and gas properties. The Company was in compliance with the financial covenants required by the facility as of December 31, 1999.

Additionally, in connection with repayment of outstanding borrowings in August 2000, the termination of certain credit agreements and the related write-off of unamortized deferred financing costs, the Company recorded an extraordinary loss of \$1.2 million after taxes.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**8. PROJECT FINANCING AND INTEREST RATE SWAP AGREEMENTS**

The components of project financing as of December 31, 2000 and 1999 are (in thousands):

PROJECTS	INTEREST RATE (1)		FINAL MATURITY	OUTSTANDING AT DECEMBER 31,		LETTERS OF CREDIT OUTSTANDING (3)
	2000	1999		2000	1999	2000
Calpine Construction Finance Company(2).....	8.39%	--	2004	\$ 701,644	\$ --	\$ --
Auburndale Power Plant.....	7.51%	--	2012	121,464	--	--
Newark & Parlin Power Plants.....	7.68%	6.51%	2011	116,715	125,318	--
Broad River Energy Center.....	8.02%	--	2007	115,880	--	34,831
Pine Bluff Energy Center.....	8.22%	--	2018	113,197	--	21,333
Hog Bayou Energy Center.....	8.24%	--	2002	107,974	--	29,003
RockGen Energy Center.....	7.97%	--	2007	89,840	--	16,095
Morris Power Plant.....	7.39%	7.50%	2004	85,600	85,622	--
DePere Energy Center.....	7.68%	--	2017	47,243	--	4,444
Dighton Power Plant.....	7.79%	--	2019	32,798	--	--
Pasadena Power Plant.....	--	5.58%	2005	--	154,800	--
Total.....				1,532,355	365,740	\$105,706
Less: current portion.....				58,486	8,603	
Long-term project financing...				\$1,473,869	\$357,137	

(1) Weighted average rate before giving effect to amortization of financing cost or interest rate swaps. The fair value of each of the project financings approximates the carrying value.

(2) Represents rate at December 31, 2000.

(3) No letters of credit associated with project financings in 1999.

**Calpine Construction Finance Company Debt**

In November 1999, the Company entered into a credit agreement for \$1.0 billion through its wholly owned subsidiary Calpine Construction Finance Company L.P. with a consortium of banks with the lead arranger being The Bank of Nova Scotia and the lead arranger syndication agent being Credit Suisse First Boston. The non-recourse credit facility is utilized to finance the construction of the Company's diversified portfolio of gas-fired power plants currently under development. The Company currently intends to refinance this construction facility in the long-term capital markets prior to its four-year maturity. As of December 31, 2000, the Company had \$544.8 million in borrowings outstanding under the facility. Borrowings under this facility bear variable interest. The credit facility specifies that the Company maintain certain covenants, with which the Company was in compliance as of December 31, 2000. The interest rate at December 31, 2000 was 8.44%. The interest rate ranged from 7.38% to 9.50% during 2000.

In October 2000, the Company entered into a credit agreement for \$2.5 billion through its wholly owned subsidiary Calpine Construction Finance Company II, LLC with a consortium of banks with the lead arrangers being The Bank of Nova Scotia and Credit Suisse First Boston. The non-recourse credit facility is utilized to finance the construction of the Company's diversified portfolio of gas-fired power plants currently under development. The Company currently intends to refinance this construction facility in the long-term capital markets prior to its four-year maturity. As of December 31, 2000, the Company had \$156.8 million in borrowings outstanding under the facility. Borrowings under this facility bear variable interest. The credit

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

facility specifies that the Company maintain certain covenants, with which the Company was in compliance as of December 31, 2000. The interest rate at December 31, 2000 was 8.20%. The interest rate ranged from 8.20% to 10.25% during 2000.

#### **Auburndale Power Plant Debt**

As part of the Company's acquisition of the Auburndale Power Plant, the Company assumed a project loan. This facility provides for project financing loans aggregating \$126.0 million. Amounts outstanding under the facility bear interest at variable rates. The weighted average interest rate for 2000 was 7.51%. The effective interest rate for 2000, after giving effect to an interest rate swap, was 7.82%.

#### **Newark & Parlin Power Plant Debt**

On December 17, 1999, the Company acquired 80% of the common stock of CGCA which owns 100% of the Newark and Parlin Power Plants ("Newark & Parlin"). At December 31, 2000 there was \$116.7 million outstanding on a fifteen year non-recourse term loan which is a joint and severable liability of Newark & Parlin. The term loan is secured by all Newark & Parlin assets and a pledge of their capital stock. CGCA has guaranteed repayment of up to \$25.0 million of the term loan based on the principal balance of the loan, and also guaranteed payment by Newark & Parlin of all income and franchise taxes when due. CGCA's guarantee is reduced proportionately to the outstanding principal as payments are made on the debt. The balance of the guarantee was \$18.8 million as of December 31, 2000. The interest rate on the outstanding principal is variable and averaged 7.68% in 2000. The effective interest rate for 2000, after giving effect to the interest rate swap, was 8.07%. Interest on the loan is payable at least quarterly.

#### **Broad River Energy Center Debt**

As part of the Company's acquisition of SkyGen, the Company assumed a term loan and a steam injection addition loan for the Broad River Energy Center. The steam injection loan is expected to be converted to a term loan in 2001. The construction loans require only interest payments through the conversion date, and blended payments of principal and interest following conversion to a term loan. Interest on the construction loan is variable and averaged 8.02% for 2000. The effective interest rate for 2000, after giving effect to interest rate swaps, was 7.34%.

#### **Pine Bluff Energy Center Debt**

As part of the Company's acquisition of SkyGen, the Company entered into construction financing for the Pine Bluff Energy Center. Under the terms of the credit facility, the Company can borrow up to \$142.0 million to fund construction. Of this amount, \$32.0 million is secured by guarantees or letters of credit from the members or their affiliates. Upon completion of construction, equity contributions of \$32.0 million will be made to repay a portion of the construction loan and the balance of the construction loan will be converted to a term loan. The term loan will consist of three tranches: Tranche A in the amount of \$30.0 million with a maturity date of 8 1/2 years from the conversion date, Tranche B in the amount of \$45.0 million with a maturity date of 13 1/2 years from the conversion date, and Tranche C in the amount of \$35.0 million with a maturity date of 17 1/2 years from the conversion date. The construction loan requires only interest payments through the conversion date, and blended payments of principal and interest following conversion to a term loan. Interest on the construction loan is variable and averaged 8.22% during 2000. The effective interest rate for 2000, after giving effect to interest rate swaps, was 7.34%.

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

#### **Hog Bayou Energy Center Debt**

As part of the Company's acquisition of SkyGen, the Company has entered into an arrangement with a syndicate of commercial banks to obtain financing to construct the Hog Bayou Energy Center. As part of the related credit agreement, the lenders will provide a facility to fund construction whereby the Company can borrow up to \$38.0 million under an equity bridge loan and \$104.6 million under a construction loan. The equity bridge loan matures on December 31, 2001 and the construction loan matures on December 31, 2002. As of December 31, 2000, the Company has borrowed \$38.0 million under the equity bridge loan and \$70.0 million under the construction loan. The weighted average interest rate for the facilities was 8.24% in 2000.

#### **RockGen Energy Center Debt**

As part of the Company's acquisition of SkyGen, the Company entered into financing for the RockGen Energy Center. As part of the related credit agreement, the lender provided a facility whereby the Company can borrow up to \$152.6 million in construction loans. Upon completion of construction, the balance of the construction loans will be converted to a term loan which matures on March 1, 2007. The construction loans require only interest payments through the conversion date, and blended payments of principal and interest following the conversion date. The weighted average interest rate during 2000 was 7.97%.

#### **Morris Power Plant Debt**

On December 17, 1999, the Company acquired 80% of the common stock of CGCA which owns 100% of Morris LLC ("Morris"). In 1997, Morris entered into a construction and term loan agreement to provide non-recourse project financing for a major portion of the Morris Project. The agreement provides \$85.6 million of 5-year term loan commitments and \$5.4 million in letter of credit commitments. As of December 31, 2000, \$85.6 million was outstanding as a term loan under the agreement and no amounts were pledged under the letter of credit. Interest on the term loan is variable and averaged 7.39% in 2000. Borrowings are secured by CGCA's ownership interest in Morris, its cash flows, dividends and any other property of Morris.

#### **DePere Energy Center Debt**

As part of the Company's acquisition of SkyGen, the Company assumed a term loan. Interest is payable based on the rate of the interest rate swap plus an applicable margin. The weighted average interest rate, before and after swap effects, was 7.68% and 6.43%, respectively.

#### **Dighton Power Plant Debt**

In December 2000, the Company acquired the remaining interest in the Dighton Power Plant. The Company assumed project financing for the plant. The weighted average interest rate as of December 31, 2000 was 7.79%.

#### **Pasadena Power Plant Debt**

On January 4, 1999, the Company entered into a credit agreement with ING (U.S.) Capital LLC ("ING") to provide up to \$265.0 million of non-recourse project financing for the construction of the Pasadena facility expansion. On August 31, 2000, the Company repaid the outstanding balance of \$224.2 million under the credit agreement.

#### **Additional Interest Rate Swap Agreements**

The Company acquired an interest rate swap agreement with the purchase of the Auburndale Power Plant on June 30, 2000. The agreement was entered into to fix the project's floating rate debt. The swap fixes

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

the interest rate on a notional amount of \$121.5 million at a weighted average rate of 6.5%. At December 31, 2000, the fair market value of this hedge was approximately \$(3.7) million.

The Company acquired ten interest rate swap agreements with the purchase of SkyGen on October 12, 2000. The agreements were entered into by SkyGen to fix the floating rate debt for its RockGen, Broad River, DePere, and Pine Bluff projects. The swaps fix the interest rates on an aggregate notional amount of \$303.1 million at a weighted average rate of 7.3%. At December 31, 2000, the fair market value of these hedges was approximately \$(16.4) million.

Upon adoption of SFAS No. 133, "Accounting for Derivative Instruments and Hedging Activities," the hedges will be accounted for using the methodology described in Note 2.

**9. SENIOR NOTES**

Senior Notes payable consist of the following as of December 31, 2000 and 1999 (in thousands):

	INTEREST RATES	FIRST CALL DATE	DECEMBER 31,		FAIR VALUE AS OF	
			2000	1999	2000	1999
Senior Notes due 2004.....	9 1/4%	1999	\$ 105,000	\$ 105,000	\$ 105,000	\$ 106,050
Senior Notes due 2005.....	8 1/4%	(2)	250,000	--	246,700	--
Senior Notes due 2006.....	10 1/2%	2001	171,750	171,750	178,620	180,939
Senior Notes due 2006.....	7 5/8%	(1)	250,000	250,000	239,700	238,050
Senior Notes due 2007.....	8 3/4%	2002	275,000	275,000	266,750	275,963
Senior Notes due 2008.....	7 7/8%	(1)	400,000	400,000	380,320	384,600
Senior Notes due 2009.....	7 3/4%	(1)	350,000	350,000	332,535	320,950
Senior Notes due 2010.....	8 5/8%	(2)	750,000	--	726,600	--
Total.....			\$2,551,750	\$1,551,750	\$2,476,225	\$1,506,552

(1) Not redeemable prior to maturity.

(2) Redeemable at any time prior to maturity.

The Company has completed a series of public debt offerings since 1994. Interest is payable semiannually at specified rates. There are no sinking fund or mandatory redemptions of principal before the maturity dates of each offering. Certain of the Senior Note indentures limit the Company's ability to incur additional debt, pay dividends, sell assets and enter into certain transactions. As of December 31, 2000 the Company is in compliance with all debt covenants relating to the Senior Notes.

**Senior Notes Due 2004**

The Senior Notes due 2004 bear interest at 9 1/4% per year, payable semi-annually on February 1 and August 1 each year and mature on February 1, 2004. The Senior Notes due 2004 are redeemable, at the option of the Company, at any time on or after February 1, 1999 at various redemption prices. In addition, the Company may redeem up to \$36.8 million of the Senior Notes due 2004 from the proceeds of any public equity offering. The effective interest rate on the \$105.0 million, after amortization of deferred financing costs, was 9.6%.

**Senior Notes Due 2005**

On August 10, 2000, the Company completed a public offering of \$250.0 million of its 8 1/4% Senior Notes due 2005 ("Senior Notes due 2005"). The Senior Notes due 2005 bear interest at 8 1/4% per year, payable semi-annually on August 15 and February 15 and mature on August 15, 2005. The Senior Notes due 2005



## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

may be redeemed at any time prior to maturity at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest plus a make-whole premium. The effective interest rate on the \$250.0 million, after amortization of deferred financing costs, was 8.6%.

#### Senior Notes Due 2006

The Senior Notes due 2006 bear interest at 10 1/2% per year, payable semi-annually on May 15 and November 15 each year and mature on May 15, 2006. The Senior Notes due 2006 are redeemable, at the option of the Company, at any time on or after May 15, 2001 at various redemption prices. In addition, the Company may redeem up to \$63.0 million of the Senior Notes due 2006 from the proceeds of any public equity offering. The effective interest rate on the \$171.8 million, after amortization of deferred financing costs, was 10.8%.

Additionally, during 1999 the Company completed a public offering of \$250.0 million of its 7 5/8% Senior Notes due 2006 ("1999 Senior Notes due 2006"). The 1999 Senior Notes due 2006 bear interest at 7 5/8% per year, payable semi-annually on April 15 and October 15 and mature on April 15, 2006. The 1999 Senior Notes due 2006 are not redeemable prior to maturity. The effective interest rate on the \$250.0 million, after amortization of deferred financing costs, was 7.9%.

#### Senior Notes Due 2007

The Senior Notes due 2007 bear interest at 8 3/4% per year, payable semi-annually on January 15 and July 15 each year and mature on July 15, 2007. The Senior Notes due 2007 are redeemable, at the option of the Company, at any time on or after July 15, 2002 at various redemption prices. In addition, the Company may redeem up to \$96.3 million of the Senior Notes due 2007 from the proceeds of any public equity offering. The effective interest rate on the \$275.0 million, after amortization of deferred financing costs, was 9.1%.

#### Senior Notes Due 2008

The Senior Notes due 2008 bear interest at 7 7/8% per year, payable semi-annually on April 1 and October 1 each year and mature on April 1, 2008. The Senior Notes due 2008 are not redeemable prior to maturity. The effective interest rate on the \$400.0 million, after amortization of deferred financing costs, was 8.0%.

#### Senior Notes Due 2009

The Senior Notes due 2009 bear interest at 7 3/4% per year, payable semi-annually on April 15 and October 15 and mature on April 15, 2009. The Senior Notes due 2009 are not redeemable prior to maturity. The effective interest rate on the \$350.0 million, after amortization of deferred financing costs, was 7.9%. Senior Notes Due 2010

On August 10, 2000, the Company completed a public offering of \$750.0 million of its 8 5/8% Senior Notes due 2010 ("Senior Notes due 2010"). The Senior Notes due 2010 bear interest at 8 5/8% per year, payable semi-annually on August 15 and February 15 and mature on August 15, 2010. The Senior Notes due 2010 may be redeemed at any time prior to maturity at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest plus a make-whole premium. The effective interest rate on the \$750.0 million, after amortization of deferred financing costs, was 8.7%.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**Annual Debt Maturities**

The annual principal maturities of the borrowings under lines of credit, project financings, notes payable and senior notes as of December 31, 2000 are as follows (in thousands):

2001.....	\$ 59,573
2002.....	96,033
2003.....	612,552
2004.....	367,554
2005.....	279,964
Thereafter.....	2,865,378
	-----
Total.....	\$4,281,054
	=====

**10. CAPITAL LEASE OBLIGATIONS**

During 2000, the Company assumed and began to consolidate capital leases in conjunction with the acquisitions of the Hidalgo Energy Center, the Stony Brook Power Plant and the Agnews Power Plant. The asset balances for the leased assets totaled \$181.7 million at December 31, 2000, with accumulated amortization of \$3.4 million.

The following is a schedule by years of future minimum lease payments under capital leases together with the present value of the net minimum lease payments as of December 31, 2000 (in thousands):

Year Ending December 31:	
2001.....	\$ 17,215
2002.....	17,174
2003.....	17,956
2004.....	18,223
2005.....	18,369
Thereafter.....	349,562
	-----
Total minimum lease payments.....	438,499
	-----
Less: Amount representing interest(1).....	(227,638)
	-----
Present value of net minimum lease payments.....	\$ 210,861
	=====
Less: Capital lease obligation, current portion.....	(1,985)
	-----
Capital lease obligation, net of current portion.....	\$ 208,876
	=====

(1) Amount necessary to reduce net minimum lease payments to present value calculated at the implicit interest rates of the leases at their inception.

**11. TRUST PREFERRED SECURITIES**

In 1999 and 2000, the Company, through its wholly-owned subsidiaries, Calpine Capital Trust, Calpine Capital Trust II and Calpine Capital Trust III, statutory business trusts created under Delaware law, (collectively, "the Trusts") completed offerings of Remarketable Term Income Deferrable Equity Securities ("trust preferred securities" or "HIGH TIDES") at a value of \$50.00 per share. In 1999, the Company and Calpine Capital Trust had a private placement of 5,520,000 shares, including the purchasers' option. In January and February of 2000 the Company and Calpine Capital Trust II privately placed 7,200,000 shares, including the purchasers' option. In August 2000, the Company and Calpine Capital Trust III privately placed

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

10,350,000 shares, including the underwriters' over-allotment option. At December 31, 2000, the balance for each of these issuances was \$268.2, \$350.9 and \$503.4, respectively.

The net proceeds from each of the offerings were used by the Trusts to invest in convertible subordinated debentures of the Company, which represent substantially all of the respective trusts' assets. The Company has effectively guaranteed all of the respective trusts' obligations under the trust preferred securities. The trust preferred securities accrue distributions at rates of 5 3/4%, 5 1/2% and 5% per annum, respectively, and have liquidation values of \$50.00 per share. The Company has the right to defer the interest payments on the debentures for up to twenty consecutive quarters, which would also cause a deferral of distributions on the trust preferred securities. Currently, the Company has no intention of deferring interest payments on the debentures. The trust preferred securities are convertible into shares of the Company's common stock at the holder's option on or prior to the tender notification date, at rates of 3.4260, 1.9524 and 1.1510 shares, respectively, of common stock for each trust preferred security.

The 1999 issuance may be redeemed at any time on or after November 5, 2002 at a redemption price equal to 101.44% of the principal amount plus any accrued and unpaid interest declining to 100% of the principal amount on or after November 5, 2003. The second issuance of HIGH TIDES may be redeemed at any time on or after February 5, 2003 at a redemption price equal to 101.375% of the principal amount plus any accrued and unpaid distributions declining to 100% of the principal amount on or after February 5, 2004. The August 2000 issuance may be redeemed at any time on or after August 5, 2003 at a redemption price equal to 101.25% of the principal amount plus any accrued and unpaid distributions declining to 100% of the principal amount on or after August 5, 2004.

**12. PROVISION FOR INCOME TAXES**

The components of the deferred income taxes, net as of December 31, 2000 and 1999 are as follows (in thousands):

	2000	1999
Expenses deductible in a future period.....	\$ 27,896	\$ 7,949
Net operating loss and credit carryforwards.....	41,472	50,358
Other differences.....	290	1,545
	-----	-----
Deferred tax assets.....	69,658	59,852
	-----	-----
Property differences.....	(621,082)	(340,164)
Difference in taxable income and income from investments recorded on the equity method.....	--	(2,305)
Other differences.....	(15,868)	(8,841)
	-----	-----
Deferred tax liabilities.....	(636,950)	(351,310)
	-----	-----
Net deferred income taxes.....	\$(567,292)	\$(291,458)
	=====	=====

The net operating loss and credit carryforwards consist of federal and state net operating loss carryforwards which expire 2005 through 2014 and federal depletion deduction carryforwards which can be carried forward indefinitely. The federal and state net operating loss carryforwards available are subject to limitations on annual usage. It is expected that they will be fully utilized before expiring. At December 31, 2000, federal and state alternative minimum tax credit carryforwards were fully utilized. Realization of the deferred tax assets and federal net operating loss carryforwards is dependent, in part, on generating sufficient taxable income prior to expiration of the loss carryforwards. The amount of the deferred tax asset considered realizable, however, could be reduced in the near term if estimates of future taxable income during the carryforward period are reduced.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

The provision for income taxes for the years ended December 31, 2000, 1999 and 1998 consists of the following (in thousands):

	2000	1999	1998
	-----	-----	-----
Current:			
Federal.....	\$214,169	\$26,564	\$ 1,582
State.....	40,596	6,728	277
Foreign.....	--	--	--
Deferred:			
Federal.....	(30,573)	23,142	26,830
State.....	(7,852)	4,305	1,772
Adjustment in state tax rate (net of federal benefit).....	--	--	(4,826)
Revision in prior years' tax estimates.....	--	1,234	1,419
Foreign.....	2,611	--	--
	-----	-----	-----
Total provision.....	\$218,951	\$61,973	\$27,054
	=====	=====	=====

The Company's effective rate for income taxes for the years ended December 31, 2000, 1999 and 1998 differs from the United States statutory rate, as reflected in the following reconciliation:

	2000	1999	1998
	----	----	----
United States statutory tax rate.....	35.0%	35.0%	35.0%
State income tax, net of federal benefit.....	3.9	3.6	3.8
Depletion allowance.....	--	--	(1.5)
Foreign tax at rates other than U.S. statutory.....	0.5	--	--
Other, net.....	0.9	0.6	(0.4)
	----	----	----
Effective income tax rate.....	40.3%	39.2%	36.9%
	====	====	====

**13. EMPLOYEE BENEFIT PLANS**

**Retirement Savings Plan**

The Company has a defined contribution savings plan under Section 401(a) and 501(a) of the Internal Revenue Code. The plan provides for tax deferred salary deductions and after-tax employee contributions. Employees are immediately eligible upon hire. Contributions include employee salary deferral contributions and a 3% employer profit-sharing contribution. Employer profit-sharing contributions in 2000, 1999 and 1998 totaled \$3.1 million, \$1.3 million and \$829,000, respectively.

**1996 Employee Stock Purchase Plan**

The Company adopted the 1996 Employee Stock Purchase Plan in July 1996. Eligible employees could purchase up to 2,200,000 shares of common stock at semi-annual intervals through periodic payroll deductions. Purchases were limited to 15 percent of an employee's eligible compensation, and to a maximum value of \$25,000 per calendar year based on the IRS code Section 423 limitation. Shares were purchased on January 31, and the plan terminated on February 1, 2000. Under the 1996 plan, 408,300 shares were issued at a weighted average fair value of \$2.67 per share in 2000. The purchase price is 85% of the lower of (i) the fair market value of the common stock on the participant's entry date into the offering period, or (ii) the fair market value on the semi-annual purchase date.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**2000 Employee Stock Purchase Plan**

The Company adopted the 2000 Employee Stock Purchase Plan ("ESPP") in May 2000. Eligible employees may purchase up to 4,000,000 shares of common stock at semi-annual intervals through periodic payroll deductions. Purchases are limited to a maximum value of \$25,000 per calendar year based on the IRS code Section 423 limitation. Shares are purchased on May 31 and November 30 of each year until termination of the plan on May 30, 2002. Under the ESPP, 221,853 shares were issued at a weighted average fair value of \$23.18 per share in 2000. The purchase price is 85% of the lower of (i) the fair market value of the common stock on the participant's entry date into the offering period, or (ii) the fair market value on the semi-annual purchase date.

**1996 Stock Incentive Plan**

The Company adopted the 1996 Stock Incentive Plan ("SIP") in September 1996. The SIP succeeded the Company's previously adopted stock option program. The Company accounts for the SIP under Accounting Principles Board Opinion No. 25, "Accounting for Stock Issued to Employees" under which no compensation cost has been recognized. Had compensation cost for the SIP been determined consistent with the methodology of SFAS No. 123, "Accounting for Stock-Based Compensation", the Company's net income and earnings per share would have been reduced to the following pro forma amounts (in thousands, except per share amounts):

		2000	1999	1998
		-----	-----	-----
Net income.....	As reported	\$323,452	\$95,093	\$45,678
	Pro Forma	304,544	84,928	42,454
Earnings per share data:				
Basic earnings per share.....	As reported	\$ 1.22	\$ 0.45	\$ 0.28
	Pro Forma	1.15	0.41	0.26
Diluted earnings per share.....	As reported	\$ 1.10	\$ 0.43	\$ 0.27
	Pro Forma	1.04	0.38	0.25

The fair value of options granted in 2000, 1999 and 1998 was \$15.33, \$5.60 and \$2.77 on the date of grant using the Black-Scholes option pricing model with the following weighted-average assumptions: expected dividend yields of 0%, expected volatility of 67% for 2000, 69% for 1999 and 35% for 1998, risk-free interest rates of 6.69% for 2000, 5.74% for 1999, 5.25% for 1998, respectively, and expected lives of 7 years for 2000, 1999 and 1998.

As of December 31, 2000, the Company had granted options to purchase 36,849,010 shares of common stock, net of cancellations. Over the life of the SIP, options exercised have equaled 7,337,624, leaving 29,511,386 granted and not yet exercised. Under the SIP, the option exercise price generally equals the stock's fair market value on date of grant. The SIP options generally vest ratably over four years and expire after

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

10 years. Changes in options outstanding, granted, exercisable and cancelled by the Company during the years 2000, 1999 and 1998, under the option plan were as follows:

	AVAILABLE FOR OPTION OR AWARD	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Outstanding January 1, 1998.....	12,418,657	20,158,424	\$ 0.75
Additional shares reserved.....	1,604,856	--	--
Granted.....	(3,365,800)	3,365,800	2.13
Exercised.....	--	(270,320)	0.37
Cancelled.....	178,384	(178,384)	1.96
Outstanding December 31, 1998.....	10,836,097	23,075,520	0.95
Additional shares reserved.....	1,612,927	--	--
Granted.....	(8,247,848)	8,247,848	6.08
Exercised.....	--	(1,380,944)	0.72
Cancelled.....	29,600	(29,600)	4.06
Outstanding December 31, 1999.....	4,230,776	29,912,824	2.37
Additional shares reserved.....	2,522,157	--	--
Granted.....	(4,061,142)	4,061,142	22.17
Exercised.....	--	(4,341,112)	1.10
Cancelled.....	121,468	(121,468)	13.60
Outstanding December 31, 2000.....	2,813,259	29,511,386	\$ 5.24
Options exercisable:			
December 31, 1998.....		15,414,440	\$ 0.55
December 31, 1999.....		17,410,052	0.74
December 31, 2000.....		18,557,646	\$ 2.25

The following tables summarizes information concerning outstanding and exercisable options at December 31, 2000:

RANGE OF EXERCISE PRICES	OUTSTANDING OPTIONS			OPTIONS EXERCISABLE	
	NUMBER OF SHARES	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE IN YEARS	WEIGHTED AVERAGE EXERCISE PRICE	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
\$ 0.065 - \$ 0.065	5,156,560	2.00	\$ 0.065	5,156,560	\$0.065
\$ 0.570 - \$ 0.615	3,976,896	4.09	0.597	3,976,896	0.597
\$ 0.645 - \$ 1.070	2,999,856	5.30	1.060	2,999,856	1.060
\$ 1.105 - \$ 2.250..	5,305,492	6.79	2.173	3,148,092	2.167
\$ 2.345 - \$ 3.320	645,950	7.07	2.856	587,950	2.895
\$ 3.750 - \$ 3.860	4,032,250	8.12	3.859	896,650	3.859
\$ 4.240 - \$ 9.955	3,398,266	8.57	9.136	933,354	8.935
\$ 10.000 - \$ 23.190	3,641,362	6.57	20.129	849,482	17.983
\$ 23.205 - \$ 51.282	323,754	9.58	38.092	8,806	30.845
\$100.000 - \$100.000	31,000	9.70	100.000	--	--
Total	29,511,386	5.84	\$ 5.239	18,557,646	\$2.250

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

#### 14. STOCKHOLDERS' EQUITY

##### Common Stock

Stock Splits -- On September 20, 1999, the Board of Directors authorized a two-for-one stock split of the Company's common stock, in the form of a stock dividend, effective October 7, 1999, payable to stockholders of record as of September 28, 1999. The Company transferred \$27,000 to common stock from additional paid-in capital, representing the aggregate par value of the shares issued under the stock split.

On May 18, 2000, the Board of Directors authorized a two-for-one stock split of the Company's common stock, in the form of a stock dividend, effective June 8, 2000, payable to stockholders of record as of May 29, 2000. The Company transferred \$64,000 to common stock from additional paid-in capital, representing the aggregate par value of the shares issued under the stock split.

On October 23, 2000, the Board of Directors authorized a two-for-one stock split of the Company's common stock, in the form of a stock dividend, effective November 14, 2000, payable to stockholders of record as of November 6, 2000. The Company transferred \$140,000 to common stock from additional paid-in capital, representing the aggregate par value of the shares issued under the stock split.

All references to the number of common shares and the per common share amounts have been restated to give retroactive effect to the above stock splits for all periods presented.

Equity Offering -- On August 9, 2000, Calpine completed a public offering of 23,000,000 shares of common stock at \$34.75 per share. The gross proceeds from the offering were \$799.3 million.

##### Preferred Stock and Preferred Share Purchase Rights

On June 5, 1997, the Board of Directors adopted a Stockholders Rights Plan ("Rights Plan") to strengthen the Board of Directors ability to protect the Company's stockholders. The Rights Plan is designed to protect against abusive or coercive takeover tactics that are not in the best interests of the Company and its stockholders. To implement the Rights Plan, the Board of Directors declared a dividend of one preferred share purchase right (a "Right") for each outstanding share of common stock, par value \$0.001 per share, held on record as of June 18, 1997, and directed the issuance of one Right with respect to each share of Common Stock that shall become outstanding between the Record Date and the Distribution Date. On December 31, 2000, there were 283,715,058 Rights outstanding. Each Right initially represents a contingent right to purchase, under certain circumstances, one one-thousandth of a share (a "Unit") of Series A Junior Participating Preferred Stock, par value \$0.001 per share (the "Preferred Stock"), of the Company at a price of \$80.00 per Unit, subject to adjustment. The Rights become exercisable and trade independently from the Company's common stock upon the public announcement of the acquisition by a person or group of 15% or more of the Company's common stock, or ten days after commencement of a tender or exchange offer that would result in the acquisition of 15% or more of the Company's common stock. Each Unit of Preferred Stock purchased upon exercise of the Rights will be entitled to a dividend equal to any dividend declared per share of common stock and will have one vote, voting together with the common stock. In the event of liquidation, each share of Preferred Stock will be entitled to any payment made per share of common stock.

If the Company is acquired in a merger or other business combination transaction after a person or group has acquired 15% or more of the Company's common stock, each Right will entitle its holder to purchase at the Right's exercise price a number of the acquiring company's common shares having a market value of twice such exercise price. In addition, if a person or group acquires 15% or more of the Company's common stock, each Right will entitle its holder (other than the acquiring person or group) to purchase, at the Right's exercise price, a number of fractional shares of the Company's Preferred Stock or shares of common stock having a market value of twice such exercise price.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

The Rights expire June 18, 2007, unless redeemed earlier by the Company's Board of Directors. The Board of Directors can redeem the Rights at a price of \$0.01 per Right at any time before the Rights become exercisable, and thereafter only in limited circumstances.

**15. SIGNIFICANT CUSTOMERS**

The Company has two significant customers, Pacific Gas & Electric Company ("PG&E") and Texas Utilities Electric Company ("TUEC"), each of which has accounted for 10% or more of the Company's annual consolidated revenues for certain years between 1998 and 2000. PG&E is the regulated subsidiary of PG&E Corporation. The information on PG&E, disclosed below, excludes PG&E Corporation's non-regulated subsidiary activity. The Company has transactions with certain of the non-regulated subsidiaries which have not been affected by PG&E's solvency problems.

Revenues earned from these sources for the years ended December 31, 2000, 1999 and 1998 were as follows (in thousands):

	2000	1999	1998
	-----	-----	-----
REVENUES:			
PG&E(1).....	\$624,458	\$215,264	\$222,593
TUEC.....	184,017	144,016	128,724

Receivables at March 9, 2001, December 31, 2000, and 1999 were as follows (in thousands):

	MARCH 9, 2001	2000	1999
	-----	-----	-----
	(UNAUDITED ESTIMATES)		
RECEIVABLES:			
PG&E Accounts Receivable.....	231,888\$	\$204,448	\$ 33,251
PG&E Notes Receivable(2).....	65,561	62,336	13,919
PG&E Total.....	297,449\$	\$266,784	\$ 47,170
	=====	=====	=====
TUEC Accounts Receivable.....	15,542\$	\$ 25,397	\$ 9,918

(1) See Note 19 for further discussion of the California energy situation.

(2) Payments of the notes receivable are scheduled from February 2003 until September 2014 (See Note 2 for further discussion).

As of March 9, 2001, the Company had received from PG&E subsequent accounts receivable collections of \$94.1 million relating to the balances outstanding at December 31, 2000. These collections represent 100% of November 2000 billings and approximately 15% of December billings. Additionally, the Company collected approximately 15% of amounts billed to PG&E in January 2001. The Company continues to sell power to PG&E pursuant to its long-term contracts and believes that the accounts receivable will ultimately be collected. However, the situation in California is highly uncertain and the Company cannot predict the outcome or the timing of payments from PG&E for past due amounts.

The Company also had combined accounts receivable balances of \$45.2 million as of December 31, 2000 due from the California Independent System Operator Corporation ("CAISO") and Automated Power Exchange, Inc. ("APX"). As of March 9, 2001, subsequent collections and 2001 activity resulted in a receivable balance of approximately \$8.8 million due from these two entities. CAISO's ability to pay the Company is directly impacted by PG&E's ability to pay CAISO. APX's ability to pay the Company is impacted by PG&E's ability to pay the California Power Exchange ("PX"), which in turn pays APX for

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

energy deliveries by the Company through APX. The Company has provided for a reserve against collection uncertainties for these receivables, which we believe to be adequate.

**16. SERVICE CONTRACT REVENUE AND EXPENSE**

Service contract revenue and service contract expense consists primarily of risk management, scheduling, balancing, hedging, and related transactions entered into by CES for the purpose of maintaining operating margins of its generating assets. The cost of purchased electricity and gas that is resold is recorded as service contract expense, while the revenue from the resale is recorded as service contract revenue. The table below shows the composition of these accounts (in thousands):

	2000	1999
	-----	-----
Service contract revenue		
Electric power sales.....	\$366,388	\$23,157
Natural gas sales.....	109,043	14,416
Operations and maintenance (O&M) and other.....	4,803	6,200
	-----	-----
Total.....	\$480,234	\$43,773
	=====	=====
Service contract expense		
Electric power purchases.....	\$365,180	\$20,681
Natural gas purchases.....	97,336	12,646
Operations and maintenance (O&M) and other.....	6,984	6,909
	-----	-----
Total.....	\$469,500	\$40,236
	=====	=====

**17. EARNINGS PER SHARE**

Basic earnings per common share were computed by dividing net income by the weighted average number of common shares outstanding for the period. The dilutive effect of the potential exercise of outstanding options to purchase shares of common stock is calculated using the treasury stock method. The dilutive effect of the assumed conversion of certain trust preferred securities into the Company's common stock is based on the dilutive common share equivalents and the after tax distribution expense avoided upon conversion. The reconciliation of basic earnings per common share to diluted earnings per share is shown in

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

the following table (in thousands except per share data). All share data has been adjusted to reflect the two-for-one stock splits effective October 7, 1999, June 8, 2000, and November 14, 2000.

	FOR THE YEARS ENDED DECEMBER 31,								
	2000			1999			1998		
	NET INCOME	SHARES	EPS	NET INCOME	SHARES	EPS	NET INCOME	SHARES	EPS
<b>BASIC EARNINGS PER COMMON SHARE:</b>									
Income before extraordinary charge.....	\$324,687	264,799	\$ 1.23	\$96,243	209,314	\$ 0.46	\$46,319	160,969	\$ 0.29
Extraordinary charge net of tax benefit of \$796, \$793 and \$441 for 2000, 1999 and 1998 respectively.....	1,235		(0.01)	1,150		(0.01)	641		(0.01)
Net income.....	\$323,452	264,799	\$ 1.22	\$95,093	209,314	\$ 0.45	\$45,678	160,969	\$ 0.28
Common shares issuable upon exercise of stock options using treasury stock method.....		15,977			13,330			8,342	
<b>DILUTED EARNINGS PER COMMON SHARE:</b>									
Income before extraordinary charge and dilutive effect of certain trust preferred securities.....	\$324,687	280,776	\$ 1.16	\$96,243	222,644	\$ 0.43	\$46,319	169,311	\$ 0.27
Dilutive effect of certain trust preferred securities.....	20,841	31,746	(0.05)	--	--	--	--	--	--
Income before extraordinary charge.....	345,528	312,522	1.11	96,243	222,644	0.43	46,319	169,311	0.27
Extraordinary charge net of tax benefit of \$796, \$793, and \$441 for 2000, 1999 and 1998 respectively.....	1,235		(0.01)	1,150		--	641		--
Net income.....	\$344,293	312,522	\$ 1.10	\$95,093	222,644	\$ 0.43	\$45,678	169,311	\$ 0.27

The Company recognized an extraordinary charge of \$1.2 million, or \$0.01 per share (net of tax benefit of \$796,000) in 2000, representing the write-off of deferred financing costs related to the termination of certain financing arrangements described in Note 7.

In 1999, the Company recognized an extraordinary charge of \$1.2 million or \$0.01 per share (net of tax benefit of \$793,000) in April of 1999, representing the write-off of deferred financing costs related to non-recourse project financing for the Gilroy Power Plant. The financing agreement was terminated and the outstanding balance as of April 1999 of \$120.6 million was repaid.

In 1998, the Company recognized a \$641,000 extraordinary charge (net of tax benefit of \$441,000), for the repurchase of \$8.3 million of the 10 1/2% Senior Notes Due 2006. The notes were redeemed at a premium plus accrued interest to the date of repurchase.

Unexercised employee stock options to purchase 256,370 shares and 240 shares of the Company's common stock during the year ended December 31, 2000 and 1999, respectively, were not included in the computation of diluted shares outstanding because such inclusion would be anti-dilutive. There were no anti-dilutive unexercised employee stock options during the year ended December 31, 1998.

**18. COMMITMENTS AND CONTINGENCIES**

**Production Royalties and Leases** -- The Company is committed under numerous geothermal leases and right-of-way, easement and surface agreements. The geothermal leases generally provide for royalties based on production revenue with reductions for property taxes paid. The right-of-way, easement and surface agreements are based on flat rates and are not material. Under the terms of certain geothermal leases prior to May, 1999 when the Company consolidated the steam field and power plant operations at The Geysers, royalties accrued at rates ranging from 3% to 14% of steam and effluent revenue. Following the consolidation of operations, the royalties began to accrue as a percentage of electrical revenues. Certain properties also have net profits and overriding royalty interests ranging from approximately 1% to 28%, which are in addition to the

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

land royalties. Most lease agreements contain clauses providing for minimum lease payments to lessors if production temporarily ceases or if production falls below a specified level.

Production royalties and lease expense for the years ended December 31, 2000, 1999 and 1998 are \$32.3 million, \$13.8 million and \$10.7 million, respectively.

Natural Gas Purchases -- The Company enters into gas purchase contracts of various terms with third parties to supply gas to its gas-fired cogeneration projects.

Office and Equipment Leases -- The Company leases its corporate office and regional offices under noncancellable operating leases expiring through 2011. Future minimum lease payments under these leases are as follows (in thousands):

2001.....	\$ 10,122
2002.....	15,822
2003.....	15,118
2004.....	12,275
2005.....	10,965
Thereafter.....	50,279
	-----
Total.....	\$114,581
	=====

Lease payments are subject to adjustments for the Company's pro rata portion of annual increases or decreases in building operating costs. In 2000, 1999 and 1998 rent expense for noncancellable operating leases amounted to \$5.0 million, \$3.1 million and \$1.2 million, respectively.

Cogeneration Facilities Operating Leases -- The Company has entered into long-term operating leases for cogeneration facilities and combined-cycle power generating facilities, expiring through 2048. Future minimum lease payments under these leases are as follows (in thousands):

	INITIAL YEAR	2001	2002	2003	2004	2005	THEREAFTER	TOTAL
	-----	-----	-----	-----	-----	-----	-----	-----
Watsonville.....	1995	\$ 2,905	\$ 2,905	\$ 2,905	\$ 2,905	\$ 2,905	\$ 12,779	\$ 27,304
King City.....	1996	21,015	21,848	22,781	13,975	10,585	119,426	209,630
Greenleaf.....	1998	9,070	8,990	8,994	8,858	8,723	62,928	107,563
Geysers.....	1999	50,102	69,408	61,135	48,902	50,300	257,690	537,537
KIAC.....	2000	22,126	25,227	25,467	24,251	24,077	336,812	457,960
Rumford/Tiverton.....	2000	21,746	32,940	32,940	35,365	44,942	755,292	923,225
Pasadena.....	2000	36,941	31,600	131,018	26,907	27,777	511,124	765,367
Aries.....	2000	--	27,647	28,577	26,853	27,753	446,084	556,914
		-----	-----	-----	-----	-----	-----	-----
Total.....		\$163,905	\$220,565	\$313,817	\$188,016	\$197,062	\$2,502,135	\$3,585,500
		=====	=====	=====	=====	=====	=====	=====

In 2000, 1999 and 1998, rent expense for cogeneration facilities operating leases amounted to \$69.4 million, \$33.6 million and \$15.7 million, respectively. The Watsonville operating lease provides for additional contingent rents payable during the period from July through December. Contingent rent expense for 2000, 1999 and 1998 amounted to \$6.8 million, \$393,000 and \$1.5 million, respectively.

The King City operating lease commitment is supported by \$88.3 million of collateral securities consisting of investment grade and U.S. Treasury securities that mature serially in amounts equal to a portion of the semi-annual lease payment.

At December 31, 2000, the Company is under contract or letter of intent with certain companies for 228 gas and steam turbines for a total purchase price of \$6.7 billion (of which \$1.8 billion had been paid as of December 31, 2000).

CALPINE CORPORATION AND SUBSIDIARIES

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

Approximate future payments relating to these turbines are as follows (in thousands):

2001.....	\$1,529,184
2002.....	1,374,271
2003.....	1,406,151
2004.....	531,832
2005.....	50,522
Thereafter.....	5,052
Total.....	\$4,897,012
	=====

**Litigation**

An action was filed against Lockport Energy Associates, L.P. and the New York Public Service Commission ("NYPSC") in August 1997 by New York State Electricity and Gas Company ("NYSEG") in the Federal District Court for the Northern District of New York. NYSEG requested the Court to direct NYPSC and the Federal Energy Regulatory Commission (the "FERC") to modify contract rates to be paid to the Lockport Power Plant. In October 1997, NYPSC filed a cross-claim alleging that the FERC violated the Public Utility Regulatory Policies Act of 1978, as amended ("PURPA"), and the Federal Power Act by failing to reform the NYSEG contract that was previously approved by the NYPSC. On September 29, 2000, the New York Federal District Court dismissed NYSEG's complaint and NYPSC's cross-claim. The Court stated that FERC has no authority to alter or waive its regulations or exemptions to alter the terms of the applicable power purchase agreements and that Qualifying Facilities are entitled to the benefit of their bargain, even if at the expense of NYSEG and its ratepayers. NYSEG has filed an appeal with respect to this decision. In any event, the Company retains the right to require The Brooklyn Union Gas Company to purchase its interest in the Lockport Power Plant for \$18.9 million, less equity distributions received by the Company, at any time before December 19, 2001.

The Company is involved in various other claims and legal actions arising out of the normal course of business. The Company does not expect that the outcome of these proceedings will have a material adverse effect on the Company's financial position or results of operations.

19. SUBSEQUENT EVENTS

**California Power Market**

During 2000, a combination of factors including increased volatility of natural gas prices, a significant number of facilities undergoing planned and unplanned major maintenance, and the decreased availability of energy for importation from neighboring states resulted in wholesale power prices significantly higher than historical levels. At the same time, two major California utilities that are subject to a retail rate freeze, including PG&E, have faced wholesale prices that far exceed the retail prices they are permitted to charge, resulting in a significant underrecovery of their costs. On January 16 and 17, 2001, PG&E's credit and debt ratings were lowered by Moody's and S&P to "junk" or "near junk" status. On January 30, 2001, the PX suspended operation of its "day ahead" and "day of" markets. On February 1, 2001, PG&E indicated that it intended to default on payments of over \$1 billion due to the PX and qualifying facilities. PG&E has defaulted under its payment obligations to the Company (See Note 15).

On February 7, 2001, the Company announced the signing of a 10-year, \$4.6 billion fixed-price contract with the California Department of Water Resources ("DWR") to provide electricity to the State of California. The Company committed to sell up to 1,000 megawatts of electricity, with initial deliveries of

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998

200 megawatts starting October 1, 2001 and increasing to 1,000 megawatts by January 1, 2004. This contract will continue through 2011. The electricity will be sold directly to DWR, on a 24-hour, 7-day-a-week basis.

On February 28, 2001, the Company announced the signing of two long-term power sales contracts with the DWR. Under the terms of the first contract, a \$5.2 billion, 10-year, fixed price contract, Calpine commits to sell up to 1,000 megawatts of generation. Initial deliveries are scheduled to begin July 1, 2001 with 200 megawatts and increase to 1,000 megawatts by as early as July 2002. Under the terms of the second contract, a 20-year contract totaling up to \$3.1 billion, Calpine will supply DWR with up to 495 megawatts of peaking generation, beginning with 90 megawatts as early as August 2001, and increasing up to 495 megawatts as early as August 2002.

On March 13, 2001, the Company announced the signing of a two-month deal to provide 555 megawatts of electricity to DWR effective immediately through May 15, 2001.

#### Other Subsequent Events

On February 8, 2001, the Company announced plans to acquire all of the common shares of Encal Energy Ltd. ("Encal"), a Calgary, Alberta-based natural gas and petroleum exploration and development company, through a stock-for-stock exchange in which Encal shareholders will receive Cdn. \$12.00 per share in Calpine common equivalent shares based on an exchange ratio to be determined prior to closing. The aggregate value of the transaction, for which the Company expects to use pooling of interests accounting, is approximately \$1.2 billion, including the assumed indebtedness of Encal. Upon completion of the acquisition, we will gain approximately 1.0 trillion cubic feet equivalent of proved and provable natural gas reserves, net of royalties. This transaction also provides access to firm gas transportation capacity from western Canada to California and the eastern U.S., and an accomplished management team capable of leading our business expansion in Canada. With the addition of Encal's assets, which currently produce approximately 230 million cubic feet of gas equivalent ("mmcf") per day, net of royalties, our net production is expected to increase to 390 mmcf per day in North America, enough to fuel approximately 2,300 megawatts of our power fleet. The Company expects to close this transaction during the second quarter of 2001.

On February 15, 2001, the Company completed a public offering of \$1.15 billion of its 8 1/2% Senior Notes Due 2011 ("Senior Notes Due 2011"). The Senior Notes Due 2011 bear interest at 8 1/2% per year, payable semi-annually on August 15 and February 15 and mature on February 15, 2011. The Senior Notes Due 2011 may be redeemed at any time prior to maturity at a redemption price equal to 100% of their principal amount plus accrued and unpaid interest plus a make-whole premium.

#### 20. QUARTERLY CONSOLIDATED FINANCIAL DATA (UNAUDITED)

The Company's quarterly operating results have fluctuated in the past and may continue to do so in the future as a result of a number of factors, including, but not limited to, the timing and size of acquisitions, the completion of development projects, the timing and amount of curtailment of operations under the terms of certain power sales agreements, and variations in levels of production. Furthermore, the majority of capacity payments under certain of the Company's power sales agreements are received during the months of May through October.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

The Company's common stock has been traded on the New York Stock Exchange since September 19, 1996. There were 547 common stockholders of record at December 31, 2000. No dividends were paid for the years ended December 31, 2000 and 1999. All share data has been adjusted to reflect the two-for-one stock split effective October 7, 1999, the two-for-one stock split effective June 8, 2000, and the two-for-one stock split effective November 14, 2000.

	QUARTER ENDED			
	DECEMBER 31,	SEPTEMBER 30,	JUNE 30,	MARCH 31,
	(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)			
2000				
Total revenue.....	\$1,004,817	\$678,891	\$363,683	\$235,402
Gross profit.....	247,195	294,168	124,079	58,675
Income from operations.....	191,398	262,233	102,516	46,301
Income before extraordinary charge.....	107,746	147,108	51,706	18,127
Extraordinary charge.....	--	1,235	--	--
Net income.....	\$ 107,746	\$145,873	\$ 51,706	\$ 18,127
Basic earnings per common share:				
Income before extraordinary charge.....	\$ 0.38	\$ 0.55	\$ 0.20	\$ 0.07
Extraordinary charge.....	--	(0.01)	--	--
Net income.....	0.38	0.54	0.20	0.07
Diluted earnings per common share:				
Income before extraordinary charge and dilutive effect of certain trust preferred securities.....	\$ 0.36	\$ 0.52	\$ 0.19	\$ 0.07
Dilutive effect of certain trust preferred securities.....	(0.02)	(0.04)	--	--
Income before extraordinary charge.....	0.34	0.48	0.19	0.07
Extraordinary charge.....	--	(0.01)	--	--
Net income.....	0.34	0.47	0.19	0.07
Common stock price per share:				
High.....	\$ 52.97	\$ 52.25	\$ 35.22	\$ 30.75
Low.....	32.25	32.25	18.13	16.09

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

	QUARTER ENDED			
	DECEMBER 31,	SEPTEMBER 30,	JUNE 30,	MARCH 31,
	(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)			
1999				
Total revenue.....	\$247,446	\$253,021	\$196,625	\$150,643
Gross profit.....	86,642	102,951	60,805	35,487
Income from operations.....	66,189	87,105	48,789	24,419
Income before extraordinary charge.....	30,766	42,917	18,710	3,850
Extraordinary charge.....	--	--	1,150	--
Net income.....	\$ 30,766	\$ 42,917	\$ 17,560	\$ 3,850
Basic earnings per common share:				
Income before extraordinary charge.....	\$ 0.13	\$ 0.20	\$ 0.09	\$ 0.02
Extraordinary charge.....	--	--	(0.01)	--
Net income.....	0.13	0.20	0.08	0.02
Diluted earnings per common share:				
Income before extraordinary charge.....	\$ 0.12	\$ 0.19	\$ 0.08	\$ 0.02
Extraordinary charge.....	--	--	(0.01)	--
Net income.....	0.12	0.19	0.07	0.02
Common stock price per share:				
High.....	\$ 16.38	\$ 11.97	\$ 7.38	\$ 4.67
Low.....	10.63	6.85	4.39	3.16

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)  
FOR THE YEARS ENDED DECEMBER 31, 2000, 1999 AND 1998**

**SCHEDULE II  
VALUATION AND QUALIFYING ACCOUNTS  
(IN THOUSANDS)**

DESCRIPTION -----	BALANCE AT BEGINNING OF YEAR -----	CHARGED TO EXPENSE -----	DEDUCTIONS -----	BALANCE AT END OF YEAR -----
Year Ended December 31, 2000				
Allowance for Doubtful Accounts.....	\$3,343	\$13,454	\$(5,719)	\$11,078
Reserve for Notes Receivable.....	--	4,513	--	4,513
Year Ended December 31, 1999				
Allowance for Doubtful Accounts.....	\$ 238	\$ 3,105	\$ --	\$ 3,343
Reserve for Notes Receivable.....	--	--	--	--

## EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
3.1.1	Amended and Restated Certificate of Incorporation of Calpine Corporation, a Delaware corporation.*
3.1.2	Certificate of Correction of Calpine Corporation.(*)
3.1.3	Certificate of Designation of Series A Participating Preferred Stock of Calpine Corporation.(*)
3.1.4	Amended Certificate of Designation of Series A Participating Preferred Stock of Calpine Corporation.(*)
3.2	Amended and Restated Bylaws of Calpine Corporation, a Delaware corporation.(d)
4.1.1	Indenture dated as of February 17, 1994 between the Company and State Street Bank and Trust Company (successor trustee to Shawmut Bank of Connecticut, National Association), as Trustee, including form of Notes.(a)
4.1.2	First Supplemental Indenture dated as of July 31, 2000 between the Company and State Street Bank and Trust Company (successor trustee to Shawmut Bank Connecticut, National Association), as Trustee.(*)
4.2.1	Indenture dated as of May 16, 1996 between the Company and Fleet National Bank, as Trustee, including form of Notes.(c)
4.2.2	First Supplemental Indenture dated as of August 1, 2000 between the Company and State Street Bank and Trust Company (successor trustee to Fleet National Bank), as Trustee.(*)
4.3.1	Indenture dated as of July 8, 1997 between the Company and The Bank of New York, as Trustee, including form of Notes.(e)
4.3.2	Supplemental Indenture dated as of September 10, 1997 between the Company and The Bank of New York, as Trustee.(q)
4.3.3	Second Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.4.1	Indenture dated as of March 31, 1998 between the Company and The Bank of New York, as Trustee, including form of Notes.(g)
4.4.2	Supplemental Indenture dated as of July 24, 1998 between the Company and The Bank of New York, as Trustee.(g)
4.4.3	Second Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.5.1	Indenture dated as of March 29, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.5.2	First Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.6.1	Indenture dated as of March 29, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.6.2	First Supplemental Indenture dated as of July 31, 2000 between the Company and The Bank of New York, as Trustee.(*)
4.7.1	Indenture dated as of August 10, 2000 between the Company and Wilmington Trust Company, as Trustee.(m)
4.7.2	First Supplemental Indenture dated as of September 28, 2000 between the Company and Wilmington Trust Company, as Trustee.(*)
4.8	Rights Agreement, dated as of June 5, 1997, between Calpine Corporation and First Chicago Trust Company of New York, as Rights Agent.(l)
4.9	HIGH TIDES I.

EXHIBIT NUMBER -----	DESCRIPTION -----
4.9.1	Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, filed October 4, 1999.(i)
4.9.2	Corrected Certificate of Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, dated September 29, 1999.(i)
4.9.3	Declaration of Trust of Calpine Capital Trust, dated as of October 4, 1999, among Calpine Corporation, as Depositor, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein.(i)
4.9.4	Indenture, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(i)
4.9.5	Remarketing Agreement, dated November 2, 1999, among Calpine Corporation, Calpine Capital Trust, The Bank of New York, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(i)
4.9.6	Amended and Restated Declaration of Trust of Calpine Capital Trust, dated as of November 2, 1999, among Calpine Corporation, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, and The Bank of New York, as Property Trustee, and the Administrative Trustees named therein, including form of Preferred Security and form of Common Security.(i)
4.9.7	Preferred Securities Guarantee Agreement, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Guarantee Trustee.(i)
4.10	HIGH TIDES II.
4.10.1	Certificate of Trust of Calpine Capital Trust II, a Delaware statutory trust, filed January 25, 2000.(n)
4.10.2	Declaration of Trust of Calpine Capital Trust II, dated as of January 24, 2000, among Calpine Corporation, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein.(n)
4.10.3	Indenture, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(n)
4.10.4	Remarketing Agreement, dated as of January 31, 2000, among Calpine Corporation, Calpine Capital Trust II, The Bank of New York, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(n)
4.10.5	Registration Rights Agreement, dated January 31, 2000, among Calpine Corporation, Calpine Capital Trust II, Credit Suisse First Boston Corporation and ING Barings LLC.(n)
4.10.6	Amended and Restated Declaration of Trust of Calpine Capital Trust II, dated as of January 31, 2000, among Calpine Corporation, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, and the Administrative Trustees named therein, including form of Preferred Security and form of Common Security.(n)
4.10.7	Preferred Securities Guarantee Agreement, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Guarantee Trustee.(n)
4.11	HIGH TIDES III.
4.11.1	Amended and Restated Certificate of Trust of Calpine Capital Trust III, a Delaware statutory trust, filed July 19, 2000.(o)
4.11.2	Declaration of Trust of Calpine Capital Trust III dated June 28, 2000, among the Company, as Depositor and Debenture Issuer, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee and the Administrative Trustees named therein.(o)

EXHIBIT NUMBER -----	DESCRIPTION -----
4.11.3	Amendment No. 1 to the Declaration of Trust of Calpine Capital Trust III dated July 19, 2000, among the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein.(o)
4.11.4	Indenture dated as of August 9, 2000, between the Company and Wilmington Trust Company, as Trustee.(o)
4.11.5	Remarketing Agreement dated as of August 9, 2000, among the Company, Calpine Capital Trust III, Wilmington Trust Company, as Tender Agent, and Credit Suisse First Boston Corporation, as Remarketing Agent.(o)
4.11.6	Registration Rights Agreement dated as August 9, 2000, between the Company, Calpine Capital Trust III, Credit Suisse First Boston Corporation, ING Barings LLC and CIBC World Markets Corp.(o)
4.11.7	Amended and Restated Declaration of Trust of Calpine Capital Trust III dated as of August 9, 2000, the Company, as Depositor and Debenture Issuer, Wilmington Trust Company, as Delaware Trustee, Wilmington Trust Company, as Property Trustee, and the Administrative Trustees named therein, including the form of Preferred Security and form of Common Security.(o)
4.11.8	Preferred Securities Guarantee Agreement dated as of August 9, 2000, between the Company, as Guarantor, and Wilmington Trust Company, as Guarantee Trustee.(o)
4.12	PASS THROUGH CERTIFICATES.
4.12.1	Pass Through Trust Agreement dated as of December 19, 2000, among Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee, including the form of Certificate.(*)
4.12.2	Participation Agreement dated as of December 19, 2000, among the Company, Tiverton Power Associates Limited Partnership, Rumford Power Associates Limited Partnership, PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee.(*)
4.12.3	Appendix A -- Definitions and Rules of Interpretation.(*)
4.12.4	Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000, between PMCC Calpine New England Investment LLC and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, including the forms of Lessor Notes.(*)
4.12.5	Calpine Guaranty and Payment Agreement (Tiverton) dated as of December 19, 2000, by Calpine, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(*)
4.12.6	Calpine Guaranty and Payment Agreement (Rumford) dated as of December 19, 2000, by Calpine, as Guarantor, to PMCC Calpine New England Investment LLC, PMCC Calpine NEIM LLC, State Street Bank and Trust Company of Connecticut, as Indenture Trustee, and State Street Bank and Trust Company of Connecticut, as Pass Through Trustee.(*)
10.1	Purchase Agreements.
10.1.1	Purchase and Sale Agreement dated March 27, 1997 for the purchase and sale of shares of Enron/Dominion Cogen Corp. Common Stock among Enron Power Corporation and Calpine Corporation.(f)

EXHIBIT NUMBER -----	DESCRIPTION -----
10.1.2	Stock Purchase and Redemption Agreement dated March 31, 1998, among Dominion Cogen, Inc., Dominion Energy, Inc. and Calpine Finance.(f)
10.2	Financing Agreements.
10.2.1	Calpine Construction Finance Company Financing Agreement ("CCFC I"), dated as of October 20, 1999.(j)
10.2.2	Calpine Construction Finance Company Financing Agreement ("CCFC II"), dated as of October 16, 2000.(p)(*)
10.2.3	Second Amended and Restated Credit Agreement dated as of May 23, 2000, among the Company, Bayerische Landesbank, as Co-Arranger and Syndication Agent, The Bank of Nova Scotia, as Lead Arranger and Administrative Agent, and the Lenders named therein.(m)
10.3	Other Agreements.
10.3.1	Calpine Corporation Stock Option Program and forms of agreements there under.(a)
10.3.2	Calpine Corporation 1996 Stock Incentive Plan and forms of agreements there under.(b)
10.3.3	Calpine Corporation Employee Stock Purchase Plan and forms of agreements there under.(b)
10.3.4	Amended and Restated Employment Agreement between Calpine Corporation and Mr. Peter Cartwright.(b)
10.3.5	Executive Vice President Employment Agreement between Calpine Corporation and Ms. Ann B. Curtis.(k)
10.3.6	Senior Vice President Employment Agreement between Calpine Corporation and Mr. Ron A. Walter.(k)
10.3.7	Senior Vice President Employment Agreement between Calpine Corporation and Mr. Robert D. Kelly.(k)
10.3.8	Executive Vice President Employment Agreement between Calpine Corporation and Mr. Thomas R. Mason.(k)
10.4	Form of Indemnification Agreement for directors and officers.(b)
12.1	Statement on Computation of Ratio of Earnings to Fixed Charges.(*)
21	Subsidiaries of the Company.(*)
23.1	Consent of Arthur Andersen LLP, Independent Public Accountants.(*)
23.2	Consent of Netherland, Sewell & Associates, Inc., independent engineer.(*)
23.3	Consent of McDaniel & Associates Consultants, Ltd., independent engineer.(*)
23.4	Consent of Gilbert Laustsen Jung Associates, Ltd., independent engineer.(*)
24	Power of Attorney of Officers and Directors of Calpine Corporation (set forth on the signature pages of this report).(*)

---

(a) Incorporated by reference to Registrant's Registration Statement on Form S-1 (Registration Statement No. 33-73160).

(b) Incorporated by reference to Registrant's Registration Statement on Form S-1/A (Registration Statement No. 333-07497).

(c) Incorporated by reference to Registrant's Registration Statement on Form S-4 (Registration Statement No. 333-06259).

(d) Incorporated by reference to Registrant's Quarterly Report on Form 10-Q dated March 31, 1996 and filed on May 14, 1996.

(e) Incorporated by reference to Registrant's Quarterly Report on Form 10-Q dated June 30, 1997 and filed on August 14, 1997.

- (f) Incorporated by reference to Registrant's Current Report on Form 8-K dated March 31, 1998 and filed on April 14, 1998.
- (g) Incorporated by reference to Registrant's Registration Statement on Form S-4 (Registration Statement No. 333-61047).
- (h) Incorporated by reference to Registrant's Registration Statement on Form S-3/A (Registration Statement No. 333-72583).
- (i) Incorporated by reference to Registrant's Registration Statement on Form S-3/A (Registration Statement No. 333-87427).
- (j) Incorporated by reference to Registrant's Annual Report on Form 10-K dated December 31, 1999 and filed on February 29, 2000. Approximately 200 pages of this exhibit have been omitted pursuant to a request for confidential treatment. The omitted language has been filed separately with the Securities and Exchange Commission.
- (k) Incorporated by reference to Registrant's Form 10-Q/A dated September 30, 1999 and filed on November 17, 1999.
- (l) Incorporated by reference to Registrant's Registration Statement on Form 8-A, amended by Calpine's Registration Statement on Form 8-A/A (Registration Statement No. 001-12079).
- (m) Incorporated by reference to Registrant's Current Report on Form 8-K dated July 25, 2000 and filed on August 9, 2000.
- (n) Incorporated by reference to Registrant's Registration Statement on Form S-3 (Registration Statement No. 333-33736).
- (o) Incorporated by reference to Registrant's Registration Statement on Form S-3 (Registration Statement No. 333-47068).
- (p) Approximately 71 pages of this exhibit have been omitted pursuant to a request for confidential treatment. The omitted language has been filed separately with the Securities and Exchange Commission.
- (q) Incorporated by reference to Registrant's Registration Statement on Form S-4 (Registration Statement No. 333-41261).
- (\*) Filed herewith.

**EXHIBIT 3.1.1**

**AMENDED AND RESTATED**

**CERTIFICATE OF INCORPORATION  
OF  
CALPINE CORPORATION**

A Delaware corporation  
(Pursuant to Sections 242 and 245  
of the Delaware General Corporation Law)

Calpine Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware, hereby certifies as follows:

FIRST: That the name of the corporation is Calpine Corporation, and that the corporation was originally incorporated on June 21, 1982 under the name Electrowatt Services Inc., pursuant to the General Corporation Law.

SECOND: The Certificate of Incorporation of this corporation shall be amended and restated to read in full as is set forth on Exhibit A attached hereto.

THIRD: That said amendment and restatement was duly adopted in accordance with the provisions of Section 242 and Section 245 of the General Corporation Law by obtaining a majority vote of the Common Stock in favor of said amendment and restatement in the manner set forth in Section 222 of the General Corporation Law.

IN WITNESS WHEREOF, Calpine Corporation has caused its corporate seal to be hereunto affixed and this Amended and Restated Certificate of Incorporation to be signed by its President and attested to by its Secretary this 13th day of September, 1996.

**CALPINE CORPORATION**

*/s/ PETER CARTWRIGHT*

-----  
*Name: Peter Cartwright*  
*Title: President*

*ATTEST:*

*/s/ ANN B. CURTIS*

-----  
*Name: Ann B. Curtis*  
*Title: Secretary*

**EXHIBIT A**

**AMENDED AND RESTATED  
CERTIFICATE OF INCORPORATION  
OF  
CALPINE CORPORATION**

FIRST. The name of the corporation is Calpine Corporation (the "Corporation").

SECOND. The address of its registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle. The name of its registered agent at such address is The Corporation Trust Company.

THIRD. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. (a) The Corporation is authorized to issue 110,000,000 shares of capital stock, \$.001 par value. The shares shall be divided into two classes, designated as follows:

Designation of Class -----	Number of Shares -----
Common Stock	100,000,000
Preferred Stock	10,000,000
	-----
Total	110,000,000

(b) The Preferred Stock may be issued from time to time in one or more series. The Board of Directors is expressly authorized, in the resolution or resolutions providing for the issuance of any wholly unissued series of Preferred Stock, to fix, state and express the powers, rights, designations, preferences, qualifications, limitations and restrictions thereof, including without limitation: the rate of dividends upon which and the times at which dividends on shares of such series shall be payable and the preference, if any, which such dividends shall have relative to dividends on shares of any other class or classes or any other series of stock of the Corporation; whether such dividends shall be cumulative or noncumulative, and if cumulative, the date or dates from which dividends on shares of such series shall be cumulative; the voting rights, if any, to be provided for shares of such series; the rights, if any, which the holders of shares of such series shall have in the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation; the rights, if any, which the holders of shares of such series shall have to convert such shares into or exchange such shares for shares of stock of the Corporation, and the terms and conditions, including price and rate of exchange of such conversion or exchange; the redemption rights (including sinking fund provisions), if any, for shares of such series; and such other powers, rights, designations, preferences, qualifications, limitations and restrictions as the Board of Directors may desire to so fix. The Board of Directors is also expressly authorized to fix the number of shares constituting such series and to increase or decrease the number of shares of any series prior to the issuance of shares of that series and to increase or decrease the number of shares of any series subsequent to the issuance of shares of that series, but not to decrease such number below the number of shares of such series then outstanding. In case the number of shares

of any series shall be so decreased, the shares constituting such decrease shall resume the status which they had prior to the adoption of the resolution originally fixing the number of shares of such series.

FIFTH. In furtherance and not in limitation of the powers conferred by statute, the Board of Directors is authorized to make, alter or repeal any or all of the Bylaws of the Corporation; provided, however, that any Bylaw amendment adopted by the Board of Directors increasing or reducing the authorized number of Directors shall require the affirmative vote of a majority of the total number of Directors which the Corporation would have if there were no vacancies. In addition, new Bylaws may be adopted or the Bylaws may be amended or repealed by the affirmative vote of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class. Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article FIFTH.

SIXTH. (a) Any action required or permitted to be taken by the stockholders of the Corporation must be effected at an annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing of such stockholders.

(b) Special meetings of stockholders of the Corporation may be called only (i) by the Chairman of the Board of Directors, or (ii) by the Chairman or the Secretary at the written request of a majority of the total number of Directors which the Corporation would have if there were no vacancies upon not fewer than 10 nor more than 60 days' written notice. Any request for a special meeting of stockholders shall be sent to the Chairman and the Secretary and shall state the purposes of the proposed meeting. Special meetings of holders of the outstanding Preferred Stock may be called in the manner and for the purposes provided in the resolutions of the Board of Directors providing for the issue of such stock. Business transacted at special meetings shall be confined to the purpose or purposes stated in the notice of meeting.

(c) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article SIXTH.

SEVENTH. (a) The number of Directors which shall constitute the whole Board of Directors of this corporation shall be as specified in the Bylaws of this corporation, subject to this Article SEVENTH.

(b) The Directors shall be classified with respect to the time for which they severally hold office into three classes designated Class I, Class II and Class III, as nearly

equal in number as possible, as shall be provided in the manner specified in the Bylaws of the Corporation. Each Director shall serve for a term ending on the date of the third annual meeting of stockholders following the annual meeting at which the Director was elected; provided, however, that each initial Director in Class I shall hold office until the annual meeting of stockholders in 1997, each initial Director in Class II shall hold office until the annual meeting of stockholders in 1998 and each initial Director in Class III shall hold office until the annual meeting of stockholders in 1999. Notwithstanding the foregoing provisions of this Article SEVENTH, each Director shall serve until his successor is duly elected and qualified or until such Director's death, resignation or removal.

(c) In the event of any increase or decrease in the authorized number of Directors, (i) each Director then serving as such shall nevertheless continue as a Director of the class of which such Director is a member until the expiration of his current term, or his early resignation, removal from office or death and (ii) the newly created or eliminated directorship resulting from such increase or decrease shall be apportioned by the Board of Directors among the three classes of Directors so as to maintain such classes as nearly equally as possible.

(d) Any Director or the entire Board of Directors may be removed by the affirmative vote of the holders of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class.

(e) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article SEVENTH.

EIGHTH. (a) 1. In addition to any affirmative vote required by law, any Business Combination (as hereinafter defined) shall require the affirmative vote of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class (for purposes of this Article EIGHTH, the "Voting Shares"). Such affirmative vote shall be required notwithstanding the fact that no vote may be required, or that some lesser percentage may be specified by law or in any agreement with any national securities exchange or otherwise.

2. The term "Business Combination" as used in this Article EIGHTH shall mean any transaction which is referred to in any one or more of the following clauses (A) through (E):

(A) any merger or consolidation of the Corporation or any Subsidiary (as hereinafter defined) with or into (i) any Interested Stockholder (as hereinafter defined) or (ii) any other corporation (whether or not itself an Interested Stockholder) which is, or after such merger or consolidation would be, an Affiliate (as hereinafter defined) or Associate (as

hereinafter defined) of an Interested Stockholder; or

(B) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of related transactions) to or with, or proposed by or on behalf of, any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder, of any assets of the Corporation or any Subsidiary constituting not less than five percent of the total assets of the Corporation, as reported in the consolidated balance sheet of the Corporation as of the end of the most recent quarter with respect to which such balance sheet has been prepared; or

(C) the issuance or transfer by the Corporation or any Subsidiary (in one transaction or a series of related transactions) of any securities of the Corporation or any Subsidiary to, or proposed by or on behalf of, any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder in exchange for cash, securities or other property (or a combination thereof) constituting not less than five percent of the total assets of the Corporation, as reported in the consolidated balance sheet of the Corporation as of the end of the most recent quarter with respect to which such balance sheet has been prepared; or

(D) the adoption of any plan or proposal for the liquidation or dissolution of the Corporation, or any spin-off or split-up of any kind of the Corporation or any Subsidiary, proposed by or on behalf of an Interested Stockholder or any Affiliate or Associate of any Interested Stockholder; or

(E) any reclassification of securities (including any reverse stock split), or recapitalization of the Corporation, or any merger or consolidation of the Corporation with any of its Subsidiaries or any similar transaction (whether or not with or into or otherwise involving an Interested Stockholder) which has the effect, directly or indirectly, of increasing the percentage of the outstanding shares of (i) any class of equity securities of the Corporation or any Subsidiary or (ii) any class of securities of the Corporation or any Subsidiary convertible into equity securities of the Corporation or any Subsidiary, represented by securities of such class which are directly or indirectly owned by any Interested Stockholder or any Affiliate or Associate of any Interested Stockholder.

(b) The provisions of section (a) of this Article EIGHTH shall not be applicable to any particular Business Combination, and such Business Combination shall require only such affirmative vote as is required by law and any other provision of this Certificate of Incorporation, if such Business Combination has been approved by two-thirds of the whole Board of Directors.

(c) For the purposes of this Article EIGHTH:

1. A "person" shall mean any individual, firm, corporation or other entity.

2. "Interested Stockholder" shall mean, in respect of any Business Combination, any person (other than the Corporation or any Subsidiary) who or which, as of the record date for the determination of stockholders entitled to notice of and to vote on such Business Combination, or immediately prior to the consummation of any such transaction

(A) is or was, at any time within two years prior thereto, the beneficial owner, directly or indirectly, of 15% or more of the then outstanding Voting Shares, or

(B) is an Affiliate or Associate of the Corporation and at any time within two years prior thereto was the beneficial owner, directly or indirectly, of 15% or more of the then outstanding Voting Shares, or

(C) is an assignee of or has otherwise succeeded to any shares of capital stock of the Corporation which were at any time within two years prior thereto beneficially owned by any Interested Stockholder, if such assignment or succession shall have occurred in the course of a transaction, or series of transactions, not involving a public offering within the meaning of the Securities Act of 1933, as amended.

3. A "person" shall be the "beneficial owner" of any Voting Shares

(A) which such person or any of its Affiliates and Associates (as hereinafter defined) beneficially own, directly or indirectly, or

(B) which such person or any of its Affiliates or Associates has (i) the right to acquire (whether such right is exercisable immediately or only after the passage of time), pursuant to any agreement, arrangement or understanding or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise, or (ii) the right to vote pursuant to any agreement, arrangement or understanding, or

(C) which are beneficially owned, directly or indirectly, by any other person with which such first mentioned person or any of its Affiliates or Associates has any agreement, arrangement or understanding for the purposes of acquiring, holding, voting or disposing of any shares of capital stock of the Corporation.

4. The outstanding Voting Shares shall include shares deemed owned through application of paragraph 3 above but shall not include any other Voting Shares which may be issuable pursuant to any agreement, or upon exercise of conversion rights, warrants or options, or otherwise.

5. "Affiliate" and "Associate" shall have the respective meanings given those terms in Rule 12b-2 of the General Rules and Regulations under the Securities Exchange Act of 1934, as in effect on the date of adoption of this Certificate

6.

of Incorporation (the "Exchange Act").

6. "Subsidiary" shall mean any corporation of which a majority of any class of equity security (as defined in Rule 3a11-1 of the General Rules and Regulations under the Exchange Act) is owned, directly or indirectly, by the Corporation; provided, however, that for the purposes of the definition of Interested Stockholder set forth in paragraph 2 of this section

(c) the term "Subsidiary" shall mean only a corporation of which a majority of each class of equity security is owned, directly or indirectly, by the Corporation.

(d) A majority of the directors shall have the power and duty to determine for the purposes of this Article EIGHTH on the basis of information known to them, (1) whether a person is an Interested Stockholder, (2) the number of Voting Shares beneficially owned by any person, (3) whether a person is an Affiliate or Associate of another, (4) whether a person has an agreement, arrangement or understanding with another as to the matters referred to in paragraph 3 of section (c) or (5) whether the assets subject to any Business Combination or the consideration received for the issuance or transfer of securities by the Corporation or any Subsidiary constitutes not less than five percent of the total assets of the Corporation.

(e) Nothing contained in this Article EIGHTH shall be construed to relieve any Interested Stockholder from any fiduciary obligation imposed by law.

(f) Notwithstanding anything contained in this Certificate of Incorporation to the contrary, the affirmative vote of the holders of at least 66-2/3% of the combined voting power of all shares of the Corporation entitled to vote generally in the election of directors, voting together as a single class, shall be required to alter, change, amend, repeal or adopt any provision inconsistent with, this Article EIGHTH.

NINTH. This Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred on stockholders herein are granted subject to this reservation.

TENTH. A Director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a Director, except for liability (i) for any breach of the Director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware or (iv) for any transaction from which the Director derived any improper personal benefit. If the General Corporation Law of Delaware is hereafter amended to authorize, with the approval of a corporation's stockholders, further reductions in the liability of a corporation's directors for breach of fiduciary duty, then a Director of the Corporation shall not be liable for any such breach to the fullest extent permitted by the General Corporation Law of Delaware as so amended. Any repeal or modification of the foregoing provisions of this Article NINTH by the stockholders of the Corporation shall not adversely affect any right or protection of a Director of the Corporation existing at the time of such repeal or modification. This corporation is authorized to indemnify the directors and officers of the corporation to the fullest extent permissible under Delaware law.

7.

**EXHIBIT 3.1.2**

**CERTIFICATE OF CORRECTION OF  
CALPINE CORPORATION**

Calpine Corporation, a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware (the "Corporation"),

**DOES HEREBY CERTIFY:**

1. The name of the Corporation is Calpine Corporation.
2. An Amended and Restated Certificate of Incorporation (the "Instrument") was filed with the Secretary of State of the State of Delaware on May 19, 2000 which contains an inaccurate record of the corporate action taken therein, and said Instrument requires correction as permitted by subsection (f) of Section 103 of the General Corporation Law of the State of Delaware.
3. The inaccuracy in said Instrument is as follows:

Since the Board of Directors and stockholders of the Corporation merely approved an amendment to the Amended and Restated Certificate of Incorporation of the Corporation, as opposed to an amendment and restatement thereof, the heading of the Instrument incorrectly identifies the Instrument as the "Amended and Restated Certificate of Incorporation of Calpine Corporation" and incorrectly restates the text of the Amended and Restated Certificate of Incorporation of Calpine Corporation as filed with the Secretary of State of the State of Delaware on September 13, 1996. The Instrument further incorrectly states in paragraph THIRD that the restatement was duly adopted in accordance with the provisions of Section 245 of the General Corporation Law of the State of Delaware.

4. The heading of the document filed on May 19, 2000 is corrected to read as follows:

"Certificate of Amendment of Amended and Restated Certificate of Incorporation of Calpine Corporation"

5. The text of the Instrument filed on May 19, 2000 is corrected to read in its entirety as follows:

**CERTIFICATE OF AMENDMENT  
OF  
AMENDED AND RESTATED CERTIFICATE OF INCORPORATION  
OF  
CALPINE CORPORATION**

CALPINE CORPORATION, a corporation duly organized and existing under the General Corporation Law of the State of Delaware (the "Corporation"), does hereby certify that:

1. The Amended and Restated Certificate of Incorporation of the Corporation is hereby amended by deleting paragraph (a) of Article FOURTH thereof and inserting the following in lieu thereof:

(a) The Corporation is authorized to issue 510,000,000 shares of capital stock, \$.001 par value. The shares shall be divided into two classes, designated as follows:

Designation of Class -----	Number of Shares -----
Common Stock	500,000,000
Preferred Stock	10,000,000
	-----
Total	510,000,000

2. The foregoing amendment was duly adopted in accordance with the provisions of Section 242 of the General Corporation Law of the State of Delaware.

IN WITNESS WHEREOF, Calpine Corporation has caused this Certificate to be executed by Lisa Bodensteiner, its duly authorized officer, this 28th day of February, 2001.

**CALPINE CORPORATION**

By: /s/ LISA BODENSTEINER

-----  
Name: Lisa Bodensteiner

Title: Vice President, General Counsel

and Assistant Secretary

**EXHIBIT 3.1.3**

**CERTIFICATE OF DESIGNATION**

of

**SERIES A PARTICIPATING PREFERRED STOCK**

of

**CALPINE CORPORATION**

(Pursuant to Section 151 of the  
Delaware General Corporation Law)

---

Calpine Corporation, a corporation organized and existing under the General Corporation Law of the State of Delaware (hereinafter called the "Corporation"), hereby certifies that the following resolution was adopted by the Board of Directors of the Corporation as required by Section 151 of the General Corporation Law at a meeting duly called and held on June 5, 1997:

RESOLVED, that pursuant to the authority granted to and vested in the Board of Directors of the Corporation (hereinafter called the "Board of Directors" or the "Board") in accordance with the provisions of the Certificate of Incorporation, the Board of Directors hereby creates a series of Preferred Stock, par value \$0.001 per share (the "Preferred Stock"), of the Corporation and hereby states the designation and number of shares, and fixes the relative rights, preferences, and limitations thereof as follows:

**Series A Participating Preferred Stock:**

Section 1. Designation and Amount. The shares of such series shall be designated as "Series A Participating Preferred Stock" (the "Series A Preferred Stock") and the number of shares constituting the Series A Preferred Stock shall be One Hundred Thousand (100,000). Such number of shares may be increased or decreased by resolution of the Board of Directors;

provided, however, that no decrease shall reduce the number of shares of Series A Preferred Stock to a number less than the number of shares then outstanding plus the number of shares reserved for issuance upon the exercise of outstanding options, rights or warrants or upon the conversion of any outstanding securities issued by the Corporation convertible into Series A Preferred Stock.

## Section 2. Dividends and Distributions.

(A) Subject to the rights of the holders of any shares of any series of Preferred Stock (or any similar stock) ranking prior and superior to the Series A Preferred Stock with respect to dividends, each holder of a share of Series A Preferred Stock, in preference to the holders of shares of Common Stock, par value \$0.001 per share (the "Common Stock"), of the Corporation, and of any other junior stock, shall be entitled to receive, when, as and if declared by the Board of Directors out of funds legally available for the purpose, quarterly dividends payable in cash on the first day of March, June, September and December in each year (each such date being referred to herein as a "Quarterly Dividend Payment Date"), commencing on the first Quarterly Dividend Payment Date after the first issuance of a share or fraction of a share of Series A Preferred Stock, in an amount per share (rounded to the nearest cent) equal to, subject to the provision for adjustment hereinafter set forth, One Thousand (1,000) times the aggregate per share amount of all cash dividends, and One Thousand (1,000) times the aggregate per share amount (payable in kind) of all non-cash dividends or other distributions, other than a dividend payable in shares of Common Stock or a subdivision of the outstanding shares of Common Stock (by reclassification or otherwise), declared on the Common Stock since the immediately preceding Quarterly Dividend Payment Date or, with respect to the first Quarterly Dividend Payment Date, since the first issuance of a share or fraction of a share of Series A Preferred Stock. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under clause (b) of the preceding sentence shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) The Corporation shall declare a dividend or distribution on the shares of Series A Preferred Stock as provided in paragraph (A) of this Section 2 immediately after it declares a dividend or distribution on the Common Stock (other than a dividend payable in shares of Common Stock); provided, however, that, in the event no dividend or distribution shall have been declared on the Common Stock during the period between any Quarterly Distribution Date and the next subsequent Quarterly Dividend Payment Date,

a dividend of \$1.00 per share of Series A Preferred Stock shall nevertheless be payable on such subsequent Quarterly Dividend Payment Date.

(C) Dividends shall begin to accrue and be cumulative on each outstanding share of Series A Participating Preferred Stock from the Quarterly Dividend Payment Date next preceding the date of issue of such share of Series A Participating Preferred Stock, unless the date of issue of such share is prior to the record date for the first Quarterly Dividend Payment Date, in which case dividends on such share shall begin to accrue from the date of issue of such share, or unless the date of issue is a Quarterly Dividend Payment Date or is a date after the record date for the determination of holders of shares of Series A Preferred Stock entitled to receive a quarterly dividend and before such Quarterly Dividend Payment Date, in either of which events such dividends shall begin to accrue and be cumulative from such Quarterly Dividend Payment Date. Accrued but unpaid dividends shall not bear interest. Dividends paid on the shares of Series A Preferred Stock in an amount less than the total amount of such dividends at the time accrued and payable on such shares shall be allocated pro rata on a share-by-share basis among all such shares at the time outstanding. The Board of Directors may fix a record date for the determination of holders of shares of Series A Preferred Stock entitled to receive payment of a dividend or distribution declared thereon, which record date shall be not more than 60 days prior to the date fixed for the payment thereof.

Section 3. Voting Rights. The holders of shares of Series A Preferred Stock shall have the following voting rights:

(A) Subject to the provision for adjustment hereinafter set forth, each share of Series A Preferred Stock shall entitle the holder thereof to One Thousand (1,000) votes on all matters submitted to a vote of the stockholders of the Corporation. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the number of votes per share to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event shall be adjusted by multiplying such number by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) Except as otherwise provided herein, in any other Certificate of Designations creating a series of Preferred Stock or any similar stock, or by law, the holders of shares of Series A Preferred Stock and the holders of shares of Common Stock and any other capital stock of the Corporation having general voting rights shall vote together as one class on all matters submitted to a vote of stockholders of the Corporation.

(C) (i) If at any time dividends on any shares of Series A Preferred Stock shall be in arrears in an amount equal to six quarterly dividends thereon, then during the period (a "default period") from the occurrence of such event until such time as all accrued and unpaid dividends for all previous quarterly dividend periods and for the current quarterly dividend period on all shares of Series A Preferred Stock then outstanding shall have been declared and paid or set apart for payment, all holders of shares of Series A Preferred Stock, voting separately as a class, shall have the right to elect two (2) Directors.

(ii) During any default period, such voting rights of the holders of shares of Series A Preferred Stock may be exercised initially at a special meeting called pursuant to subparagraph (iii) of this Section 3(C) or at any annual meeting of stockholders, and thereafter at annual meetings of stockholders, provided that neither such voting rights nor any right of the holders of shares of Series A Preferred Stock to increase, in certain cases, the authorized number of Directors may be exercised at any meeting unless one-third of the outstanding shares of Preferred Stock shall be present at such meeting in person or by proxy. The absence of a quorum of the holders of Common Stock shall not affect the exercise by the holders of shares of Series A Preferred Stock of such rights. At any meeting at which the holders of shares of Series A Preferred Stock shall exercise such voting rights initially during an existing default period, they shall have the right, voting separately as a class, to elect Directors to fill up to two (2) vacancies in the Board of Directors, if any such vacancies may then exist, or, if such right is exercised at an annual meeting, to elect two (2) Directors. If the number which may be so elected at any special meeting does not amount to the required number, the holders of the Series A Preferred Stock shall have the right to make such increase in the number of Directors as shall be necessary to permit the election by them of the required number. After the holders of shares of Series A Preferred Stock shall have exercised their right to elect Directors during any default period, the number of Directors shall not be increased or decreased except as approved by a vote of the holders of shares of Series A Preferred Stock as herein provided or pursuant to the rights of any equity securities ranking senior to the Series A Preferred Stock.

(iii) Unless the holders of Series A Preferred Stock shall, during an existing default period, have previously exercised their right to elect Directors, the Board of Directors may order, or any stockholder or stockholders owning in the aggregate not less than 25% of the total number of the shares of Series A Preferred Stock outstanding may request, the calling of a special meeting of the holders of shares of Series A Preferred Stock, which meeting shall thereupon be called by the Secretary of the Corporation. Notice of such meeting and of any annual meeting at which holders of shares of Series A Preferred Stock are entitled to vote pursuant to this Section 3(C)(iii) shall be given to each holder of record of shares of Series A Preferred Stock by mailing a copy of such notice to such

holder at such holder's last address as the same appears on the books of the Corporation. Such meeting shall be called for a time not earlier than 20 days and not later than 60 days after such order or request or in default of the calling of such meeting within 60 days after such order or request, such meeting may be called on similar notice by any stockholder or stockholders owning in the aggregate not less than 25% of the total number of outstanding shares of Series A Preferred Stock. Notwithstanding the provisions of this Section 3(C)(iii), no such special meeting shall be called during the 60 days immediately preceding the date fixed for the next annual meeting of the stockholders.

(iv) During any default period, the holders of shares of Common Stock and shares of Series A Preferred Stock, and other classes or series of stock of the Corporation, if applicable, shall continue to be entitled to elect all the Directors until holders of the shares of Series A Preferred Stock shall have exercised their right to elect two (2) Directors voting as a separate class, after the exercise of which right (x) the Directors so elected by the holders of shares of Series A Preferred Stock shall continue in office until their successors shall have been elected by such holders or until the expiration of the default period, and (y) any vacancy in the Board of Directors may (except as provided in Section 3(C)(ii)) be filled by vote of a majority of the remaining Directors theretofore elected by the holders of the class of capital stock which elected the Director whose office shall have become vacant. References in this Section 3(C) to Directors elected by the holders of a particular class of capital stock shall include Directors elected by such Directors to fill vacancies as provided in clause (y) of the foregoing sentence.

(v) Immediately upon the expiration of a default period,

(x) the right of the holders of shares of Series A Preferred Stock as a separate class to elect Directors shall cease, (y) the term of any Directors elected by the holders of shares of Series A Preferred Stock as a separate class shall terminate, and (z) the number of Directors shall be such number as may be provided for in the Certificate of Incorporation or by-laws irrespective of any increase made pursuant to the provisions of Section 3(C)(ii) (such number being subject, however, to change thereafter in any manner provided by law or in the Certificate of Incorporation or by-laws). Any vacancies in the Board of Directors effected by the provisions of clauses (y) and (z) in the preceding sentence may be filled by a majority of the remaining Directors.

(vi) The provisions of this Section 3(C) shall govern the election of Directors by holders of shares of Preferred Stock during any default period notwithstanding any provisions of the Certificate of Incorporation to the contrary, including, without limitation, the provisions of Article Sixth of the Certificate of Incorporation.

(D) Except as set forth herein, or as otherwise provided by law, holders of Series A Preferred Stock shall have no special voting rights and their consent shall not be required (except to the extent they are entitled to vote with holders of Common Stock as set forth herein) for taking any corporate action.

#### Section 4. Certain Restrictions.

(A) Whenever quarterly dividends or other dividends or distributions payable on the Series A Preferred Stock as provided in Section 2 are in arrears, thereafter and until all accrued and unpaid dividends and distributions, whether or not declared, on shares of Series A Preferred Stock outstanding shall have been paid in full, the Corporation shall not:

(i) declare or pay dividends, or make any other distributions, on any shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock;

(ii) declare or pay dividends, or make any other distributions, on any shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except dividends paid ratably on the shares of Series A Preferred Stock and all such parity stock on which dividends are payable or in arrears in proportion to the total amounts to which the holders of all such shares are then entitled;

(iii) redeem or purchase or otherwise acquire for consideration shares of any stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock, provided that the Corporation may at any time redeem, purchase or otherwise acquire shares of any such junior stock in exchange for shares of any stock of the Corporation ranking junior (either as to dividends or upon dissolution, liquidation or winding up) to the Series A Preferred Stock; or

(iv) redeem or purchase or otherwise acquire for consideration any shares of Series A Preferred Stock, or any shares of stock ranking on a parity with the Series A Preferred Stock, except in accordance with a purchase offer made in writing or by publication (as determined by the Board of Directors) to all holders of such shares upon such terms as the Board of Directors, after consideration of the respective annual dividend rates and other relative rights and preferences of the respective series and classes, shall determine in good faith will result in fair and equitable treatment among the respective series or classes.

(B) The Corporation shall not permit any subsidiary of the Corporation to purchase or otherwise acquire for consideration any shares of stock of the Corporation unless the Corporation could, under paragraph (A) of this Section 4, purchase or otherwise acquire such shares at such time and in such manner.

Section 5. Reacquired Shares. Any shares of Series A Preferred Stock purchased or otherwise acquired by the Corporation in any manner whatsoever shall be retired and cancelled promptly after the acquisition thereof. All such shares shall upon their cancellation become authorized but unissued shares of Preferred Stock and may be reissued as part of a new series of Preferred Stock subject to the conditions and restrictions on issuance set forth herein, in the Certificate of Incorporation, or in any other Certificate of Designations creating a series of Preferred Stock or any similar stock or as otherwise required by law.

Section 6. Liquidation, Dissolution or Winding Up.

(A) Upon any liquidation, dissolution or winding up of the Corporation, no distribution shall be made (1) to the holders of shares of stock ranking junior (either as to dividends or upon liquidation, dissolution or winding up) to the Series A Preferred Stock unless, prior thereto, the holders of shares of Series A Preferred Stock shall have received One Thousand Dollars (\$1,000), per share, plus an amount equal to accrued and unpaid dividends and distributions thereon, whether or not declared, to the date of such payment; provided, however, that the holders of shares of Series A Preferred Stock shall be entitled to receive an aggregate amount per share, subject to the provision for adjustment hereinafter set forth, equal to one thousand (1,000), times the aggregate amount to be distributed per share to holders of shares of Common Stock, or (2) to the holders of shares of stock ranking on a parity (either as to dividends or upon liquidation, dissolution or winding up) with the Series A Preferred Stock, except distributions made ratably upon the Series A Preferred Stock and all such parity stock in proportion to the total amounts to which the holders of all such shares are entitled upon such liquidation, dissolution or winding up. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the aggregate amount to which holders of shares of Series A Preferred Stock were entitled immediately prior to such event under the proviso in clause (1) of the preceding sentence shall be adjusted by multiplying such amount by a fraction the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

(B) In the event, however, that there are not sufficient assets available to permit payment in full the Series A Liquidation Preference and the liquidation preferences of all other series of Preferred Stock, if any, which rank on a parity with the Series A Preferred Stock, then such remaining assets shall be distributed ratably to the holders of such parity shares in proportion to their respective liquidation preferences.

Section 7. Consolidation, Merger, etc. In case the Corporation shall enter into any consolidation, merger, combination or other transaction in which the shares of Common Stock are exchanged for or changed into other stock or securities, cash and/or any other property, then in any such case each share of Series A Preferred Stock shall at the same time be similarly exchanged or changed into an amount per share, subject to the provision for adjustment hereinafter set forth, equal to One Thousand (1,000) times the aggregate amount of stock, securities, cash and/or any other property (payable in kind), as the case may be, into which or for which each share of Common Stock is changed or exchanged. In the event the Corporation shall at any time declare or pay any dividend on the Common Stock payable in shares of Common Stock, or effect a subdivision or combination or consolidation of the outstanding shares of Common Stock (by reclassification or otherwise than by payment of a dividend in shares of Common Stock) into a greater or lesser number of shares of Common Stock, then in each such case the amount set forth in the preceding sentence with respect to the exchange or change of shares of Series A Preferred Stock shall be adjusted by multiplying such amount by a fraction, the numerator of which is the number of shares of Common Stock outstanding immediately after such event and the denominator of which is the number of shares of Common Stock that were outstanding immediately prior to such event.

Section 8. No Redemption. The shares of Series A Preferred Stock shall not be redeemable.

Section 9. Rank. The Series A Preferred Stock shall rank, with respect to the payment of dividends and the distribution of assets, junior to all series of any other class of the Corporation's Preferred Stock.

Section 10. Amendment. The Certificate of Incorporation of the Corporation shall not be amended in any manner which would materially alter or change the powers, preferences or special rights of the Series A Preferred Stock so as to affect them adversely without the affirmative vote of the holders of at least a majority of the outstanding shares of Series A Preferred Stock, voting together as a single class.

IN WITNESS WHEREOF, this Certificate of Designation is executed on behalf of the Corporation by its President and its corporate seal attested by its Secretary this 16th day of June, 1997.

*/s/ PETER CARTWRIGHT*

-----  
*Name: Peter Cartwright*  
*Title: Chairman, President and Chief Executive Officer*

*Attest:*

*/s/ ANN B. CURTIS*

-----  
*Name: Ann B. Curtis*  
*Title: Senior Vice President*  
*and Corporate Secretary*

**EXHIBIT 3.1.4**

**AMENDED CERTIFICATE OF DESIGNATION  
OF  
SERIES A PARTICIPATING PREFERRED STOCK  
OF  
CALPINE CORPORATION**

**(PURSUANT TO SECTION 151 OF THE  
DELAWARE GENERAL CORPORATION LAW)**

---

CALPINE CORPORATION, a corporation organized and existing under the General Corporation Law of the State of Delaware (the "Company"), in accordance with the provisions of Section 103 of the General Corporation Law of the State of Delaware, certifies as follows:

1. That by resolution of the Board of Directors of the Company dated June 5, 1997, and by a Certificate of Designation filed in the office of the Secretary of State of the State of Delaware on June 16, 1997, the Company authorized a series of 100,000 shares of Series A Participating Preferred Stock, par value \$0.001 per share, of the Company (the "Series A Preferred Stock") and established the powers, designations, preferences and relative, participating, optional and other rights of the Series A Preferred Stock and the qualifications, limitations or restrictions thereof.
2. As of the date hereof, no shares of Series A Preferred Stock are outstanding and no shares of Series A Preferred Stock have been issued.
3. The pursuant to the authority conferred on the Board of Directors of the Company by its Restated Certificate of Incorporation and the provisions of Section 151(g) of the General Corporation Law of the State of Delaware, the Board of Directors on February 6, 2001, adopted the following resolution amending certain provisions of said Certificate of Designation:

RESOLVED FURTHER, that the Board finds it advisable to amend the Certificate of Designation of Series A Participating Preferred Stock of Calpine Corporation (the "Series A Preferred Certificate of Designation"), and the Series A Preferred Stock Certificate of Designation is hereby amended, as follows: the phrase "One Hundred Thousand (100,000)" in the first sentence of Section 1 of the Series A Preferred Certificate of Designation is deleted and replaced with the phrase "Five Hundred Thousand (500,000)".

IN WITNESS WHEREOF, CALPINE CORPORATION has caused this certificate to be executed by Lisa M. Bodensteiner, the Vice President, General Counsel and Assistant Secretary of the Company, this 28th day of February, 2001.

*/s/ LISA M. BODENSTEINER*

-----  
*Lisa M. Bodensteiner*  
*Vice President, General Counsel*  
*and Assistant Secretary*

**EXHIBIT 4.1.2**

**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of July 31, 2000**

**Between**

**CALPINE CORPORATION,**

**AS ISSUER**

and

**STATE STREET BANK AND TRUST COMPANY**

(successor trustee to Shawmut Bank Connecticut, National Association),

**AS TRUSTEE**

Supplementing the Indenture  
Dated as of February 17, 1994

FIRST SUPPLEMENTAL INDENTURE, dated as of July 31, 2000 (the "First Supplemental Indenture"), between Calpine Corporation, a Delaware corporation (the "Company"), and State Street Bank and Trust Company, as successor trustee to Shawmut Bank Connecticut, National Association (the "Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of February 17, 1994 (the "Indenture"), to the Trustee's predecessor to provide for the issuance of \$105,000,000 of the Company's 9 1/4% Senior Notes due 2004;

WHEREAS, the Holders (as defined in the Indenture) of a majority in principal amount of such Senior Notes have approved certain amendments proposed by the Company to certain provisions of the Indenture, and the Company desires to supplement and amend the Indenture accordingly as contemplated by Section 8.2 thereof;

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

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

## **ARTICLE II AMENDMENTS TO THE INDENTURE**

### Section 2.1 Amendments

- (a) The following definitions in Section 1.1 of the Indenture are amended to read in their entirety as follows:

"Non-Recourse Debt" means Indebtedness of the Company or any Restricted Subsidiary that is Incurred to finance the exploration, drilling,

development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or any Restricted Subsidiary, provided that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any property or assets of the Company or any Restricted Subsidiary other than property or assets (including Capital Stock) subject to a Lien permitted pursuant to Section 3.7 (f) or (p).

"Subsidiary" means, as applied to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least 50% of the outstanding Voting Shares or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

(b) Clause (vii) of Section 3.4(b) is amended to read in its entirety:

**Non-Recourse Debt of a Restricted Subsidiary.**

(c) Section 3.7(f) of the Indenture is amended to read in its entirety:

(1) Liens incurred by the Company or any Restricted Subsidiary securing Indebtedness Incurred by the Company or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such a Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or asset being so financed;

(d) Section 3.7(l) is deleted in its entirety and the term "[Deleted]" is inserted in lieu thereof.

(e) Section 3.7(p) is amended to read in its entirety:

Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i), provided, however, that (x) such new Lien shall be limited to all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness);

### **ARTICLE III MISCELLANEOUS**

Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.2 of the Indenture of the execution of this First Supplemental Indenture.

Section 3.2 Ratification of Indenture.

The Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 3.3 Governing Law.

This First Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

Section 3.4 Separability.

In case any one or more of the provisions contained in this First Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture but this First Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 3.5 Counterparts.

This First Supplemental 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 3.6 Effectiveness.

This First Supplemental Indenture shall be effective and binding when executed by the Company and the Trustee.

Section 3.7 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

Section 3.8 Performance by Trustee.

The Trustee, for itself and its successors accepts the Trust of the Indenture as amended by this First Supplemental Indenture and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liability and responsibility of the Trustee.

\* \* \*

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
*Ann B. Curtis*  
*Executive Vice President and*  
*Chief Financial Officer*

**STATE STREET BANK AND TRUST COMPANY**

successor trustee to Shawmut Bank  
Connecticut, National Association

By: /s/ SUSAN T. KELLER

-----  
*Name: Susan T. Keller*  
*Title: Vice President*

**EXHIBIT 4.2.2**

**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of August 1, 2000**

**Between**

**CALPINE CORPORATION,**

**AS ISSUER**

and

**STATE STREET BANK AND TRUST COMPANY**  
(successor trustee to Fleet National Bank),

**AS TRUSTEE**

Supplementing the Indenture  
Dated as of May 16, 1996

FIRST SUPPLEMENTAL INDENTURE, dated as of August 1, 2000 (the "First Supplemental Indenture"), between Calpine Corporation, a Delaware corporation (the "Company"), and State Street Bank and Trust Company, as successor trustee to Fleet National Bank (the "Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of May 16, 1996 (the "Indenture") to the Trustee's predecessor to provide for the issuance of \$180,000,000 of the Company's 10 1/2% Senior Notes due 2006;

WHEREAS, the Holders (as defined in the Indenture) of a majority in principal amount of such Senior Notes have approved certain amendments proposed by the Company to certain provisions of the Indenture, and the Company desires to supplement and amend the Indenture accordingly as contemplated by Section 8.2 thereof;

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

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

## **ARTICLE II AMENDMENTS TO THE INDENTURE**

### Section 2.1 Amendments

- (a) The following definitions in Section 1.1 of the Indenture are amended to read in their entirety as follows:

"Non-Recourse Debt" means Indebtedness of the Company or any Restricted Subsidiary that is Incurred to finance the exploration, drilling,

development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or any Restricted Subsidiary, provided that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any property or assets of the Company or any Restricted Subsidiary other than property or assets (including Capital Stock) subject to a Lien permitted pursuant to Section 3.7 (f) or (p).

"Subsidiary" means, as applied to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least 50% of the outstanding Voting Shares or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

(b) Clause (vii) of Section 3.4(b) is amended to read in its entirety:

**Non-Recourse Debt of a Restricted Subsidiary.**

(c) Section 3.7(f) of the Indenture is amended to read in its entirety:

(1) Liens incurred by the Company or any Restricted Subsidiary securing Indebtedness Incurred by the Company or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such a Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or asset being so financed;

(d) Section 3.7(l) is deleted in its entirety and the term "[Deleted]" is inserted in lieu thereof.

(e) Section 3.7(p) is amended to read in its entirety:

Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i), provided, however, that (x) such new Lien shall be limited to all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness);

### **ARTICLE III MISCELLANEOUS**

Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.2 of the Indenture of the execution of this First Supplemental Indenture.

Section 3.2 Ratification of Indenture.

The Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 3.3 Governing Law.

This First Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

Section 3.4 Separability.

In case any one or more of the provisions contained in this First Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture but this First Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 3.5 Counterparts.

This First Supplemental 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 3.6 Effectiveness.

This First Supplemental Indenture shall be effective and binding when executed by the Company and the Trustee.

Section 3.7 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

Section 3.8 Performance by Trustee.

The Trustee, for itself and its successors accepts the Trust of the Indenture as amended by this First Supplemental Indenture and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liability and responsibility of the Trustee.

\* \* \*

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
Ann B. Curtis  
Executive Vice President and  
Chief Financial Officer

**STATE STREET BANK AND TRUST COMPANY**

as successor trustee to Fleet National Bank

By: /s/ SUSAN T. KELLER

-----  
Name: Susan T. Keller  
Title: Vice President

**EXHIBIT 4.3.3**

**SECOND SUPPLEMENTAL INDENTURE**

**Dated as of July 31, 2000**

**Between**

**CALPINE CORPORATION,**

**AS ISSUER**

**and**

**THE BANK OF NEW YORK,**

**AS TRUSTEE**

Supplementing the Indenture

Dated as of July 8, 1997

SECOND SUPPLEMENTAL INDENTURE, dated as of July 31, 2000 (the "Second Supplemental Indenture"), between Calpine Corporation, a Delaware corporation (the "Company"), and The Bank of New York, as trustee ("the Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of July 8, 1997, to the Trustee to provide for the issuance of \$275,000,000 of the Company's 8 3/4% Senior Notes due 2007, as supplemented by the First Supplemental Indenture dated as of September 10, 1997(the "Indenture");

WHEREAS, the Holders (as defined in the Indenture) of a majority in principal amount of such Senior Notes have approved certain amendments proposed by the Company to certain provisions of the Indenture, and the Company desires to supplement and amend the Indenture accordingly as contemplated by Section 8.2 thereof;

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

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

## **ARTICLE II AMENDMENTS TO THE INDENTURE**

### Section 2.1 Amendments

- (a) The following definitions in Section 1.1 of the Indenture are amended to read in their entirety as follows:

"Non-Recourse Debt" means Indebtedness of the Company or any Restricted Subsidiary that is Incurred to finance the exploration, drilling,

development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or any Restricted Subsidiary, provided that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any property or assets of the Company or any Restricted Subsidiary other than property or assets (including Capital Stock) subject to a Lien permitted pursuant to Section 3.7 (f) or (p).

"Subsidiary" means, as applied to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least 50% of the outstanding Voting Shares or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

(b) Clause (vii) of Section 3.4(b) is amended to read in its entirety:

**Non-Recourse Debt of a Restricted Subsidiary.**

(c) Section 3.7(f) of the Indenture is amended to read in its entirety:

(1) Liens incurred by the Company or any Restricted Subsidiary securing Indebtedness Incurred by the Company or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such a Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or asset being so financed;

(d) Section 3.7(l) is deleted in its entirety and the term "[Deleted]" is inserted in lieu thereof.

(e) Section 3.7(p) is amended to read in its entirety:

Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i), provided, however, that (x) such new Lien shall be limited to all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness);

### **ARTICLE III MISCELLANEOUS**

Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.2 of the Indenture of the execution of this Second Supplemental Indenture.

Section 3.2 Ratification of Indenture.

The Indenture, as supplemented by this Second Supplemental Indenture, is in all respects ratified and confirmed, and this Second Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 3.3 Governing Law.

This Second Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

Section 3.4 Separability.

In case any one or more of the provisions contained in this Second Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Second Supplemental Indenture but this Second Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 3.5 Counterparts.

This Second Supplemental 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 3.6 Effectiveness.

This Second Supplemental Indenture shall be effective and binding when executed by the Company and the Trustee.

Section 3.7 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Second Supplemental Indenture.

Section 3.8 Performance by Trustee.

The Trustee, for itself and its successors accepts the Trust of the Indenture as amended by this Second Supplemental Indenture and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liability and responsibility of the Trustee.

\* \* \*

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
Ann B. Curtis  
Executive Vice President and  
Chief Financial Officer

**THE BANK OF NEW YORK  
as Trustee**

By: /s/ MICHELE L. RUSSO

-----  
Name: Michele L. Russo  
Title: Assistant Vice President

**EXHIBIT 4.4.3**

**SECOND SUPPLEMENTAL INDENTURE**

**Dated as of July 31, 2000**

**Between**

**CALPINE CORPORATION,**

**AS ISSUER**

**and**

**THE BANK OF NEW YORK,**

**AS TRUSTEE**

Supplementing the Indenture  
Dated as of March 31, 1998

SECOND SUPPLEMENTAL INDENTURE, dated as of July 31, 2000 (the "Second Supplemental Indenture"), between Calpine Corporation, a Delaware corporation (the "Company"), and The Bank of New York, as trustee ("the Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of March 31, 1999, to the Trustee to provide for the issuance of \$400,000,000 of the Company's 77/8% Senior Notes due 2008, as supplemented by the First Supplemental Indenture dated as of July 24, 1998 (the "Indenture");

WHEREAS, the Holders (as defined in the Indenture) of a majority in principal amount of such Senior Notes have approved certain amendments proposed by the Company to certain provisions of the Indenture, and the Company desires to supplement and amend the Indenture accordingly as contemplated by Section 8.2 thereof;

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

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

## **ARTICLE II AMENDMENTS TO THE INDENTURE**

### Section 2.1 Amendments

- (a) The following definitions in Section 1.1 of the Indenture are amended to read in their entirety as follows:

"Non-Recourse Debt" means Indebtedness of the Company or any Restricted Subsidiary that is Incurred to finance the exploration, drilling,

development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or any Restricted Subsidiary, provided that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any property or assets of the Company or any Restricted Subsidiary other than property or assets (including Capital Stock) subject to a Lien permitted pursuant to Section 3.7 (f) or (p).

"Subsidiary" means, as applied to any Person, any corporation, limited or general partnership, trust, association or other business entity of which an aggregate of at least 50% of the outstanding Voting Shares or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

(b) Clause (vii) of Section 3.4(b) is amended to read in its entirety:

**Non-Recourse Debt of a Restricted Subsidiary.**

(c) Section 3.7(f) of the Indenture is amended to read in its entirety:

(1) Liens incurred by the Company or any Restricted Subsidiary securing Indebtedness Incurred by the Company or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such a Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or asset being so financed;

(d) Section 3.7(l) is deleted in its entirety and the term "[Deleted]" is inserted in lieu thereof.

(e) Section 3.7(p) is amended to read in its entirety:

Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i), provided, however, that (x) such new Lien shall be limited to all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness);

### **ARTICLE III MISCELLANEOUS**

Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.2 of the Indenture of the execution of this Second Supplemental Indenture.

Section 3.2 Ratification of Indenture.

The Indenture, as supplemented by this Second Supplemental Indenture, is in all respects ratified and confirmed, and this Second Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

Section 3.3 Governing Law.

This Second Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

Section 3.4 Separability.

In case any one or more of the provisions contained in this Second Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Second Supplemental Indenture but this Second Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

Section 3.5 Counterparts.

This Second Supplemental 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 3.6 Effectiveness.

This Second Supplemental Indenture shall be effective and binding when executed by the Company and the Trustee.

Section 3.7 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this Second Supplemental Indenture.

Section 3.8 Performance by Trustee.

The Trustee, for itself and its successors accepts the Trust of the Indenture as amended by this Second Supplemental Indenture and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liability and responsibility of the Trustee.

\* \* \*

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
Ann B. Curtis  
Executive Vice President and  
Chief Financial Officer

**THE BANK OF NEW YORK  
as Trustee**

By: /s/ MICHELE L. RUSSO

-----  
Name: Michele L. Russo  
Title: Assistant Vice President

**Exhibit 4.5.2**

**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of July 31, 2000**

**Between**

**CALPINE CORPORATION,**

**AS ISSUER**

**and**

**THE BANK OF NEW YORK,**

**AS TRUSTEE**

Supplementing the Indenture  
Dated as of March 29, 1999

FIRST SUPPLEMENTAL INDENTURE, dated as of July 31, 2000 (the "First Supplemental Indenture"), between Calpine Corporation, a Delaware corporation (the "Company"), and The Bank of New York, as trustee ("the Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of March 29, 1999 (the "Indenture"), to the Trustee to provide for the issuance of \$350,000,000 of the Company's 7 3/4% Senior Notes due 2009;

WHEREAS, the Holders (as defined in the Indenture) of a majority in principal amount of such Senior Notes have approved certain amendments proposed by the Company to certain provisions of the Indenture, and the Company desires to supplement and amend the Indenture accordingly as contemplated by Section 8.2 thereof;

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

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

## **ARTICLE II AMENDMENTS TO THE INDENTURE**

### Section 2.1 Amendments

- (a) The following definition in Section 1.1 of the Indenture is amended to read in its entirety as follows:

"Non-Recourse Debt" means Indebtedness of the Company or any Restricted Subsidiary that is Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements

or additions to, property or assets of the Company or any Restricted Subsidiary, provided that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any property or assets of the Company or any Restricted Subsidiary other than property or assets (including Capital Stock) subject to a Lien permitted pursuant to Section 3.7 (f) or (p).

(b) Clause (vii) of Section 3.4(b) is amended to read in its entirety:

**Non-Recourse Debt of a Restricted Subsidiary.**

(c) Section 3.7(f) of the Indenture is amended to read in its entirety:

(1) Liens incurred by the Company or any Restricted Subsidiary securing Indebtedness Incurred by the Company or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such a Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or asset being so financed;

(d) Section 3.7(l) is deleted in its entirety and the term "[Deleted]" is inserted in lieu thereof.

(e) Section 3.7(p) is amended to read in its entirety:

Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i), provided, however, that (x) such new Lien shall be limited to

all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness);

### **ARTICLE III MISCELLANEOUS**

#### Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.2 of the Indenture of the execution of this First Supplemental Indenture.

#### Section 3.2 Ratification of Indenture.

The Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

#### Section 3.3 Governing Law.

This First Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

#### Section 3.4 Separability.

In case any one or more of the provisions contained in this First Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture but this First Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

#### Section 3.5 Counterparts.

This First Supplemental 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 3.6 Effectiveness.

This First Supplemental Indenture shall be effective and binding when executed by the Company and the Trustee.

Section 3.7 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

Section 3.8 Performance by Trustee.

The Trustee, for itself and its successors accepts the Trust of the Indenture as amended by this First Supplemental Indenture and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liability and responsibility of the Trustee.

\* \* \*

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
Ann B. Curtis  
Executive Vice President and  
Chief Financial Officer

**THE BANK OF NEW YORK  
as Trustee**

By: /s/ MICHELE L. RUSSO

-----  
Name: Michele L. Russo  
Title: Assistant Vice President

**EXHIBIT 4.6.2**

**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of July 31, 2000**

**Between**

**CALPINE CORPORATION,**

**AS ISSUER**

**and**

**THE BANK OF NEW YORK,**

**AS TRUSTEE**

Supplementing the Indenture  
Dated as of March 29, 1999

FIRST SUPPLEMENTAL INDENTURE, dated as of July 31, 2000 (the "First Supplemental Indenture"), between Calpine Corporation, a Delaware corporation (the "Company"), and The Bank of New York, as trustee ("the Trustee").

WHEREAS, the Company executed and delivered the Indenture dated as of March 29, 1999 (the "Indenture"), to the Trustee to provide for the issuance of \$250,000,000 of the Company's 75/8% Senior Notes due 2006;

WHEREAS, the Holders (as defined in the Indenture) of a majority in principal amount of such Senior Notes have approved certain amendments proposed by the Company to certain provisions of the Indenture, and the Company desires to supplement and amend the Indenture accordingly as contemplated by Section 8.2 thereof;

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

NOW THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

## **ARTICLE II AMENDMENTS TO THE INDENTURE**

### Section 2.1 Amendments

- (a) The following definition in Section 1.1 of the Indenture is amended to read in its entirety as follows:

"Non-Recourse Debt" means Indebtedness of the Company or any Restricted Subsidiary that is Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements

or additions to, property or assets of the Company or any Restricted Subsidiary, provided that such Indebtedness is without recourse to the Company or any Restricted Subsidiary or to any property or assets of the Company or any Restricted Subsidiary other than property or assets (including Capital Stock) subject to a Lien permitted pursuant to Section 3.7 (f) or (p).

(b) Clause (vii) of Section 3.4(b) is amended to read in its entirety:

**Non-Recourse Debt of a Restricted Subsidiary.**

(c) Section 3.7(f) of the Indenture is amended to read in its entirety:

(1) Liens incurred by the Company or any Restricted Subsidiary securing Indebtedness Incurred by the Company or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Company or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such a Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or asset being so financed;

(d) Section 3.7(l) is deleted in its entirety and the term "[Deleted]" is inserted in lieu thereof.

(e) Section 3.7(p) is amended to read in its entirety:

Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (f), (g), (h) and (i), provided, however, that (x) such new Lien shall be limited to

all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness);

### **ARTICLE III MISCELLANEOUS**

#### Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.2 of the Indenture of the execution of this First Supplemental Indenture.

#### Section 3.2 Ratification of Indenture.

The Indenture, as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

#### Section 3.3 Governing Law.

This First Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

#### Section 3.4 Separability.

In case any one or more of the provisions contained in this First Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture but this First Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

#### Section 3.5 Counterparts.

This First Supplemental 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 3.6 Effectiveness.

This First Supplemental Indenture shall be effective and binding when executed by the Company and the Trustee.

Section 3.7 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

Section 3.8 Performance by Trustee.

The Trustee, for itself and its successors accepts the Trust of the Indenture as amended by this First Supplemental Indenture and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including the terms and provisions defining and limiting the liability and responsibility of the Trustee.

\* \* \*

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
*Ann B. Curtis*  
*Executive Vice President and*  
*Chief Financial Officer*

**THE BANK OF NEW YORK**  
**as Trustee**

By: /s/ MICHELE L. RUSSO

-----  
*Name: Michele L. Russo*  
*Title: Assistant Vice President*

**CALPINE CORPORATION,**

and

**WILMINGTON TRUST COMPANY, Trustee**

---

**FIRST SUPPLEMENTAL INDENTURE**

**Dated as of September 28, 2000**

Supplementing the Indenture  
Dated as of August 10, 2000

---

**Debt Securities**

FIRST SUPPLEMENTAL INDENTURE, dated as of September 28, 2000, between Calpine Corporation, a Delaware corporation (the "Company"), and Wilmington Trust Company, a Delaware banking corporation ("the Trustee").

WHEREAS, the Company executed and delivered the Indenture, dated as of August 10, 2000 (the "Indenture"), to the Trustee to provide for the issuance of debt securities in one or more series from time to time thereunder in an unlimited aggregate principal amount;

WHEREAS, pursuant to Section 2.1 of the Indenture, two duly authorized members of the Board of Directors of the Company executed and delivered to the Trustee a Directors' Certificate, dated as of August 10, 2000 (the "Directors' Certificate"), that established the terms of the Company's 8-1/4% Senior Notes due 2005 (the "8-1/4% Senior Notes") and the Company's 8-5/8% Senior Notes due 2010 (the "8-5/8% Senior Notes" and together with the 8-1/4% Senior Notes, the "Senior Notes");

WHEREAS, the Company, when authorized by a Board Resolution, and the Trustee may amend the Indenture pursuant to Section 8.1 thereof without notice to or consent of any Holder of the Senior Notes to make any change that does not adversely affect the rights of any Holder of such Series, including, without limitation, changing any payment record dates as necessary to conform to the then-current market practice;

WHEREAS, the Company desires to supplement and amend the Indenture as contemplated by Section 8.1 thereof; and

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

NOW, THEREFORE, for and in consideration of the premises and mutual covenants herein contained, the Company and the Trustee agree as follows:

## **ARTICLE I DEFINITIONS**

### Section 1.1 Definition of Terms

Unless the context otherwise requires:

- (a) capitalized terms used herein that are not otherwise defined herein shall have the meaning assigned to such terms in the Indenture or the Directors' Certificate, as the case may be;
- (b) the singular includes the plural and vice versa;
- (c) headings are for convenience of reference only and do not affect interpretation.

**ARTICLE II  
AMENDMENTS TO THE INDENTURE**

Section 2.1 Amendments

(a) Paragraph 4 of the Directors' Certificate relating to the 8-1/4% Senior Notes is hereby deleted in its entirety and the following paragraph is inserted in lieu thereof to conform the payment record dates in respect of the 8-1/4% Senior Notes to current market practice:

4. The 8-1/4% Senior Notes shall bear interest from August 10, 2000 at the rate of 8-1/4% per annum, payable on February 15 and August 15, commencing February 15, 2001, for payment to Holders of record on the immediately preceding February 1 and August 1, respectively;

(b) Paragraph 4 of the Directors' Certificate relating to the 8-5/8% Senior Notes is hereby deleted in its entirety and the following paragraph is inserted in lieu thereof to conform the payment record dates in respect of the 8-5/8% Senior Notes to current market practice:

4. The 8-5/8% Senior Notes shall bear interest from August 10, 2000 at the rate of 8-5/8% per annum, payable on February 15, and August 15, commencing February 15, 2001, for payment to the Holders of record on the immediately preceding February 1 and August 1, respectively;

**ARTICLE III  
MISCELLANEOUS**

Section 3.1 Notification to Holders.

The Company shall notify the Holders in accordance with Section 8.1 of the Indenture of the execution of this First Supplemental Indenture.

Section 3.2 Notation on Senior Notes.

All Senior notes authenticated and delivered after the date hereof shall bear the following notation, which may be stamped or imprinted thereon:

"In accordance with the First Supplemental Indenture dated as of September 28, 2000, to the Indenture, dated as of August 10, 2000, each between Calpine Corporation and Wilmington Trust Company, as Trustee, the interest payable on this Security on each February 15 and August 15 shall be payable to the Holders of record on the immediately preceding February 1 and August 1, respectively."

The Company shall arrange for and pay all expenses related to such notation.

### Section 3.3 Ratification of Indenture.

The Indenture (including, without limitation, the Directors' Certificate), as supplemented by this First Supplemental Indenture, is in all respects ratified and confirmed, and this First Supplemental Indenture shall be deemed part of the Indenture in the manner and to the extent herein and therein provided.

### Section 3.4 Governing Law.

This First Supplemental Indenture shall be deemed to be a contract made under the laws of the State of New York, and for all purposes shall be construed in accordance with the laws of said State.

### Section 3.5 Separability.

In case any one or more of the provisions contained in this First Supplemental Indenture shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this First Supplemental Indenture but this First Supplemental Indenture shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein or therein.

### Section 3.6 Counterparts.

This First Supplemental 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 3.7 Effectiveness.

This First Supplemental Indenture shall be effective and binding when executed and delivered by the Company and the Trustee.

### Section 3.8 Trustee Not Responsible for Recitals.

The recitals herein contained are made by the Company and not by the Trustee, and the Trustee assumes no responsibility for the correctness thereof. The Trustee makes no representation as to the validity or sufficiency of this First Supplemental Indenture.

### Section 3.9 Performance by Trustee.

The Trustee, for itself and its successors accepts the trusts under the Indenture as amended by this First Supplemental Indenture, and agrees to perform the same, but only upon the terms and conditions set forth in the Indenture, including, without limitation, the terms and provisions defining and limiting the liability and responsibility of the Trustee.

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

**CALPINE CORPORATION**

By: /s/ ANN B. CURTIS

-----  
Name: Ann B. Curtis  
Title: Executive Vice President and  
Chief Financial Officer

**WILMINGTON TRUST COMPANY,  
as Trustee**

By: /s/ BRUCE L. BISSON

-----  
Name: Bruce L. Bisson  
Title: Vice President

**EXHIBIT 4.12.1**

**EXECUTION COPY**

---

**PASS THROUGH TRUST AGREEMENT**

**Dated as of December 19, 2000**

between

**TIVERTON POWER ASSOCIATES LIMITED PARTNERSHIP,**

**RUMFORD POWER ASSOCIATES LIMITED PARTNERSHIP,**

and

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,**

not in its individual capacity, but solely as Pass Through Trustee

**Tiverton and Rumford 2000 Pass Through Trust**

**9.00% Pass Through Certificates**

---

SECTION 1.	DEFINITIONS.....	6
Section 1.1.	Definitions.....	6
Section 1.2.	Compliance Certificates and Opinions.....	11
Section 1.3.	Form of Documents Delivered to Pass Through Trustee.....	12
Section 1.4.	Acts of Holders.....	13
Section 1.5.	Conflict with Trust Indenture Act.....	14
SECTION 2.	ACQUISITION OF LESSOR NOTES; ORIGINAL ISSUANCE OF CERTIFICATES.....	14
Section 2.1.	Issuance of Certificates; Acquisition of Lessor Notes.....	14
Section 2.2.	Acceptance by Pass Through Trustee.....	15
Section 2.3.	Limitation of Powers.....	15
SECTION 3.	THE CERTIFICATES.....	15
Section 3.1.	Form, Denomination and Execution of Certificates.....	15
Section 3.2.	Authentication of Certificates.....	16
Section 3.3.	Temporary Certificates.....	16
Section 3.4.	Registration of Transfer and Exchange of Certificates.....	17
Section 3.5.	Mutilated, Destroyed, Lost or Stolen Certificates.....	19
Section 3.6.	Persons Deemed Owners.....	19
Section 3.7.	Cancellation.....	19
Section 3.8.	Limitation of Liability for Payments.....	19
Section 3.9.	Book-Entry and Definitive Certificates.....	20
Section 3.10.	Form of Certification.....	23
SECTION 4.	DISTRIBUTIONS; STATEMENTS TO CERTIFICATEHOLDERS.....	23
Section 4.1.	Certificate Account and Special Payments Account.....	23
Section 4.2.	Distributions from Certificate Account and Special Payments Account.....	24
Section 4.3.	Statements to Certificateholders.....	25
Section 4.4.	Investment of Special Payment Moneys.....	26
SECTION 5.	FINANCIAL STATEMENTS AND OTHER REPORTS.....	26
SECTION 6.	DEFAULT.....	27
Section 6.1.	Events of Default.....	27
Section 6.2.	Incidents of Sale of Lessor Notes.....	28

Section 6.3.	Judicial Proceedings Instituted by Pass Through Trustee.....	28
Section 6.4.	Control by Certificateholders.....	29
Section 6.5.	Waiver of Defaults.....	30
Section 6.6.	Undertaking to Pay Court Costs.....	30
Section 6.7.	Right of Certificateholders to Receive Payments Not to Be Impaired.....	31
Section 6.8.	Certificateholders May Not Bring Suit Except Under Certain Conditions.....	31
Section 6.9.	Remedies Cumulative.....	32
SECTION 7.	THE PASS THROUGH TRUSTEE.....	32
Section 7.1.	Certain Duties and Responsibilities.....	32
Section 7.2.	Notice of Defaults.....	33
Section 7.3.	Certain Rights of Pass Through Trustee.....	33
Section 7.4.	Not Responsible for Recitals; Issuance of Certificates.....	34
Section 7.5.	May Hold Certificates.....	34
Section 7.6.	Money Held in Pass Through Trust.....	35
Section 7.7.	Compensation, Reimbursement and Indemnification.....	35
Section 7.8.	Corporate Trustee Required; Eligibility.....	35
Section 7.9.	Resignation and Removal: Appointment of Successor.....	36
Section 7.10.	Acceptance of Appointment by Successor.....	37
Section 7.11.	Merger, Conversion, Consolidation or Succession to Business.....	38
Section 7.12.	Maintenance of Agencies.....	38
Section 7.13.	Money for Certificate Payments to Be Held in Trust.....	39
Section 7.14.	Registration of Lessor Notes in Pass Through Trustee's Name.....	40
Section 7.15.	Withholding Taxes; Information Reporting.....	40
SECTION 8.	CERTIFICATEHOLDERS' LISTS AND REPORTS.....	40
Section 8.1.	The Partnerships to Furnish Pass Through Trustee with Names and Addresses of Certificateholder.....	40
Section 8.2.	Preservation of Information.....	41
Section 8.3.	Reports by the Partnerships.....	41
Section 8.4.	Reports by the Pass Through Trustee.....	41
SECTION 9.	SUPPLEMENTAL TRUST AGREEMENTS.....	41
Section 9.1.	Supplemental Trust Agreement Without Consent of Certificateholders.....	41

Section 9.2.	Supplemental Trust Agreements with Consent of Certificateholders.....	42
Section 9.3.	Documents Affecting Immunity or Indemnity.....	43
Section 9.4.	Execution of Supplemental Trust Agreements.....	43
Section 9.5.	Effect of Supplemental Trust Agreements.....	44
Section 9.6.	Reference in Certificates to Supplemental Trust Agreements.....	44
Section 9.7.	Conformity with Trust Indenture Act.....	44
SECTION 10.	AMENDMENTS AND CONSENTS TO COLLATERAL TRUST INDENTURE AND OTHER LESSOR NOTE DOCUMENTS.....	44
SECTION 11.	TERMINATION OF PASS THROUGH TRUST.....	45
Section 11.1.	Termination of the Pass Through Trust.....	45
SECTION 12.	MISCELLANEOUS PROVISIONS.....	46
Section 12.1.	Amendments and Waivers.....	46
Section 12.2.	Limitation on Rights of Certificateholders.....	46
Section 12.3.	Certificates Nonassessable and Fully Paid.....	46
Section 12.4.	Notices, etc. to Partnerships and Pass Through Trustee.....	46
Section 12.5.	Notices to Holders; Waiver.....	48
Section 12.6.	Successors and Assigns.....	48
Section 12.7.	Business Day.....	48
Section 12.8.	Governing Law.....	49
Section 12.9.	Severability.....	49
Section 12.10.	Benefits of Pass Through Trust Agreement.....	49
Section 12.11.	Counterparts.....	49
Section 12.12.	Headings and Table of Contents.....	49
Section 12.13.	Further Assurances.....	49
Section 12.14.	Effectiveness.....	49
Section 12.15.	Statement of Intent.....	49

**SCHEDULE:**

Schedule 1 Participation Agreement

EXHIBITS:

Exhibit A Form of Certificate  
Exhibit B Form of Pass Through Trustee's Certificate of Authentication  
Exhibit C Form of Transfer Certificate  
Exhibit D Form of Purchase Letter for Institutional Accredited Investors

## PASS THROUGH TRUST AGREEMENT

This PASS THROUGH TRUST AGREEMENT, dated as of December 19, 2000 (this "Pass Through Trust Agreement"), with respect to the formation of the Tiverton and Rumford 2000 Pass Through Trust (the "Pass Through Trust"), between TIVERTON POWER ASSOCIATES LIMITED PARTNERSHIP, a Rhode Island limited partnership ("Tiverton"), RUMFORD POWER ASSOCIATES LIMITED PARTNERSHIP, a Maine limited partnership ("Rumford," together, the "Partnerships"), and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, as Pass Through Trustee (the "Pass Through Trustee").

### WITNESSETH:

WHEREAS, the Partnerships, the Pass Through Trustee, and certain other parties named therein have entered into the Participation Agreement referred to on Schedule 1 hereto, pursuant to which the Partnerships have agreed to (a) sell to the Owner Lessor certain interests in the Tiverton facility and Rumford facility (together, the "Facilities"), and (b) lease from the Owner Lessor such Facilities;

WHEREAS, Tiverton and Rumford will consummate the sale to and lease from the Owner Lessor of the Facilities on the Closing Date;

WHEREAS, on the Closing Date, the Owner Lessor will enter into a Collateral Trust Indenture and issue, on a non-recourse basis, Lessor Notes thereunder to finance a portion of the purchase price for the Facilities;

WHEREAS, subject to the terms and conditions of this Pass Through Trust Agreement, the Pass Through Trust will purchase the Lessor Notes issued in connection with the purchase of the Facilities from Tiverton and Rumford on the Closing Date and will hold all such Lessor Notes in trust for the benefit of the Certificateholders;

WHEREAS, the Pass Through Trustee, upon the execution and delivery of this Pass Through Trust Agreement, hereby declares the creation of this Pass Through Trust for the benefit of the Certificateholders, and the initial Certificateholders as the grantors of the Pass Through Trust and by their respective acceptances of the Certificates join in the creation of this Pass Through Trust with the Pass Through Trustee; and

WHEREAS, to facilitate the sale of the Lessor Notes to the Pass Through Trust and the purchase of the Lessor Notes by the Pass Through Trust, the Partnerships are, on a joint and several basis, undertaking to perform certain administrative and ministerial duties hereunder and are also undertaking to pay the fees and expenses of the Pass Through Trustee.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and of the other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. DEFINITIONS

### Section 1.1. Definitions.

(a) Unless the context hereof otherwise requires, capitalized terms used in this Pass Through Trust Agreement, including those in the recitals, and not otherwise defined herein shall have the respective meanings set forth in Appendix A to the Participation Agreement. The general provisions of Appendix A to such Participation Agreement shall apply to the terms used in this Pass Through Trust Agreement and specifically defined herein.

(b) As used in this Pass Through Trust Agreement, the following terms shall have the respective meanings assigned thereto as follows:

"Act", when used with respect to any Holder, shall have the meaning specified in Section 1.4.

"Authorized Agent" shall mean any Paying Agent or Registrar.

"Avoidable Tax" shall have the meaning specified in 7.9(e).

"Book-Entry Certificate" shall mean a beneficial interest in the Certificates, ownership and transfers of which shall be made through book entries by a Clearing Agency as described in Section 3.9.

"Cedelbank" shall have the meaning specified in Section 3.9.

"Certificate" shall mean any one of the certificates executed and authenticated by the Pass Through Trustee, substantially in the form of Exhibit A hereto.

"Certificate Account" shall mean that account or accounts created and maintained pursuant to Section 4.1(a).

"Certificate Owner" shall mean, when used in Section 3.9, the Person for whom a Clearing Agency Participant acts.

"Certificate Owner Request" shall mean a request to the Pass Through Trustee to receive the reports and other information the Partnerships or any other Person is required to furnish to the Pass Through Trustee pursuant to the Operative Documents, which request certifies that the Person making the request is a Certificateholder or Certificate Owner. Any Certificateholder or Certificate Owner making a Certificate Owner Request may specify its election to receive such information from the Pass Through Trustee on an ongoing basis.

"Certificateholder" or "Holder" shall mean the Person in whose name a Certificate is registered in the Register.

"Clearing Agency" shall mean an organization registered as a "clearing agency" pursuant to Section 17A of the Exchange Act.

"Clearing Agency Participant" shall mean a broker, dealer, bank, other financial institution or other Person for whom from time to time a Clearing Agency effects, directly or indirectly, book-entry transfers and pledges of securities deposited with the Clearing Agency.

"Collateral Trust Indenture" shall mean (i) an Indenture of Trust, Mortgage and Security Agreement between the Owner Lessor and the Indenture Trustee, entered into pursuant to the Participation Agreement, as the same may be amended or supplemented in accordance with its terms and (ii) any Indenture of Trust, Mortgage and Security Agreement, or analogous document, between the Partnerships and a Indenture Trustee, entered into in connection with the assumption by the Partnerships of the indebtedness evidenced by any Lessor Note, as the same may be amended or supplemented in accordance with its terms.

"Consideration" shall have the meaning specified in Section 2.1.

"Default" shall mean any event which is or, after notice or lapse of time or both would become, an Event of Default.

"Definitive Certificates" shall have the meaning specified in Section 3.9.

"Direction" shall have the meaning specified in Section 1.4(c).

"Distribution Date" shall mean, with respect to distributions of Scheduled Payments, each January 15 and July 15 until payment of all the Scheduled Payments to be made under the Lessor Notes have been made, commencing on July 15, 2001.

"DTC" shall mean The Depository Trust Company and any successor that is a Clearing Agency.

"Euroclear" shall have the meaning specified in Section 3.9.

"Event of Default" shall have the meaning specified in Section 6.1(a).

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Fractional Undivided Interest" shall mean the fractional undivided interest in the Pass Through Trust that is evidenced by a Certificate.

"Holder" shall have the meaning set forth in the definition of "Certificateholder".

"Indenture Trustee" shall mean a bank or trust company acting as indenture trustee under the Collateral Trust Indenture, and any successor to such Indenture Trustee as such trustee. The term "Indenture Trustee" refers to any one or all of such Indenture Trustees, as the context requires.

"Institutional Accredited Investor" shall mean an institutional "accredited investor", as such term is defined in Rule 501(a)(1), (2), (3) or (7) under the Securities Act.

"Lease" shall mean a Facility Lease Agreement between the Owner Lessor, as the lessor, and each respective Partnership, as the lessee, entered into pursuant to the Participation Agreement, as such Lease may be amended or supplemented in accordance with its terms. The term "Lease" refers to any one or all of such Leases, as the context requires.

"Lease Event of Default" shall mean any Lease Event of Default (as such term is defined in a Lease).

"Lease Indenture Default" shall mean any event which is, or after notice or lapse of time or both would become, a Lease Indenture Event of Default.

"Lease Transaction" shall mean a sale leaseback transaction in respect of an Undivided Interest between Tiverton or Rumford, as applicable, and the Owner Lessor that is financed in part by the issuance of Lessor Notes to the Pass Through Trust, as contemplated by the Participation Agreement and the agreements and instruments referred to therein.

"Lessor Note" shall mean any one of the Notes (as defined in the Collateral Trust Indenture) issued under the Collateral Trust Indenture, including any Lessor Note (as so defined) issued under the Collateral Trust Indenture in replacement or substitution therefor, held by the Pass Through Trustee.

"Lessor Note Documents" shall mean, with respect to any Lessor Note, the Collateral Trust Indenture, Participation Agreement and the Lease entered into pursuant to the Participation Agreement.

"Letter of Representations" shall mean the agreement among the Partnerships, the Pass Through Trustee and the initial Clearing Agency.

"Outstanding" shall mean, when used with respect to Certificates, as of the date of determination, and subject to Section 1.4(c), all Certificates theretofore authenticated and delivered under this Pass Through Trust Agreement, except:

(i) Certificates theretofore canceled by the Registrar or delivered to the Pass Through Trustee or the Registrar for cancellation;

(ii) Certificates for which money in the full amount thereof has been theretofore deposited with the Pass Through Trustee or any Paying Agent in trust for the holders of such Certificates as provided in Section 4.1 pending distribution of such money to the Certificateholders pursuant to the final distribution payment to be made pursuant to Section 11.1; and

(iii) Certificates in exchange for or in lieu of which other Certificates have been authenticated and delivered pursuant to this Pass Through Trust Agreement.

"Owner Lessor" shall mean a Delaware limited liability company indirectly owned by an institutional investor.

"Owner Participant" shall mean a Delaware limited liability company indirectly owned by an institutional investor.

"Participation Agreement" shall mean the Participation Agreement among Tiverton, Rumford, the Owner Participant, the Owner Lessor, an Indenture Trustee and the Pass Through Trustee, providing for the Lease Transaction, as identified on Schedule 1 hereto.

"Partnerships" shall have the meaning specified in the Preamble hereto.

"Pass Through Trust" shall mean the trust created by this Pass Through Trust Agreement, the estate of which consists of the Trust Property.

"Pass Through Trustee" shall mean State Street Bank and Trust Company of Connecticut, National Association, not in its individual capacity, but solely as Pass Through Trustee under this Pass Through Trust Agreement, and each other Person that may be acting as a Pass Through Trustee in accordance with the provisions provided herein.

"Paying Agent" shall mean the paying agent maintained and appointed pursuant to Section 7.12.

"Permanent Regulation S Global Certificate" shall have the meaning specified in Section 3.9.

"Permitted Government Investment" shall mean the obligations of the United States of America for the payment of which the full faith and credit of the United States of America is pledged, maturing in not more than 60 days or such lesser time as is necessary for payment of any Special Payments on a Special Distribution Date.

"Record Date" shall mean (i) for Scheduled Payments to be distributed on any Distribution Date, other than the final distribution, the day (whether or not a Business Day) which is fifteen days preceding such Distribution Date, and (ii) for Special Payments to be distributed on any Special Distribution Date, other than the final distribution, the day (whether or not a Business Day) which is fifteen days preceding such Special Distribution Date.

"Register" and "Registrar" shall mean the register maintained and the registrar appointed pursuant to Sections 3.4 and 7.12.

"Regulation S Global Certificate" shall have the meaning specified in Section 3.9.

"Request" shall mean a request by the Partnerships, the Owner Lessor, or any Indenture Trustee setting forth the subject matter of the request accompanied by an Officer's Certificate and an Opinion of Counsel as provided in Section 1.2.

"Responsible Officer" shall mean, with respect to any Person, (i) its Chairman of the Board, its President, any Senior Vice President, the Chief Financial Officer, any Vice President, the Treasurer or any other management employee (a) that has the power to take the action in question and has been authorized, directly or indirectly, by the Board of Directors or equivalent body of such Person, (b) working under the direct supervision of such Chairman of the Board, President, Senior Vice President, Chief Financial Officer, Vice President or Treasurer and (c) whose responsibilities include the administration of the Overall Transaction and (ii) with respect to the Pass Through Trustee and the Indenture Trustee an officer in their respective corporate trust departments.

"Restricted Certificate" shall have the meaning specified in Section 3.1.

"Restricted Global Certificate" shall have the meaning specified in Section 3.9.

"Scheduled Payment" shall mean, with respect to a Distribution Date, any payment (other than a Special Payment) of principal and interest on a Lessor Note, due from the Owner Lessor, which payment represents the payment of a regularly scheduled installment of principal then due on such Lessor Note, or the payment of regularly scheduled interest accrued on such Lessor Note.

"SEC" shall mean the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Special Distribution Date" shall mean (i) with respect to the prepayment, redemption or otherwise prepayment of any Lessor Notes, the day on which such prepayment, redemption or otherwise prepayment is scheduled to occur pursuant to the terms of the Collateral Trust Indenture, and (ii) with respect to any Special

Payment relating to a Lessor Note other than as described in clause (i) of the definition of Special Payment, the earliest second day of a month for which it is practicable for the Pass Through Trustee to give notice pursuant to Section 4.2(c).

"Special Payment" shall mean (i) any payment of principal, premium, if any, and interest on a Lessor Note resulting from the redemption or otherwise prepayment of such Lessor Note pursuant to the applicable provisions of the Collateral Trust Indenture, (ii) any payment of principal and interest (including any interest accruing upon default) on, or any other amount in respect of, such Lessor Note upon a Lease Indenture Event of Default in respect thereof or upon the exercise of remedies under the Collateral Trust Indenture relating to such Lessor Note, (iii) any Special Payment referred to in clause (i) of this definition or any Scheduled Payment which is not in fact paid within five days of the Special Distribution Date or Distribution Date applicable thereto, or (iv) any proceeds from the sale of any Lessor Note by the Pass Through Trustee pursuant to Section 6 hereof.

"Special Payments Account" shall mean the account or accounts created and maintained pursuant to Section 4.1(b).

"Temporary Regulation S Global Certificate" shall have the meaning specified in Section 3.9.

"Transfer Date" shall mean the closing date of the public offering of the Certificates.

"Trust Indenture Act" shall mean the Trust Indenture Act of 1939, as amended and as in force on the date on which this Pass Through Trust Agreement was executed and delivered, except as provided in Section 9.7; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" shall mean, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"Trust Property" shall mean the Lessor Notes held as the property of the Pass Through Trust created hereby and all monies at any time paid thereon and all monies due and to become due thereunder, funds from time to time deposited in the Certificate Account and the Special Payments Account and any proceeds from the sale by the Pass Through Trustee pursuant to Section 6 hereof of any Lessor Note.

#### Section 1.2. Compliance Certificates and Opinions.

(a) Upon any application or request by either Partnership, the Owner Lessor or any Indenture Trustee to the Pass Through Trustee to take any action under any provision of this Pass Through Trust Agreement, such Partnership, the Owner Lessor or such Indenture Trustee, as the case may be, shall furnish to the Pass Through Trustee an Officer's Certificate

stating that, in the opinion of the signers, all conditions precedent, if any, provided for in this Pass Through Trust Agreement relating to the proposed action have been complied with and an Opinion of Counsel stating that in the opinion of such counsel all such conditions precedent, if any, have been complied with, except that in the case of any such application or request as to which the furnishing of such documents is specifically required by any provision of this Pass Through Trust Agreement relating to such particular application or request, no additional certificate or opinion need be furnished.

(b) Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Pass Through Trust Agreement shall include:

(1) a statement that each individual signing 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 each such individual, he has made such examination or investigation as is necessary to enable him to express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

### Section 1.3. Form of Documents Delivered to Pass Through Trustee.

(a) In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters and any such Person may certify or give an opinion as to such matters in one or several documents.

(b) Any Officer's Certificate may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless the signer of such Officer's Certificate knows that the certificate or opinion or representations with respect to the matters upon which his certificate or opinion is based are erroneous. Any such certificate or Opinion of Counsel may be based, insofar as it relates to factual matters, upon an Officer's Certificate stating that the information with respect to such factual matters is in the possession of the signer of such Officer's Certificate, unless such counsel knows that the certificate or opinions or representations with respect to such matters are erroneous.

(c) Any Opinion of Counsel stated to be based on the opinion of other counsel shall be accompanied by a copy of such other opinion.

(d) Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this

Pass Through Trust Agreement, they may, but need not, be consolidated and form one instrument.

#### Section 1.4. Acts of Holders.

(a) Any direction, consent, waiver, demand, authorization, request, approval or other action provided by this Pass Through Trust Agreement to be given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent or agents duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments are delivered to the Pass Through Trustee and, where it is hereby expressly required, to the Partnerships, the Owner Lessor or any Indenture Trustee. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Pass Through Trust Agreement and (subject to Section 7.1) conclusive in favor of the Pass Through Trustee, the Partnerships, the Owner Lessor and any Indenture Trustee, if made in the manner provided in this Section.

(b) The fact and date of the execution by any Person of any such instrument or writing may be proved in any reasonable manner which the Pass Through Trustee deems sufficient.

(c) In determining whether the Holders of the requisite Fractional Undivided Interests of Certificates Outstanding have given any direction, consent, waiver or other action (a "Direction"), under this Pass Through Trust Agreement, Certificates owned by the Partnerships, the Owner Lessor, the Owner Participant or any Affiliate of any such Person shall be disregarded and deemed not to be Outstanding under this Pass Through Trust Agreement for purposes of any such determination. In determining whether the Pass Through Trustee shall be protected in relying upon any such Direction, only Certificates which the Pass Through Trustee knows to be so owned shall be so disregarded. Notwithstanding the foregoing, (i) if any such Person owns 100% of the Certificates Outstanding, such Certificates shall not be so disregarded as aforesaid, and (ii) if any amount of Certificates so owned by any such Person have been pledged in good faith, such Certificates shall not be disregarded as aforesaid if the pledgee establishes to the satisfaction of the Pass Through Trustee the pledgee's right so to act with respect to such Certificates and that the pledgee is not one of the Partnerships, the Owner Lessor, the Owner Participant or any Affiliate of any such Person.

(d) Any Act by the Holder of any Certificate shall bind the Holder of every Certificate issued upon the transfer thereof or in exchange therefor or in lieu thereof, whether or not notation of such Act is made upon such Certificate.

(e) Except as otherwise provided in Section 1.4(c), Certificates owned by or pledged to any Person shall have an equal and proportionate benefit under the provisions of this Pass Through Trust Agreement, without preference, priority or distinction as among all of the Certificates.

(f) Notwithstanding anything herein to the contrary, the Certificates will vote and consent together on all matters as one class and will not have the right to vote or consent as a separate class on any matter.

(g) The Pass Through Trustee may fix in advance a record date for the determination of the Holders entitled to give any request, demand, authorization, direction, notice, consent, waiver or other Act solicited by the Partnerships, but the Pass Through Trustee shall not have any obligation to do so.

Section 1.5. Conflict with Trust Indenture Act. If any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required or deemed under such Act to be a part of and govern this Pass Through Trust Agreement, such required or deemed provision shall, so long as the Certificates shall be subject to the Trust Indenture Act, control. If any provision of this Pass Through Trust Agreement modifies or excludes any provision of the Trust Indenture Act that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

## SECTION 2. ACQUISITION OF LESSOR NOTES; ORIGINAL ISSUANCE OF CERTIFICATES

### Section 2.1. Issuance of Certificates; Acquisition of Lessor Notes.

(a) The Pass Through Trustee, at or promptly following the execution and delivery of this Pass Through Trust Agreement, shall also execute and deliver the Participation Agreement, in the form delivered to the Pass Through Trustee on or prior to the date of the execution and delivery hereof. Upon delivery of an authentication order by each of the Partnerships and the satisfaction of the closing conditions with respect to the Lessor Notes in

Section 4 of the Participation Agreement, the Pass Through Trustee shall execute, deliver and authenticate, on behalf of the Pass Through Trust, Certificates equaling in the aggregate the total principal amount of the Lessor Notes deposited into the Pass Through Trust on the Transfer Date. The Certificates so executed, delivered and authenticated on the Transfer Date shall evidence the entire ownership of the Pass Through Trust. The Pass Through Trust shall issue such Certificates on the Transfer Date, in authorized denominations and in such Fractional Undivided Interests, so as to result in the receipt of consideration (the "Consideration") in an amount equal to the aggregate principal amount of such Lessor Notes referred to in the second preceding sentence. The Pass Through Trust shall purchase Lessor Notes on the Transfer Date at an aggregate purchase price equal to the amount of the Consideration so received. Except as provided in Sections 3.4 and 3.5 hereof, the Pass Through Trustee shall not execute or deliver Certificates in excess of the aggregate amount specified in this paragraph.

(b) The Partnerships' Assumption of Lessor Notes. If either Partnership shall assume the obligations of the Owner Lessor under its Lessor Note pursuant to the Collateral Trust Indenture, the Pass Through Trustee shall, upon its receipt of written instructions from such Partnership, surrender the applicable Lessor Notes issued pursuant to the Collateral Trust Indenture to the Indenture Trustee in exchange for new Lessor Notes of the same aggregate outstanding principal amount as the Lessor Notes so surrendered, bearing interest at the same rate, and having the same maturity and amortization schedule, and otherwise of similar tenor,

issued under the Collateral Trust Indenture and any new Collateral Trust Indenture entered into by such Partnership and the Indenture Trustee in connection with such assumption, and thereafter each reference to such Lessor Notes in this Pass Through Trust Agreement shall be deemed to mean a reference to such new Lessor Notes.

(c) Authentication. Any authentication order delivered by either of the Partnerships hereunder shall be signed by one of such Partnership's authorized signatories and shall specify the amount and maturity of the Certificates to be authenticated and the date on which the original issue of Certificates is to be authenticated. The Pass Through Trustee may appoint an authenticating agent to authenticate the Certificates. Unless limited by the terms of such appointment, an authenticating agent may authenticate the Certificates whenever the Pass Through Trustee may do so. Each reference in this Pass Through Trust Agreement to authentication by the Pass Through Trustee includes authentication by such agent. An authenticating agent has the same rights as any Registrar, Paying Agent or agent for service of notices and demands.

Section 2.2. Acceptance by Pass Through Trustee. The Pass Through Trustee, upon the execution and delivery of this Pass Through Trust Agreement, acknowledges on behalf of the Pass Through Trust its acceptance of all right, title, and interest in and to the Lessor Notes acquired pursuant to Section 2.1 hereof and declares that the Pass Through Trustee holds and will hold such right, title, and interest, together with all other property constituting the Trust Property, for the benefit of all present and future Certificateholders, upon the trusts herein set forth. By its payment for and acceptance of each Certificate issued to it hereunder, each initial Certificateholder as grantor of the Pass Through Trust thereby joins in the creation and declaration of the Pass Through Trust. The Pass Through Trustee shall be under no duty or obligation to inspect, review or examine the Lessor Notes to determine that they are genuine, valid, binding, enforceable or appropriate for the represented purpose or that they are other than what they purport to be on their face.

Section 2.3. Limitation of Powers. The Pass Through Trust is constituted solely for the purpose of making the investment in the Lessor Notes, and, except as set forth herein, the Pass Through Trustee is not authorized or empowered to acquire any other investments or engage in any other activities and, in particular, the Pass Through Trustee is not authorized or empowered to do anything that would cause the Pass Through Trust to fail to qualify as a pass through entity for federal income tax purposes (including, as subject to this restriction, acquiring any Undivided Interest or any portion thereof by bidding the Lessor Notes or otherwise, or taking any action with respect to any Undivided Interest or any portion thereof once acquired).

### SECTION 3. THE CERTIFICATES

Section 3.1. Form, Denomination and Execution of Certificates. The Certificates shall be issued in registered form without coupons and shall be substantially in the form attached hereto as Exhibit A, with such omissions, variations and insertions as are permitted by this Pass Through Trust Agreement, and may have such letters, numbers or other marks of identification and such legends or endorsements printed, lithographed or engraved thereon, as may be required to comply with the rules of any securities exchange on which such Certificates may be listed or to conform to any usage in respect thereof, or as may, consistently herewith, be prescribed by the

Pass Through Trustee or by the officer executing such Certificates, such determination by said officer to be evidenced by his signing the Certificates.

Except as provided in Section 3.9, definitive Certificates shall be printed, lithographed or engraved or produced by any combination of these methods, all as determined by the officer executing such Certificates, as evidenced by his execution of such Certificates.

During the period beginning on the Closing Date and ending on the date two years from the Closing Date, all Certificates issued on the Closing Date, and all Certificates issued upon registration of transfer of, or in exchange for, such Certificates, shall be "Restricted Certificates" and shall be subject to the restrictions on transfer provided in the legend set forth on the face of the form of certificate in Exhibit A; provided, however, that the term "Restricted Certificates" shall not include Certificates as to which such restrictions on transfer have been terminated in accordance with Section 3.4. All Restricted Certificates shall bear the legend set forth on the face of the Certificate in Exhibit A. Certificates which are not Restricted Certificates shall not bear such legend.

The Certificates shall be issued in minimum denominations of \$100,000 or integral multiples of \$1,000 in excess thereof.

The Certificates shall be executed on behalf of the Pass Through Trust by manual or facsimile signature of a Responsible Officer of the Pass Through Trustee. Certificates bearing the manual or facsimile signature of an individual who was, at the time when such signature was affixed, authorized to sign on behalf of the Pass Through Trustee shall be valid and binding obligations of the Pass Through Trust, notwithstanding that such individual has ceased to be so authorized prior to the authentication and delivery of such Certificates or did not hold such office at the date of such Certificates. No Certificate shall be entitled to any benefit under this Pass Through Trust Agreement, or be valid for any purpose unless there appears on such Certificate a certificate of authentication substantially in the form set forth in Exhibit B hereto executed by the Pass Through Trustee by manual signature, and such certificate of authentication upon any Certificate shall be conclusive evidence, and the only evidence, that such Certificate has been duly authenticated and delivered hereunder. All Certificates shall be dated the date of their authentication.

Section 3.2. Authentication of Certificates. Upon delivery of an authentication order by the Partnerships, the Pass Through Trustee shall cause to be delivered Certificates duly authenticated by the Pass Through Trustee, in authorized denominations equaling in the aggregate the aggregate principal amount set forth in the authentication order evidencing the entire ownership of the Pass Through Trust.

Section 3.3. Temporary Certificates. Pending the preparation of definitive Certificates, the Pass Through Trustee may execute, authenticate and deliver temporary Certificates which are printed, lithographed, typewritten, or otherwise produced, in any denomination, containing substantially the same terms and provisions as set forth in Exhibit A, except for such appropriate insertions, omissions, substitutions and other variations relating to their temporary nature as the officer executing such temporary Certificates may determine, as evidenced by his or her execution of such temporary Certificates.

If temporary Certificates are issued, the Partnerships will cause definitive Certificates to be prepared without unreasonable delay. After the preparation of definitive Certificates, the temporary Certificates shall be exchangeable for definitive Certificates upon surrender of the temporary Certificates at the Corporate Trust Office of the Pass Through Trustee, or at the office or agency of the Pass Through Trustee maintained in accordance with

Section 7.12, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Certificates, the Pass Through Trustee shall execute, authenticate and deliver in exchange therefor definitive Certificates of authorized denominations of a like aggregate Fractional Undivided Interest. Until so exchanged, such temporary Certificates shall in all respects be entitled to the same benefits under this Pass Through Trust Agreement as definitive Certificates.

#### Section 3.4. Registration of Transfer and Exchange of Certificates.

(a) The Pass Through Trustee shall cause to be kept, at the office or agency to be maintained by it in accordance with the provisions of Section 7.12, a register (the "Register") in which, subject to the provisions of this Section 3.4 and the Certificates, the Pass Through Trustee shall provide for the registration of Certificates (registering owners of Certificates and the principal of and any interest on the Lessor Notes represented by the Certificates held by each owner) and of transfers and exchanges of Certificates as herein provided. The Pass Through Trustee shall initially be the registrar (the "Registrar") for the purpose of registering Certificates and transfers and exchanges of Certificates as herein provided.

(b) Every Restricted Certificate shall be subject to the restrictions on transfer provided in the legend required to be set forth on the face of each Restricted Certificate pursuant to Section 3.1, and the Holder of each Restricted Certificate, by such Holder's acceptance thereof, agrees to be bound by such restrictions on transfer. Whenever any Restricted Certificate is presented or surrendered for registration of transfer or for exchange for a Certificate registered in a name other than that of the Holder, such Restricted Certificate must be accompanied by a certificate in substantially the form set forth in Exhibit C hereto, dated the date of such surrender and signed by the Holder of such Restricted Certificate, or such Holder's attorney duly authorized in writing, as to compliance with such restrictions on transfer. Neither the Pass Through Trustee nor any Registrar shall be required to accept for such registration of transfer or exchange any Restricted Certificate not so accompanied by a properly completed certificate. Notwithstanding the preceding two sentences, a properly completed certificate shall not be required in connection with any transfer of any Restricted Certificate through the facilities of DTC or any other United States securities clearance and settlement organization; provided, that such transfer does not require a change in the name (other than to another nominee of DTC or such other securities clearance and settlement organization) in which such Restricted Certificate is then registered. Any transfer of ownership of Certificates shall be effective only when such transfer is reflected on the Register.

Whenever any Restricted Certificate is proposed to be transferred by a Holder to an Institutional Accredited Investor, the Pass Through Trustee shall have received from such Institutional Accredited Investor, prior to such transfer, a signed letter substantially in the form of Exhibit D relating to certain representations and agreements regarding restrictions on transfer of such Restricted Certificate. In addition, if such Restricted Certificate evidences a Fractional

Undivided Interest of less than \$100,000, the Institutional Accredited Investor must, prior to such transfer, furnish to the Registrar an Opinion of Counsel to confirm that such transfer is being made pursuant to an exemption from, or in a transaction not subject to, the registration requirements of the Securities Act.

The restrictions imposed by this Section 3.4 and Section 3.1 upon the transferability of any particular Restricted Certificate shall cease and terminate if and when such Restricted Certificate has been (i) sold pursuant to an effective registration statement under the Securities Act, or (ii) transferred pursuant to Rule 144 under the Securities Act (or any successor provision thereto), unless the Holder thereof is an affiliate of either of the Partnerships within the meaning of Rule 144 (or such successor provision). Any Restricted Certificate as to which such restrictions on transfer shall have expired in accordance with their terms or shall have terminated may, upon surrender of such Restricted Certificate for exchange to the Pass Through Trustee or any Registrar in accordance with the provisions of this Section 3.4 (accompanied, in the event that such restrictions on transfer have terminated by reason of a transfer pursuant to Rule 144 or any successor provision, by an Opinion of Counsel having substantial experience in practice under the Securities Act and otherwise reasonably acceptable to each of the Partnerships, addressed to each of the Partnerships and the Pass Through Trustee and in form acceptable to each of the Partnerships, to the effect that the transfer of such Restricted Certificate has been made in compliance with Rule 144 or such successor provision), be exchanged for a new Certificate, of authorized denominations of a like aggregate Fractional Undivided Interest, which shall not bear the restrictive legend required by Section 3.1. The Pass Through Trustee shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the aforementioned Opinion of Counsel.

(c) Upon surrender for registration of transfer of any Certificate that is not a Restricted Certificate at the Corporate Trust Office or such other office or agency, the Pass Through Trustee shall execute, authenticate and deliver, in the name of the designated transferee or transferees, one or more new Certificates, in authorized denominations of a like aggregate Fractional Undivided Interest.

(d) At the option of a Certificateholder, Certificates may be exchanged for other Certificates, in authorized denominations and of a like aggregate Fractional Undivided Interest, upon surrender of the Certificates to be exchanged at any such office or agency; provided, that a Restricted Certificate may only be exchanged for another Restricted Certificate, until such restrictions on such Restricted Certificate shall cease and terminate in accordance with the terms of this Section 3.4. Whenever any Certificates are so surrendered for exchange, the Pass Through Trustee shall execute, authenticate and deliver the Certificates that the Certificateholder making the exchange is entitled to receive. Every Certificate presented or surrendered for registration of transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form satisfactory to each of the Partnerships and the Pass Through Trustee and the Registrar duly executed by the Certificateholder thereof or its attorney duly authorized in writing.

(e) No service charge shall be made to a Certificateholder for any registration of transfer or exchange of Certificates, but the Pass Through Trustee shall require payment of a

sum sufficient to cover any tax or charge that may be imposed in connection with any transfer or exchange of Certificates.

(f) All Certificates surrendered for registration of transfer and exchange shall be canceled and disposed of in accordance with the usual practices of the Pass Through Trustee.

**Section 3.5. Mutilated, Destroyed, Lost or Stolen Certificates.** If any mutilated Certificate is surrendered to the Registrar, or the Registrar receives evidence to its satisfaction of the destruction, loss or theft of any Certificate and in the case of such destruction, loss or theft, there is delivered to the Registrar, the Pass Through Trustee, the Partnerships and the Owner Lessor such security, indemnity or bond as may be required by them to protect each of them and the Pass Through Trust from any loss that any of them may suffer if a Certificate is replaced, then, in the absence of notice to the Registrar or the Pass Through Trustee that such Certificate has been acquired by a bona fide purchaser, the Pass Through Trustee, on behalf of the Pass Through Trust, shall execute, authenticate and deliver, in exchange for or in lieu of any such mutilated, destroyed, lost or stolen Certificate, a new Certificate of like Fractional Undivided Interest with the same final Distribution Date. In connection with the issuance of any new Certificate under this Section 3.5, the Pass Through Trustee shall require the payment of a sum sufficient to cover any tax or other charge that may be imposed in relation thereto and any other expenses (including the fees and expenses of the Pass Through Trustee and the Registrar) connected therewith. Any duplicate Certificate issued pursuant to this Section 3.5 shall constitute conclusive evidence of the appropriate Fractional Undivided Interest in the Pass Through Trust, as if originally issued, whether or not the lost, stolen or destroyed Certificate shall be found at any time.

**Section 3.6. Persons Deemed Owners.** Prior to due presentation of a Certificate for registration of transfer, the Pass Through Trustee, the Partnerships, the Owner Lessor, the Registrar and any Paying Agent may treat the person in whose name any Certificate is registered as the owner of such Certificate for the purpose of receiving distributions pursuant to Section 4.2 and for all other purposes whatsoever, and neither the Pass Through Trustee, either Partnership, the Owner Lessor, the Registrar nor any Paying Agent shall be affected by any notice to the contrary.

**Section 3.7. Cancellation.** All Certificates surrendered for payment, transfer or exchange shall, if surrendered to any Person a party hereto other than the Registrar, be delivered by such Person to the Registrar for cancellation. No Certificates shall be authenticated in lieu of or in exchange for any Certificates canceled as provided in this Section 3.7, except as expressly permitted by this Pass Through Trust Agreement. All canceled Certificates held by the Registrar shall be disposed of in accordance with the usual practice of the Pass Through Trustee and, if destroyed, a certification of their destruction shall be delivered to the Pass Through Trustee.

**Section 3.8. Limitation of Liability for Payments.** All payments or distributions made to Certificateholders under this Pass Through Trust Agreement shall be made only from the Trust Property and only to the extent that the Pass Through Trustee shall have received sufficient income or proceeds from the Trust Property to make such payments in accordance with the terms of Section 4 of this Pass Through Trust Agreement. Each Holder of a Certificate, by its acceptance of such Certificate, agrees that it will look solely to the income and proceeds from the

Trust Property to the extent available for distribution to the Holder thereof as provided in this Pass Through Trust Agreement. Nothing in this Pass Through Trust Agreement shall be construed as an agreement, or otherwise creating an obligation, of (a) either of the Partnerships, the Pass Through Trust or the Pass Through Trustee to pay any of the principal, premium, if any, or interest due from time to time under the Lessor Notes, or (b) either of the Partnerships, the Pass Through Trust or the Pass Through Trustee to pay any amount due from time to time in respect of the Certificates. The liability of the Owner Lessor under the applicable Lessor Notes shall be limited as set forth therein and in the Collateral Trust Indenture.

### Section 3.9. Book-Entry and Definitive Certificates.

(a) Except for Certificates issued to Institutional Accredited Investors which must be issued in the form of definitive, fully registered Certificates ("Definitive Certificates"), the Certificates may be issued in the form of one or more typewritten Certificates representing the Book-Entry Certificates to be delivered to DTC, the initial Clearing Agency, by, or on behalf of, the Pass Through Trustee. In such case, the Certificates delivered to DTC shall initially be registered on the Register in the name of Cede & Co., the nominee of the initial Clearing Agency, and no Certificate Owner will receive a definitive certificate representing such Certificate Owner's interest in the Certificates, except as provided above and in subsection (d) below. As to the Book-Entry Certificates, unless and until Definitive Certificates have been issued pursuant to subsection (d) below:

(i) the provisions of this Section 3.9 shall be in full force and effect;

(ii) the Partnerships, the Owner Lessor, the Paying Agent, the Registrar and the Pass Through Trustee may deal with the Clearing Agency for all purposes (including the making of distributions on the Certificates) as the authorized representative of the Certificate Owners;

(iii) to the extent that the provisions of this Section 3.9 conflict with any other provisions of this Pass Through Trust Agreement (other than the provisions of any supplemental agreement amending this Section 3.9 as permitted by this Pass Through Trust Agreement), the provisions of this Section 3.9 shall control;

(iv) the rights of Certificate Owners shall be exercised only through the Clearing Agency and shall be limited to those established by law and agreements between such Certificate Owners and the Clearing Agency Participants; and until Definitive Certificates are issued pursuant to subsection (d) below, the Clearing Agency will make book-entry transfers among the Clearing Agency Participants and receive and transmit distributions of principal and interest and premium, if any, on the Certificates to such Clearing Agency Participants; and

(v) whenever this Pass Through Trust Agreement requires or permits actions to be taken based upon instructions or directions of

Certificateholders holding Certificates evidencing a specified percentage of the Fractional Undivided Interests in the Pass Through Trust, the Clearing Agency shall be deemed to represent such percentage only to the extent that it has received instructions to such effect from Certificate Owners and/or Clearing Agency Participants owning or representing, respectively, such required percentage of the beneficial interest in Certificates and has delivered such instructions to the Pass Through Trustee. The Pass Through Trustee shall have no obligation to determine (and shall incur no liability in connection with any determination of) whether the Clearing Agency has in fact received any such instructions.

(b) With respect to Book-Entry Certificates, whenever notice or other communication to the Certificateholders is required under this Pass Through Trust Agreement, unless and until Definitive Certificates shall have been issued pursuant to subsection (d) below, the Pass Through Trustee shall give all such notices and communications specified herein to be given to Certificateholders to the Clearing Agency and/or the Clearing Agency Participants (and, upon receipt of a valid Certificate Owner Request, to the Certificateholder or Certificate Owner making such request), and shall make available additional copies as reasonably requested by such Clearing Agency Participants.

(c) Unless and until Definitive Certificates are issued pursuant to subsection (d) below, on the Record Date prior to each applicable Distribution Date and Special Distribution Date, the Pass Through Trustee will request from the Clearing Agency a "Securities Position Listing" setting forth the names of all Clearing Agency Participants reflected on the Clearing Agency's books as holding interests in the Certificates on such Record Date. The Pass Through Trustee shall mail to each such Clearing Agency Participant the statements described in Section 4.3 hereof.

(d) If with respect to the Certificates (i) the Partnerships or either of them advise the Pass Through Trustee in writing that the Clearing Agency is no longer willing or able to properly discharge its responsibilities and the Partnerships are unable to locate a qualified successor, (ii) the Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) at their option, advise the Pass Through Trustee in writing that it elects to terminate the book-entry system through the Clearing Agency or (iii) after the occurrence of an Event of Default, Certificate Owners of Book-Entry Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Pass Through Trust, by Act of said Certificate Owners delivered to the Partnerships and the Pass Through Trustee, advise the Partnerships, the Owner Lessor, the Pass Through Trustee and the Clearing Agency through the Clearing Agency Participants in writing that the continuation of a book-entry system through the Clearing Agency is no longer in the best interests of the Certificate Owners, then the Pass Through Trustee shall notify all Certificate Owners, through the Clearing Agency, of the occurrence of any such event and of the availability of Definitive Certificates. Upon surrender to the Pass Through Trustee of all the Certificates held by the Clearing Agency, accompanied by registration instructions from the Clearing Agency for registration of Definitive Certificates in the names of Certificate Owners, the Pass Through Trust shall issue and deliver the Definitive Certificates in accordance with the instructions of the Clearing Agency. None of the Partnerships, the Owner Lessor, the Registrar, the Paying Agent or the Pass Through Trustee

shall be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be protected in relying on, such registration instructions. Upon the issuance of Definitive Certificates, the Pass Through Trustee shall recognize the Person in whose name the Definitive Certificates are registered in the Register as Certificateholder hereunder. Neither the Partnerships nor the Pass Through Trustee shall be liable if the Partnerships are unable to locate a qualified successor Clearing Agency.

(e) The Certificates sold in offshore transactions in reliance on Regulation S under the Securities Act will be represented initially by a single, temporary Book-Entry Certificate, in definitive, fully registered form without interest coupons (the "Temporary Regulation S Global Certificate") and will be deposited with the Pass Through Trustee as custodian for DTC and registered in the name of a nominee of DTC for the accounts of Morgan Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System ("Euroclear"), and Cedelbank ("Cedelbank"). Each Temporary Regulation S Global Certificate will be exchangeable for a single, permanent Book-Entry Certificate (the "Permanent Regulation S Global Certificate," and together with the Temporary Regulation S Global Certificate, the "Regulation S Global Certificate") on or after 40 days after the later of the commencement of the offering of the Certificates and the Closing Date upon certification that the beneficial interests in such Book-Entry Certificate are owned by persons who are not U.S. persons as defined in Regulation S. Prior to the expiration of such 40-day period, beneficial interests in the Temporary Regulation S Global Certificate may be held only through Euroclear or Cedelbank, and any resale or other transfer of such interests to U.S. persons shall not be permitted during such period unless such resale or transfer is made pursuant to Rule 144A or Regulation S under the Securities Act and in accordance with the certification requirements specified in Section 3.9(f) below. The aggregate original principal amount of the Regulation S Global Certificate may from time to time be increased or decreased by adjustments made on the records of the Pass Through Trustee, as custodian for DTC, in connection with a corresponding decrease or increase in the aggregate original principal amount of a Definitive Certificate or the Restricted Global Certificate, as hereinafter provided.

(f) The Certificates sold in reliance on Rule 144A under the Securities Act will be represented by a single, permanent Book-Entry Certificate, in definitive, fully registered form without interest coupons (the "Restricted Global Certificate"), which will be deposited with the Pass Through Trustee as custodian for DTC and registered in the name of a nominee of DTC. Prior to the 40th day after the later of the commencement of the offering of the Certificates and the Closing Date, a beneficial interest in the Temporary Regulation S Global Certificate may be transferred to a person who takes delivery in the form of an interest in the Restricted Global Certificate only upon receipt by the Pass Through Trustee of a written certification from the transferor (in the form of Exhibit C hereto) to the effect that such transfer is being made to a person who the transferor reasonably believes is a "qualified institutional buyer" within the meaning of Rule 144A in a transaction meeting the requirements of Rule 144A and in accordance with any applicable securities laws of any state of the United States or any other jurisdiction. Beneficial interests in the Restricted Global Certificate may be transferred to a person who takes delivery in the form of an interest in the Regulation S Global Certificate whether before, on or after such 40th day, only upon receipt by the Pass Through Trustee of a written certification (in the form of Exhibit C hereto) to the effect that such transfer is being made in accordance with Regulation S under the Securities Act and, if such transfer occurs prior

to such 40th day, the interest will be held immediately thereafter only through Euroclear or Cedelbank. The aggregate initial principal amount of the Restricted Global Certificate may from time to time be increased or decreased by adjustments made on the records of the Pass Through Trustee, as custodian for DTC, in connection with a corresponding decrease or increase in the aggregate initial principal amount of a Definitive Certificate or a Regulation S Global Certificate, as hereinafter provided.

(g) Any beneficial interest in one of the Book-Entry Certificates that is transferred to a person who takes delivery in the form of an interest in another Book-Entry Certificate will, upon transfer, cease to be an interest in such first Book-Entry Certificate and become an interest in such other Book-Entry Certificate and, accordingly, will thereafter be subject to all transfer restrictions, if any, and other procedures applicable to beneficial interests in such other Book-Entry Certificate for so long as it remains such an interest. Upon the transfer of Definitive Certificates to a qualified institutional buyer or in accordance with Regulation S, such Definitive Certificates will be exchanged for an interest in a Book-Entry Certificate.

(h) The Partnerships and the Pass Through Trustee, if necessary, shall each enter into the Letter of Representations with respect to the Certificates and fulfill its responsibilities thereunder.

Section 3.10. Form of Certification. In connection with any certification contemplated by Section 3.4, relating to compliance with certain restrictions relating to transfers of Restricted Certificates, such certification shall be provided substantially in the form of Exhibit C hereto, with only such changes as shall be reasonably approved by the Partnerships and reasonably acceptable to the Pass Through Trustee.

#### SECTION 4. DISTRIBUTIONS; STATEMENTS TO CERTIFICATEHOLDERS

##### Section 4.1. Certificate Account and Special Payments Account.

(a) The Pass Through Trust shall establish and maintain on behalf of the Certificateholders the Certificate Account with the Pass Through Trustee as one or more non-interest bearing accounts. The Pass Through Trustee shall hold the Certificate Account in trust for the benefit of the Certificateholders, and shall make or permit withdrawals therefrom only as provided in this Pass Through Trust Agreement. On each day when a Scheduled Payment is made and identified as such under the Collateral Trust Indenture to the Pass Through Trust, as holder of the Lessor Notes issued under Collateral Trust Indenture, the Pass Through Trustee upon receipt shall immediately deposit the aggregate amount of such Scheduled Payment in the Certificate Account.

(b) The Pass Through Trust shall establish and maintain on behalf of the Certificateholders the Special Payments Account with the Pass Through Trustee as one or more accounts, which shall be non-interest bearing except as provided in Section 4.4. The Pass Through Trustee shall hold the Special Payments Account in trust for the benefit of the Certificateholders, and shall make or permit withdrawals therefrom only as provided in this Pass Through Trust Agreement. On each day when a Special Payment is made and identified as such under the Collateral Trust Indenture to the Pass Through Trustee, as holder of the Lessor Notes

issued under the Collateral Trust Indenture, the Pass Through Trustee upon receipt shall immediately deposit the aggregate amounts of such Special Payments in the Special Payments Account.

(c) The Pass Through Trustee shall present to the applicable Indenture Trustee each Lessor Note on the date of its stated final maturity, or in the case of any Lessor Note which is to be redeemed or otherwise prepaid in whole pursuant to the Collateral Trust Indenture, on the applicable redemption or other prepayment date under the Collateral Trust Indenture.

#### Section 4.2. Distributions from Certificate Account and Special Payments Account.

(a) On each Distribution Date if the Pass Through Trustee receives payment of the Scheduled Payments due on any Lessor Notes on such date by 12:00 noon, New York time, on such date, the Pass Through Trustee shall distribute out of the Certificate Account the entire amount deposited therein pursuant to Section 4.1(a). If a Scheduled Payment is received by the Pass Through Trustee after 12:00 noon, New York time, on a Distribution Date, such payment shall be distributed on the next Business Day. If a Scheduled Payment is not received by the Pass Through Trustee on a Distribution Date but is received prior to the time such payment would become a Special Payment, such payment shall be distributed (i) on the date received, if received by 12:00 noon, New York time, on such date or (ii) on the next Business Day, if received after 12:00 noon, New York time, on such date. There shall be so distributed to each Certificateholder of record on the Record Date with respect to such Distribution Date (other than as provided in Section 11.1 concerning the final distribution)

(i) if (A) DTC is the Certificateholder of record, or (B) a Certificateholder holds a Certificate or Certificates in an aggregate amount greater than \$10,000,000 or (C) a Certificateholder holds a Certificate or Certificates in an aggregate amount greater than \$1,000,000 and so requests to the Pass Through Trustee, by wire transfer in immediately available funds to an account maintained by such Certificateholder with a bank, or (ii) if none of the above apply, by check mailed to such Certificateholder at the address appearing in the Register, such Certificateholder's pro rata share (based on the aggregate Fractional Undivided Interest held by such Certificateholder) of the aggregate amount in the Certificate Account.

(b) On each Special Distribution Date with respect to any Special Payment if the Pass Through Trustee receives the Special Payments due on the required date by 12:00 noon, New York time, on such date, the Pass Through Trustee shall distribute out of the Special Payments Account the entire amount deposited therein with respect to such Special Payment pursuant to this Section

4.1(b). If a Special Payment is received by the Pass Through Trustee after 12:00 noon, New York time, on a Special Distribution Date, such payment shall be distributed on the next Business Day. If a Special Payment is not received by the Pass Through Trustee on a Special Distribution Date, such payment shall be distributed (i) on the date received, if received by 12:00 noon, New York time, on such date or (ii) on the next Business Day, if received after 12:00 noon, New York time, on such date. There shall be so distributed to each Certificateholder of record on the Record Date with respect to such Special Distribution Date

(other than as provided in Section 11.1 concerning the final distribution) (i) if (A) DTC is the Certificateholder of record, or (B) a Certificateholder holds a Certificate or Certificates in an aggregate amount greater than \$10,000,000 or

(C) a Certificateholder holds a Certificate or Certificates in an aggregate amount greater than \$1,000,000 and so requests to the Pass Through

Trustee, by wire transfer in immediately available funds to an account maintained by the Certificateholder with a bank, or (ii) if none of the above apply, by check mailed to such Certificateholder at the address appearing in the Register, such Certificateholder's pro rata share (based on the aggregate Fractional Undivided Interest held by such Certificateholder) of the aggregate amount in the Special Payments Account on account of such Special Payment.

(c) The Pass Through Trustee shall, at the expense of the Partnerships, cause notice of each Special Payment to be mailed to (i) each Certificateholder, at the address of such Certificateholder as it appears in the Register and (ii) any Certificate Owner who has made a valid Certificate Owner Request, at the address specified in such Certificate Owner Request. In the event of prepayment of any Lessor Notes, such notice shall be mailed not less than 20 days prior to the date any such Special Payment is scheduled to be distributed. In the case of any other Special Payments, such notice shall be mailed as soon as practicable after the Pass Through Trustee has confirmed that it has received funds for such Special Payment. Notices mailed by the Pass Through Trustee shall set forth:

(i) the Special Distribution Date and the Record Date therefor (except as otherwise provided in Section 11.1);

(ii) the amount of the Special Payment per \$1,000 of face amount of Certificates and the amount thereof constituting principal, premium, if any, and interest;

(iii) the reason for the Special Payment; and

(iv) if the Special Distribution Date is the same date as a Distribution Date, the total amount to be received on such date per \$1,000 of face amount of Certificates.

If the amount of premium payable upon the prepayment of a Lessor Note has not been calculated at the time that the Pass Through Trustee mails notice of a Special Payment, it shall be sufficient if the notice sets forth the other amounts to be distributed and states that any premium received will also be distributed. If a Distribution Date or Special Distribution Date is not a Business Day, distribution shall be made on the immediately following Business Day.

#### Section 4.3. Statements to Certificateholders.

(a) On each Distribution Date and Special Distribution Date, the Pass Through Trustee will include with each distribution to Certificateholders a statement, giving effect to such distribution to be made on such date, setting forth the following information (per a \$1,000 face amount Certificate):

(i) the amount of such distribution allocable to principal and the amount allocable to premium if any; and

(ii) the amount of such distribution allocable to interest.

(b) Within a reasonable period of time after the end of each calendar year but not later than the latest date permitted by law, the Pass Through Trustee shall furnish (i) to each Person who at any time during such calendar year was a Certificateholder of record and (ii) to any Person who at any time during such calendar year was a Certificate Owner who has made a valid Certificate Owner Request and provided the Pass Through Trustee with such pertinent information as the Pass Through Trustee shall reasonably request, a statement containing the sum of the amounts determined pursuant to clauses

(a)(i) and (a)(ii) with respect to the Pass Through Trust for such calendar year or, in the event such Person was a Certificateholder of record or Certificate Owner during a portion of such calendar year, for the applicable portion of such year, and such other items as are readily available to the Pass Through Trustee and which a Certificateholder or Certificate Owner shall reasonably request as necessary for the purpose of such Certificateholder's or Certificate Owner's preparation of its Federal income tax returns.

Section 4.4. Investment of Special Payment Moneys. Any money received by the Pass Through Trustee pursuant to Section 4.1(b) representing a Special Payment which is not to be promptly distributed shall, to the extent practicable, be invested in Permitted Government Investments by the Pass Through Trustee pending distribution of such Special Payment pursuant to Section 4.2. Any investment made pursuant to this Section 4.4 shall be in such Permitted Government Investments having maturities not later than the date that such moneys are required to be paid to make the payment required under Section 4.2 on the applicable Special Distribution Date and the Pass Through Trustee shall hold any such Permitted Government Investments until maturity. The Pass Through Trustee shall have no liability with respect to any investment made pursuant to this Section 4.4, other than by reason of the willful misconduct or negligence of the Pass Through Trustee. All income and earnings from such investments shall be distributed on such Special Distribution Date as part of such Special Payment.

## SECTION 5. FINANCIAL STATEMENTS AND OTHER REPORTS

For so long as any Certificates remain Outstanding, the Partnerships shall furnish:

(a) to Certificateholders, Certificate Owners and prospective investors, upon their request, the information required to be delivered pursuant to Rule 144A(d)(4) under the Securities Act so long as the Certificates are not freely transferable under the Securities Act; and

(b) to the Pass Through Trustee, who in turn shall provide such information, upon a Certificate Owner Request, to Certificateholders and Certificate Owners:

(i) within 60 days following the end of each of the first three fiscal quarters of the Partnerships during each fiscal year, a copy of Form 10-Q (or any successor form) filed by the Partnerships with the SEC for such fiscal quarter, or if the Partnerships are not then subject to the reporting requirements of the Exchange Act, unaudited consolidated quarterly financial statements for the Partnerships for such fiscal quarter in the form required by Section 5.3(b) of the Participation Agreement;

(ii) within 120 days following the end of the fiscal year of the Partnerships, a copy of the Form 10-K (or any successor form) filed by the

Partnerships with the SEC for such fiscal year, or, if the Partnerships are not then subject to the reporting requirements of the Exchange Act, audited consolidated annual financial statements in the form required by Section 5.3(a) of the Participation Agreement; and

(iii) within 20 days after the occurrence thereof, (A) a copy of any current report on Form 8-K (or any successor form) filed by the Partnerships with the SEC, if any, and (B) notice of the following events (1) a Change of Control; (2) any litigation or claim against the Partnerships, or the Tiverton or Rumford facilities which could reasonably be expected to have a Material Adverse Effect; (3) the appointment of a receiver over either of the Partnerships or the confirmation of a plan of reorganization or liquidation for either of the Partnerships; or (4) the resignation or dismissal of the independent accountants engaged by the Partnerships.

## SECTION 6. DEFAULT

### Section 6.1. Events of Default.

(a) If any Lease Indenture Event of Default under the Collateral Trust Indenture (an "Event of Default") shall occur and be continuing, then, and in each and every case, so long as such Lease Indenture Event of Default shall be continuing, the Pass Through Trustee may vote all of the Lessor Notes issued under the Collateral Trust Indenture held in the Pass Through Trust, and upon the Direction of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)), the Pass Through Trustee shall vote a corresponding majority of such Lessor Notes, in favor of directing the Indenture Trustee to declare the unpaid principal amount of such Lessor Notes then outstanding and accrued interest thereon to be due and payable under, and to the extent permitted by and in accordance with, the provisions of the Collateral Trust Indenture.

In addition, if an Event of Default shall have occurred and be continuing, the Pass Through Trustee may in its discretion, and upon the Direction of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)) shall, by such officer or agent as it may appoint, sell, convey, transfer and deliver all or a portion of such Lessor Note or Lessor Notes issued under the Collateral Trust Indenture with respect to which the Event of Default has occurred, without recourse to or warranty by the Pass Through Trustee or any Certificateholders to any Person. In any such case, the Pass Through Trustee shall sell, assign, contract to sell or otherwise dispose of and deliver such Lessor Note or Lessor Notes in one or more parcels at public or private sale or sales, at any location or locations at the option of the Pass Through Trustee, all upon such terms and conditions as it may reasonably deem advisable and at such prices as it may reasonably deem advisable, for cash. The Pass Through Trustee shall give notice to the Partnerships and the Owner Lessor promptly after any such sale.

In the event that the Pass Through Trustee shall deem it advisable to sell any or all

of the Lessor Notes in accordance with the provisions of this Section, the parties agree that if registration of any such Lessor Notes shall be required, in the opinion of counsel for the Pass Through Trustee under the Securities Act of 1933, as amended, or other applicable law, and regulations promulgated thereunder, and if the Partnerships shall not effect, or cause to be effected, such registration promptly, the Pass Through Trustee may sell any such Lessor Notes at a private sale, and no Person shall attempt to maintain that the prices at which such Lessor Notes are sold are inadequate by reason of the failure to sell at public sale, or hold the Pass Through Trustee liable thereafter.

Section 6.2. Incidents of Sale of Lessor Notes. Upon any sale of all or any part of the Lessor Notes made either under the power of sale given under this Pass Through Trust Agreement or otherwise for the enforcement of this Pass Through Trust Agreement, the following shall be applicable:

(1) Certificateholders and Pass Through Trustee May Purchase Lessor Notes. Any Certificateholder, the Pass Through Trustee in its individual or any other capacity or any other Person may bid for and purchase any of the Lessor Notes and, upon compliance with the terms of sale, may hold, retain, possess and dispose of such Lessor Notes in their or its or his own absolute right without further accountability.

(2) Receipt of Pass Through Trustee Shall Discharge Purchaser. The receipt of immediately available funds by the Pass Through Trustee or the officer or agent appointed by the Pass Through Trustee shall be a sufficient discharge to any purchaser for his purchase money, and, after paying such purchase money and receiving such receipt, such purchaser or his personal representative or assigns shall not be obliged to see to the application of such purchase money, or be in any way answerable for any loss, misapplication or non-application thereof.

(3) Application of Moneys Received upon Sale. Any moneys collected by the Pass Through Trustee, upon any sale made either under the power of sale given by this Pass Through Trust Agreement or otherwise for the enforcement of this Pass Through Trust Agreement, shall be applied as provided in Section 4.2.

Section 6.3. Judicial Proceedings Instituted by Pass Through Trustee.

(a) Pass Through Trustee May Bring Suit. If there shall be a failure to make payment of the principal of, premium, if any, or interest on any Lessor Note, or if there shall be any failure to pay Rent (as defined in a Lease) under the Lease related to any Lessor Note when due and payable, then the Pass Through Trustee, in its own name, and as trustee of an express trust, as holder of such Lessor Notes shall be, to the extent permitted by and in accordance with the terms of the Lessor Note Documents, entitled and empowered (but not obligated) to institute any suits, actions or proceedings at law, in equity or otherwise, for the collection of the sums so due and unpaid on such Lessor Notes or under such Lease and may prosecute any such claim or proceeding to judgment or final decree with respect to the whole amount of any such sums so due and unpaid; subject, however, to the limitations of liability set forth in the Lessor Notes and the Lessor Note Documents.

(b) Pass Through Trustee May File Proofs of Claim; Appointment of Pass Through Trustee as Attorney-in-Fact in Judicial Proceedings. The Pass Through Trustee in its own name, or as trustee of an express trust, or as attorney-in-fact for the Certificateholders, or in any one or more of such capacities (irrespective of whether distributions on the Certificates shall then be due and payable, or the payment of the principal on the Lessor Notes shall then be due and payable, as therein expressed or by declaration or otherwise and irrespective of whether the Pass Through Trustee shall have made any demand to the applicable Indenture Trustee for the payment of overdue principal, premium (if any) or interest on the Lessor Notes), shall, subject to the terms of the Lessor Note Documents, be entitled and empowered to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Pass Through Trustee and of the Certificateholders allowed in any receivership, insolvency, bankruptcy, liquidation, readjustment, reorganization or any other judicial proceedings relative to the Partnerships or the Owner Lessor, or the Owner Participant, or their respective creditors or property. Subject to the terms of the Lessor Note Documents, any receiver, assignee, trustee, liquidator or sequestrator (or similar official) in any such judicial proceeding is hereby authorized by each Certificateholder to make payments in respect of such claim to the Pass Through Trustee, and in the event that the Pass Through Trustee shall consent to the making of such payments directly to the Certificateholders, to pay to the Pass Through Trustee any amount due to it for the reasonable compensation, expenses, disbursements and advances of the Pass Through Trustee, its agents and counsel and any other amounts due the Pass Through Trustee under Section 7.7. Subject to Section 6.4, nothing contained in this Pass Through Trust Agreement shall be deemed to give to the Pass Through Trustee any right to accept or consent to any plan of reorganization or otherwise by action of any character in any such proceeding to waive or change in any way any right of any Certificateholder.

Section 6.4. Control by Certificateholders. The Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)) shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Pass Through Trustee, or exercising any trust or power conferred upon the Pass Through Trustee, under this Pass Through Trust Agreement, including any right of the Pass Through Trustee as holder of the Lessor Notes, provided that:

- (1) such Direction shall not be in conflict with any rule of law or with this Pass Through Trust Agreement and would not involve the Pass Through Trustee in personal liability or expense;
- (2) the Pass Through Trustee shall not determine that the action so directed would expose it to personal liability or be unjustly prejudicial to the Certificateholders not taking part in such direction;
- (3) the Pass Through Trustee may take any other action deemed proper by the Pass Through Trustee which is not inconsistent with such Direction;
- (4) such Holders shall have offered to the Pass Through Trustee security or indemnity against the costs, expenses or liabilities which may be incurred thereby; and

(5) if a Lease Indenture Event of Default shall have occurred and be continuing, such Direction shall not obligate the Pass Through Trustee to vote more than a corresponding majority of the related Lessor Notes held by the Pass Through Trust in favor of directing any action by the Indenture Trustee with respect to such Lease Indenture Event of Default.

Section 6.5. Waiver of Defaults. The Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)) may on behalf of the Certificateholders of all the Certificates waive any Default or Event of Default hereunder and its consequences or may instruct the Pass Through Trustee to waive any default under the Collateral Trust Indenture and its consequences, except:

(1) a default in the deposit of any Scheduled Payment or Special Payment under Section 4.1 or in the distribution of any payment under Section 4.2 on the Certificates; or

(2) a default in the payment of the principal of, premium, if any, or interest on any Lessor Notes; or

(3) a default in respect of a covenant or provision hereof which under Section 9 hereof cannot be modified or amended without the consent of the Holder of each Outstanding Certificate affected.

Upon any such waiver, such Default shall cease to exist with respect to this Pass Through Trust Agreement, and any Event of Default arising therefrom shall be deemed to have been cured for every purpose of this Pass Through Trust Agreement and any direction given by the Pass Through Trustee on behalf of such Holders to the applicable Indenture Trustee shall be annulled with respect thereto; but no such waiver shall extend to any subsequent or other Default, Event of Default or impair any right consequent thereon. Upon any such waiver with respect to a Default under the Collateral Trust Indenture, the Pass Through Trustee shall vote a corresponding majority of the Lessor Notes issued under the Collateral Trust Indenture to waive the corresponding Lease Indenture Default or Lease Indenture Event of Default.

With respect to consents, approvals, waivers and authorizations which under the terms of Section 8 of the Collateral Trust Indenture may be given by the applicable Indenture Trustee without the necessity of the consent of any of the holders of Lessor Notes issued with respect to the Collateral Trust Indenture, no consent, approval, waiver or authorization shall be required hereunder on the part of the Pass Through Trustee or the Certificateholders.

Section 6.6. Undertaking to Pay Court Costs. All parties to this Pass Through Trust Agreement, and each Certificateholder by his acceptance of a Certificate, shall be deemed to have agreed that any court may in its discretion require, in any suit, action or proceeding for the enforcement of any right or remedy under this Pass Through Trust Agreement, or in any suit, action or proceeding against the Pass Through Trustee for any action taken or omitted by it as Pass Through Trustee hereunder, the filing by any party litigant in such suit, action or proceeding of an undertaking to pay the costs of such suit, action or proceeding, and that such court may, in

its discretion, assess reasonable costs, including reasonable attorneys' fees, against any party litigant in such suit, action or proceeding, having due regard to the merits and good faith of the claims or defenses made by such party litigant; provided, however, that the provisions of this Section 6.6 shall not apply to (a) any suit, action or proceeding instituted by any Holder, or group of Holders, holding in the aggregate Certificates evidencing Fractional Undivided Interests aggregating more than 10% of the Pass Through Trust, (b) any suit, action or proceeding instituted by any Certificateholder for the enforcement of the distribution of payments pursuant to Section 4.2 hereof on or after the respective due dates expressed herein or (c) any suit, action or proceeding instituted by the Pass Through Trustee.

Section 6.7. Right of Certificateholders to Receive Payments Not to Be Impaired. Anything in this Pass Through Trust Agreement to the contrary notwithstanding, but subject to Section 3.8 hereof, the right of any Certificateholder to receive distributions of payments required pursuant to Section 4.2 hereof on the Certificates when due, or to institute suit for the enforcement of any such payment on or after the applicable Distribution Date or Special Distribution Date, shall not be impaired or affected without the consent of such Certificateholder.

Section 6.8. Certificateholders May Not Bring Suit Except Under Certain Conditions. A Certificateholder shall not have the right to institute any suit, action or proceeding at law or in equity or otherwise with respect to this Pass Through Trust Agreement, for the appointment of a receiver or for the enforcement of any other remedy under this Pass Through Trust Agreement, unless:

- (1) such Certificateholder previously shall have given written notice to the Pass Through Trustee of a continuing Event of Default;
- (2) the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)) shall have requested the Pass Through Trustee in writing to institute such suit, action or proceeding and shall have offered to the Pass Through Trustee indemnity as provided in Section 7.3(e);
- (3) the Pass Through Trustee shall have refused or neglected to institute any such suit, action or proceeding for 60 days after receipt of such notice, request and offer of indemnity; and
- (4) no Direction inconsistent with such written request has been given to the Pass Through Trustee during such 60-day period by the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)).

It is understood and intended that no one or more of the Certificateholders shall have any right in any manner whatever hereunder or under the Certificates to (i) surrender, impair, waive, affect, disturb or prejudice any property in the Trust Property or the lien of the Collateral Trust Indenture on any property subject thereto, or the rights of the Certificateholders

or the holders of the Lessor Notes, (ii) obtain or seek to obtain priority over or preference to any other such Holder, or (iii) enforce any right under this Pass Through Trust Agreement, except in the manner herein provided and for the equal, ratable and common benefit of all the Certificateholders subject to the provisions of this Pass Through Trust Agreement.

Section 6.9. Remedies Cumulative. Every remedy given hereunder to the Pass Through Trustee or to any of the Certificateholders shall not be exclusive of any other remedy or remedies, and every such remedy shall be cumulative and in addition to every other remedy given hereunder or now or hereafter given by statute, law, equity or otherwise.

## SECTION 7. THE PASS THROUGH TRUSTEE

### Section 7.1. Certain Duties and Responsibilities.

(a) Prior to an Event of Default of which a Responsible Officer of the Pass Through Trustee has actual knowledge:

(1) the Pass Through Trustee shall not be liable except for the performance of such duties as are specifically set out in this Pass Through Trust Agreement; and

(2) the Pass Through Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, in the absence of bad faith on the part of the Pass Through Trustee, upon Officer's Certificates or Opinions of Counsel conforming to the requirements of this Pass Through Trust Agreement;

but the Pass Through Trustee shall, at any time that the Certificates shall be subject to the Trust Indenture Act, examine any evidence furnished to it pursuant to this Pass Through Trust Agreement or Section 314 of the Trust Indenture Act to determine whether or not such evidence conforms to the requirements of this Pass Through Trust Agreement; provided, however, that the Pass Through Trustee shall not be responsible for the accuracy or content of such evidence.

(b) In case an Event of Default has occurred and is continuing, the Pass Through Trustee shall exercise each of the rights and powers vested in it by this Pass Through Trust Agreement, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(c) No provision of this Pass Through Trust Agreement shall be construed to relieve the Pass Through Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) this paragraph (c) shall not be construed to limit the effect of paragraph (a) of this Section 7.1;

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

(3) the Pass Through Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the Direction of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c)) (A) relating to the time, method and place of conducting any proceeding for any remedy available to the Pass Through Trustee, or (B) exercising any trust or power conferred upon the Pass Through Trustee, under this Pass Through Trust Agreement.

(d) Whether or not herein expressly so provided, every provision of this Pass Through Trust Agreement relating to the conduct or affecting the liability of or affording protection to the Pass Through Trustee shall be subject to the provisions of this Section 7.1.

Section 7.2. Notice of Defaults. The Pass Through Trustee shall give to the Certificateholders, at any time that the Certificates shall be subject to the Trust Indenture Act, in the manner and to the extent required by Section 313(c) of the Trust Indenture Act, and to each of the Partnerships, the Owner Lessor and the applicable Indenture Trustee in accordance with Section 12.4, notice of all Defaults actually known to a Responsible Officer of the Pass Through Trustee within 90 days after the occurrence thereof; provided, however, that, except in the case of a Default in the payment of the principal of, premium, if any, or interest on any Lessor Note, the Pass Through 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 or Responsible Officers of the Pass Through Trustee in good faith determine that the withholding of such notice is in the interests of the Certificateholders.

Section 7.3. Certain Rights of Pass Through Trustee. Except as otherwise provided in Section 7.1:

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

(b) any request or direction of either of the Partnerships, the Owner Lessor or any Indenture Trustee mentioned herein shall be sufficiently evidenced by a Request;

(c) whenever in the administration of this Pass Through Trust Agreement the Pass Through Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Pass Through Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officer's Certificate of either of the Partnerships, the Owner Lessor or the applicable Indenture Trustee;

(d) the Pass Through 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;

(e) the Pass Through Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Pass Through Trust Agreement at the request or direction of any of the Certificateholders pursuant to this Pass Through Trust Agreement, unless such Certificateholders shall have offered to the Pass Through Trustee reasonable security or indemnity against the cost, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Pass Through Trustee shall not be bound to make any investigation into the facts or matters stated in any Act, Direction, resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture or other paper or document;

(g) the Pass Through 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 Pass Through Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed by it hereunder with due care;

(h) the Pass Through Trustee shall not be personally liable for any action taken, suffered or omitted by it in good faith and believed by it to be authorized or within the discretion of rights or powers conferred upon it by this Pass Through Trust Agreement;

(i) the right of the Pass Through Trustee to perform any discretionary act enumerated in this Pass Through Trust Agreement shall not be construed as a duty, and the Pass Through Trustee shall not be answerable for other than its negligence or willful misconduct in the performance of such act;

(j) the Pass Through Trustee shall not be required to give any bond or surety in respect of the execution of the trust fund created hereby or the powers granted hereunder; and

(k) the Pass Through Trustee shall have no responsibility for filing any financing or continuation statement in any public office at any time or to otherwise perfect or maintain the perfection of any security interest or lien granted to it hereunder or to record this Pass Through Trust Agreement.

Section 7.4. Not Responsible for Recitals; Issuance of Certificates. The recitals contained herein and in the Certificates, except the certificates of authentication, shall not be taken as the statements of the Pass Through Trustee, and the Pass Through Trustee assumes no responsibility for their correctness. The Pass Through Trustee makes no representations as to the validity or sufficiency of this Pass Through Trust Agreement, the Lessor Notes, the Lessor Note Documents, or the Certificates, or the collateral securing the Lessor Notes, except that the Pass Through Trustee hereby represents and warrants that this Pass Through Trust Agreement has been, and each Certificate will be, executed and delivered by one of its officers who is duly authorized to execute and deliver such document on its behalf.

Section 7.5. May Hold Certificates. The Pass Through Trustee, any Paying Agent, Registrar or any other agent, in their respective individual or any other capacity, may become the owner or pledgee of Certificates and may otherwise deal with the Partnerships, Owner Lessor, Owner Participant or Indenture Trustee with the same rights it would have if it were not the Pass Through Trustee, Paying Agent, Registrar or such other agent, subject to Section 7.8 in the case of the Pass Through Trustee.

Section 7.6. Money Held in Pass Through Trust. Money held by the Pass Through Trustee or the Paying Agent in trust hereunder need not be segregated from other funds except to the extent required herein or by law and neither the Pass Through Trustee nor the Paying Agent shall have any liability for interest upon any such moneys except as provided for herein.

Section 7.7. Compensation, Reimbursement and Indemnification. Each of the Partnerships agrees, on a joint and severable basis:

(1) to pay, or cause to be paid, to the Pass Through Trustee from time to time the compensation separately agreed to by the Pass Through Trustee and the Partnerships for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust); and

(2) except as otherwise expressly provided herein, to reimburse, or cause to be reimbursed, the Pass Through Trustee upon its request for all reasonable out-of-pocket expenses, disbursements and advances incurred or made by the Pass Through Trustee in accordance with any provision of this Pass Through Trust Agreement (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence, willful misconduct or bad faith.

In addition, the Pass Through Trustee shall be entitled to reimbursement from, and shall have a lien prior to the Certificates upon, all property and funds held or collected by the Pass Through Trustee in its capacity as Pass Through Trustee for any tax incurred without negligence, bad faith or willful misconduct, on its part, arising out of or in connection with the acceptance or administration of this Pass Through Trust (other than any tax attributable to the Pass Through Trustee's compensation for serving as such), including any costs and expenses incurred in contesting the imposition of any such tax. If the Pass Through Trustee reimburses itself for any such tax, it will within 30 days mail a brief report setting forth the circumstances thereof to all Certificateholders as their names and addresses appear in the Register.

Section 7.8. Corporate Trustee Required; Eligibility. There shall at all times be a Pass Through Trustee hereunder which (a) shall be, at any time that the Certificates shall be subject to the Trust Indenture Act, a Person eligible to act as a trustee under Section 310(a) of the Trust Indenture Act and (b) shall be a corporation organized and doing business under the laws of the United States of America or of any state, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$150,000,000, and subject to supervision or examination by Federal or state authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 7.8, 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. If at any time the Pass Through Trustee shall cease to be eligible in accordance with the provisions of clause (a) of this Section 7.8 at a time when it is required to be so qualified, it shall resign immediately in the manner and with the effect hereinafter specified in this Section 7.

Section 7.9. Resignation and Removal: Appointment of Successor.

(a) No resignation or removal of the Pass Through Trustee and no appointment of a successor Pass Through Trustee pursuant to this Section 7.9 shall become effective until the acceptance of appointment by the successor Pass Through Trustee under Section 7.10.

(b) The Pass Through Trustee may resign at any time by giving written notice thereof to the Partnerships, the Authorized Agents, the Owner Lessor, the Owner Participant and each Indenture Trustee. If an instrument of acceptance by a successor Pass Through Trustee shall not have been delivered to the Partnerships, the Owner Lessor, the Owner Participant and each Indenture Trustee within 30 days after the giving of such notice of resignation, the resigning Pass Through Trustee may petition any court of competent jurisdiction for the appointment of a successor Pass Through Trustee.

(c) The Pass Through Trustee may be removed at any time by Act of the Holders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Pass Through Trust delivered to the Pass Through Trustee and to the Partnerships, the Owner Lessor and each Indenture Trustee.

(d) If at any time:

(1) the Pass Through Trustee fails to, at any time that the Certificates shall be subject to the Trust Indenture Act, comply with the requirements of Section 310 of the Trust Indenture Act after written request for such compliance by a Certificateholder that has been a bona fide Certificateholder for at least six months; or

(2) the Pass Through Trustee shall cease to be eligible under Section 7.8 hereof and shall fail to resign after written request therefor by the Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) or by any such Certificateholder; or

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

then, in any case, (i) the Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor), may remove the Pass Through Trustee or (ii) subject to Section 6.6 hereof, any Certificateholder who has been a bona fide Holder of a Certificate for at least six months

may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the removal of the Pass Through Trustee and the appointment of a successor Pass Through Trustee.

(e) If a Responsible Officer of the Pass Through Trustee shall obtain Actual Knowledge of an Avoidable Tax (as hereinafter defined) which has been or is likely to be asserted, the Pass Through Trustee shall promptly notify the Partnerships and the Owner Lessor thereof and shall, within 30 days of such notification, resign hereunder unless within such 30-day period the Pass Through Trustee shall have received notice that the Partnerships or the Owner Lessor has agreed to pay such tax. The Partnerships shall promptly appoint a successor Pass Through Trustee in a jurisdiction where there are no Avoidable Taxes. As used herein an "Avoidable Tax" means a state or local tax: (i) upon (w) the Pass Through Trust, (x) the Trust Property, (y) Holders of the Certificates or (z) the Pass Through Trustee for which the Pass Through Trustee is entitled to seek reimbursement from the Trust Property, and (ii) that would be avoided if the Pass Through Trustee were located in another state, or jurisdiction within a state, within the United States. A tax shall not be an Avoidable Tax if the Partnerships or the Owner Lessor shall agree to pay, and shall pay, such tax.

(f) If the Pass Through Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of the Pass Through Trustee for any cause, the Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) shall promptly appoint a successor Pass Through Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Pass Through Trustee shall be appointed by Act of the Holders holding Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest in the Pass Through Trust, delivered to the Partnerships, the Owner Lessor, the Owner Participant, the Indenture Trustees and the retiring Pass Through Trustee, the successor Pass Through Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Pass Through Trustee and supersede the successor Pass Through Trustee appointed as provided above. If no successor Pass Through Trustee shall have been so appointed as provided above and accepted appointment in the manner hereinafter provided, any Certificateholder who has been a bona fide Holder of a Certificate for at least six months may, on behalf of himself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Pass Through Trustee.

(g) The successor Pass Through Trustee shall give notice of the resignation and removal of the Pass Through Trustee and appointment of the successor Pass Through Trustee by mailing written notice of such event by first-class mail, postage prepaid, to the Holders of Certificates as their names and addresses appear in the Register. Each notice shall include the name of such successor trustee and the address of its Corporate Trust Office.

Section 7.10. Acceptance of Appointment by Successor. Every successor Pass Through Trustee appointed hereunder shall execute, acknowledge and deliver to the Partnerships, the Owner Lessor and to the retiring Pass Through Trustee an instrument accepting such appointment, and thereupon the resignation or removal of the retiring Pass Through Trustee shall become effective and such successor Pass Through Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Pass

Through Trustee; but, on request of either of the Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) to the successor Pass Through Trustee, such retiring Pass Through Trustee shall execute and deliver an instrument transferring to such successor Pass Through Trustee all the rights, powers and trusts of the retiring Pass Through Trustee and shall duly assign, transfer and deliver to such successor Pass Through Trustee all property and money held by such retiring Pass Through Trustee hereunder, subject nevertheless to its lien, if any, provided for in Section 7.7. Upon request of any such successor Pass Through Trustee, the Partnerships, the Owner Lessor, the retiring Pass Through Trustee and such successor Pass Through Trustee shall execute and deliver any and all instruments containing such provisions as shall be necessary or desirable to transfer and confirm to, and for more fully and certainly vesting in, such successor Pass Through Trustee all such rights, powers and trusts.

No successor Pass Through Trustee shall accept its appointment unless at the time of such acceptance such successor Pass Through Trustee shall be qualified and eligible under this Section 7.

Section 7.11. Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Pass Through 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 Pass Through Trustee shall be a party, or any Person succeeding to all or substantially all of the corporate trust business of the Pass Through Trustee, shall be the successor of the Pass Through Trustee hereunder, provided such Person shall be otherwise qualified and eligible under this Section 7, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Certificates shall have been authenticated, but not delivered, by the Pass Through Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Pass Through Trustee may adopt such authentication and deliver the Certificates so authenticated with the same effect as if such successor Pass Through Trustee had itself authenticated such Certificates.

Section 7.12. Maintenance of Agencies.

(a) There shall at all times be maintained in the Borough of Manhattan, The City of New York, an office or agency where Certificates may be presented or surrendered for registration of transfer or for exchange, and for payment thereof and where notices and demands to or upon the Pass Through Trustee in respect of the Certificates or of this Pass Through Trust Agreement may be served. Written notice of the location of each such other office or agency and of any change of location thereof shall be given by the Pass Through Trustee to the Partnerships, the Owner Lessor, the Owner Participant, each Indenture Trustee and the Certificateholders. In the event that no such office or agency shall be maintained or no such notice of location or of change of location shall be given, presentations and demands may be made and notices may be served at the Corporate Trust Office of the Pass Through Trustee.

(b) There shall at all times be a Registrar and a Paying Agent hereunder. Each such Authorized Agent shall be a bank or trust company, shall be a corporation organized and doing business under the laws of the United States or any state, with a combined capital and surplus of at least \$150,000,000, and shall be authorized under such laws to exercise corporate trust powers, subject to supervision by Federal or state authorities. The Pass Through Trustee

shall initially be the Paying Agent and, as provided in Section 3.4, Registrar hereunder. Each Registrar shall furnish to the Pass Through Trustee (unless they are the same entity), at stated intervals of not more than six months, and at such other times as the Pass Through Trustee may request in writing, a copy of the Register.

(c) Any Person into which any Authorized Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, consolidation or conversion to which any Authorized Agent shall be a party, or any Person succeeding to the corporate trust business of any Authorized Agent, shall be the successor of such Authorized Agent hereunder, if such successor Person is otherwise eligible under this Section 7.12, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authorized Agent or such successor Person.

(d) Any Authorized Agent may at any time resign by giving written notice of resignation to the Pass Through Trustee, the Partnerships, the Owner Lessor, the Owner Participant and each Indenture Trustee. The Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) may, and at the request of the Pass Through Trustee shall, at any time terminate the agency of any Authorized Agent by giving written notice of termination to such Authorized Agent and to the Pass Through Trustee. Upon the resignation or termination of an Authorized Agent or in case at any time any such Authorized Agent shall cease to be eligible under this Section 7.12 (when, in either case, no other Authorized Agent performing the functions of such Authorized Agent shall have been appointed), the Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) shall promptly appoint one or more qualified successor Authorized Agents reasonably satisfactory to the Pass Through Trustee, to perform the functions of the Authorized Agent which has resigned or whose agency has been terminated or who shall have ceased to be eligible under this Section 7.12. The Partnerships (or, following the occurrence of a Lease Event of Default, the Owner Lessor) shall give written notice of any such appointment made by it to the Pass Through Trustee, the Partnerships, the Owner Lessor and each Indenture Trustee; and in each case the Pass Through Trustee shall mail notice of such appointment to all Holders as their names and addresses appear on the Register.

(e) Each Partnership agrees to pay, or cause to be paid, from time to time to each Authorized Agent the compensation as set forth in the schedule agreed to by each Authorized Agent and such Partnership for its services and to reimburse it for its reasonable expenses.

Section 7.13. Money for Certificate Payments to Be Held in Trust. All moneys deposited with any Paying Agent for the purpose of any payment on Certificates shall be deposited in a non interest bearing account and held in trust for the benefit of the Holders of the Certificates entitled to such payment, subject to the provisions of this Section 7.13. Moneys so deposited and held in trust shall constitute a separate trust fund for the benefit of the Holders of the Certificates with respect to which such money was deposited.

The Pass Through Trustee will cause each Paying Agent other than the Pass Through Trustee to execute and deliver to it an instrument in which such Paying Agent shall

agree with the Pass Through Trustee, subject to the provisions of this Section 7.13, that such Paying Agent will:

- (1) hold all sums held by it for payments on Certificates in trust for the benefit of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;
- (2) give the Pass Through Trustee notice in writing of any default by any obligor upon the Lessor Notes in the making of any such payment; and
- (3) at any time during the continuance of any such default, upon the written request of the Pass Through Trustee, forthwith pay to the Pass Through Trustee all sums so held in trust by such Paying Agent.

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

Section 7.14. Registration of Lessor Notes in Pass Through Trustee's Name. The Pass Through Trustee agrees that all Lessor Notes and Permitted Government Investments, if any, shall be issued in the name of the Pass Through Trustee or its nominee and held by the Pass Through Trustee, or, if not so held, the Pass Through Trustee or its nominee shall be reflected as the owner of such Lessor Notes or Permitted Government Investments, as the case may be, in the register of the issuer of such Lessor Notes or Permitted Government Investments under the applicable provisions of the Uniform Commercial Code in effect where the Pass Through Trustee holds such Lessor Notes or Permitted Government Investments, or other applicable law then in effect.

Section 7.15. Withholding Taxes; Information Reporting. The Pass Through Trustee, as trustee, shall exclude and withhold from each distribution of principal, premium, if any, and interest and other amounts due hereunder or under the Certificates any and all withholding taxes applicable thereto as required by law. The Pass Through Trustee agrees (i) to act as such withholding agent and, in connection therewith, whenever any present or future taxes or similar charges are required to be withheld with respect to any amounts payable in respect of the Certificates, to withhold such amounts and timely pay the same to the appropriate authority in the name of and on behalf of the Holders of the Certificates, (ii) that it will file any necessary withholding tax returns or statements when due, and (iii) that, as promptly as possible after the payment thereof, it will deliver to each Holder of a Certificate appropriate documentation showing the payment thereof, together with such additional documentary evidence as such Holders may reasonably request from time to time. The Pass Through Trustee agrees to file any other information reports as it may be required to file under United States law. Any amounts withheld and paid to a relevant taxing authority pursuant to this Section 7.15 shall be deemed to have been paid to the related Certificateholders for all purposes under the Operative Documents.

## SECTION 8. CERTIFICATEHOLDERS' LISTS AND REPORTS

Section 8.1. The Partnerships to Furnish Pass Through Trustee with Names and Addresses of Certificateholder. Each Partnership will furnish to the Pass Through Trustee within fifteen days after each Record Date with respect to a Scheduled Payment, and at such other times as the Pass Through Trustee may request in writing, a list, in such form as the Pass Through Trustee may reasonably require, of all information in the possession or control of such Partnership as to the names and addresses of the Holders of Certificates, in each case as of a date not more than sixty days prior to the time such list is furnished; provided, however, that so long as the Pass Through Trustee is the sole Registrar, no such list need be furnished; and provided, further, however, that no such list need be furnished for so long as a copy of the Register is being furnished to the Pass Through Trustee pursuant to Section 7.12(b).

Section 8.2. Preservation of Information. The Pass Through Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders of Certificates contained in the most recent list furnished to the Pass Through Trustee as provided in Section 7.12(b) or Section 8.1, as the case may be, and the names and addresses of Holders of Certificates received by the Pass Through Trustee in its capacity as Registrar, if so acting. The Pass Through Trustee may destroy any list furnished to it as provided in Section 7.12(b) or Section 8.1, as the case may be, upon receipt of a new list so furnished.

Section 8.3. Reports by the Partnerships. Each Partnership shall, at any time that the Certificates shall be subject to the Trust Indenture Act, comply with Section 314 of the Trust Indenture Act and shall file, furnish and deliver the reports, information, documents, certificates and opinions required thereunder, and, at any time that the Certificates shall be subject to the Trust Indenture Act, acknowledge and agree that, for purposes of Section 314 of the Trust Indenture Act, each Partnership shall be considered to be the "obligor" upon the Certificates. Without limiting the generality of the foregoing, at any time that the Certificates shall be subject to the Trust Indenture Act, each Partnership shall deliver to the Pass Through Trustee the annual certificate required under clause (4) of Section 314(a) of the Trust Indenture Act within 120 days following the end of each fiscal year of such Partnership (which ends on December 31) ending after the date hereof. The provisions of this Section 8.3 shall not be construed to impose any obligation or liability on the Partnerships to pay any of the principal, premium, if any, or interest in respect of the Lessor Notes or the Certificates.

Section 8.4. Reports by the Pass Through Trustee. At any time that the Certificates shall be subject to the Trust Indenture Act, the Pass Through Trustee shall transmit, on or before May 15 of each year, reports with respect to events described in Section 313(a) of the Trust Indenture Act in accordance with and to the extent required under Section 313(a) of the Trust Indenture Act. Additionally, the Pass Through Trustee shall comply with the reporting requirements imposed under Treasury Regulation 1.67.

## SECTION 9. SUPPLEMENTAL TRUST AGREEMENTS

Section 9.1. Supplemental Trust Agreement Without Consent of Certificateholders. Without the consent of the Holder of any Certificates, the Partnerships may, and the Pass Through Trustee (subject to Section 9.3) shall, at any time and from time to time enter into one

or more agreements supplemental hereto, in form satisfactory to the Pass Through Trustee, for any of the following purposes:

- (1) to evidence the succession of another corporation to either Partnership and the assumption by any such successor of the obligations of such Partnership herein contained;
- (2) to add to the covenants of the Partnerships, for the protection of the Holders of the Certificates;
- (3) to surrender any right or power herein conferred upon the Partnerships;
- (4) to cure any ambiguity, to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein or to make any other provisions with respect to matters or questions arising under this Pass Through Trust Agreement; provided that any such action will not adversely affect in any material respect the interests of the Holders of the Certificates;
- (5) to correct or amplify the description of property that constitutes Trust Property or the conveyance of such property to the Pass Through Trustee;
- (6) to evidence and provide for a successor Pass Through Trustee;
- (7) to comply with requirements of the SEC, any applicable law, rules or regulations of any exchange or quotation system on which the Certificates are listed, or any regulatory body;
- (8) at any time that the Certificates shall be subject to the Trust Indenture Act, to modify, eliminate or add to the provisions of this Pass Through Trust Agreement to the extent as shall be necessary to qualify or continue the qualification of this Pass Through Trust Agreement (including any supplemental agreement) under the Trust Indenture Act or under any similar Federal statute hereafter enacted, or to add to this Pass Through Trust Agreement such other provisions as may be expressly permitted by the Trust Indenture Act, excluding, however, the provisions referred to in Section 316(a)(2) of the Trust Indenture Act as in effect at the date as of which this instrument was executed or any corresponding provision in any similar Federal statute hereafter enacted;
- (9) to modify, amend or supplement any provision herein to reflect changes relating to the assumption and substitution of any Lessor Note pursuant to Section 2.10(b) of the Collateral Trust Indenture; or
- (10) to add, eliminate, or change any provision under this Pass Through Trust Agreement that will not adversely affect the interests of the Certificateholders in any material respect.

provided that in each case the Pass Through Trustee shall have received an opinion of counsel, which may be counsel to the Partnerships, to the effect that such supplemental agreement does not cause the Pass Through Trust to become taxable as an "association" within the meaning of

Treasury Regulation Section 301.7701-4 or to be taxable as other than a pass through entity for Federal income tax purposes.

Section 9.2. Supplemental Trust Agreements with Consent of Certificateholders. With the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding (determined as provided in Section 1.4(c) hereof), by Act of said Holders delivered to the Partnerships and the Pass Through Trustee, the Partnerships may (with the consent of the Owner Lessor, such consent not to be unreasonably withheld), and the Pass Through Trustee (subject to Section 9.3 hereof) shall, enter into an agreement or agreements supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Pass Through Trust Agreement or of modifying in any manner the rights and obligations of the Holders of the Certificates under this Pass Through Trust Agreement; provided, however, that no such supplemental agreement shall, without the consent of the Holder of each Outstanding Certificate affected thereby:

(1) reduce in any manner the amount of, or delay the timing of, any receipt by the Pass Through Trustee of payments on the Lessor Notes held in the Pass Through Trust, or distributions that are required to be made herein on any Certificate of such Pass Through Trust, or change any date of payment on any such Certificate, or change the place of payment where, or the coin or currency in which, any such Certificate is payable, or impair the right of any Holder of any such Certificate to institute suit for the enforcement of any such payment or distribution on or after the Distribution Date or Special Distribution Date applicable thereto; or

(2) except as provided in this Pass Through Trust Agreement, permit the disposition of any Lessor Note in the Trust Property, or permit the creation of any lien on the Trust Property, or otherwise deprive any Certificateholder of the benefit of the ownership of the Lessor Notes held in the Pass Through Trust or the lien of the Collateral Trust Indenture; or

(3) reduce the percentage of the aggregate Fractional Undivided Interests which is required to approve any such supplemental agreement, or reduce such percentage required for any waiver provided for in this Pass Through Trust Agreement.

Notwithstanding the foregoing, no such supplemental agreement shall be entered into unless the Pass Through Trustee shall have received an opinion of counsel, which may be counsel to the Partnerships or either of them, to the effect that such supplemental agreement does not cause the Pass Through Trust to become taxable as an "association", within the meaning of Treasury Regulation Section 301.7701-4 or to be taxable as other than a pass through entity for Federal income tax purposes.

It shall not be necessary for any Act of Certificateholders under this Section 9.2 to approve the particular form of any proposed supplemental agreement, but it shall be sufficient if such Act shall approve the substance thereof.

Section 9.3. Documents Affecting Immunity or Indemnity. If in the opinion of the Pass Through Trustee any document required to be executed by it pursuant to the terms of Section 9.1 or 9.2 affects any interest, right, duty, immunity or indemnity in favor of the Pass Through Trustee under this Pass Through Trust Agreement, the Pass Through Trustee may in its discretion decline to execute such document.

Section 9.4. Execution of Supplemental Trust Agreements. In executing, or accepting the additional trusts created by, any supplemental agreement permitted by this Section 9 or the modification thereby of the trusts created by this Pass Through Trust Agreement, the Pass Through Trustee shall be entitled to receive, and (subject to Section 7.1) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental agreement is authorized or permitted by this Pass Through Trust Agreement.

Section 9.5. Effect of Supplemental Trust Agreements. Upon the execution of any supplemental agreement under this Section 9, this Pass Through Trust Agreement shall be modified in accordance therewith, and such supplemental agreement shall form a part of this Pass Through Trust Agreement for all purposes; and every Holder of Certificates theretofore or thereafter authenticated and delivered hereunder shall be bound thereby.

Section 9.6. Reference in Certificates to Supplemental Trust Agreements. Certificates authenticated and delivered after the execution of any supplemental agreement pursuant to this Section 9 may bear a notation in form approved by the Pass Through Trustee as to any matter provided for in such supplemental agreement; and, in such case, suitable notation may be made upon Outstanding Certificates after proper presentation and demand.

Section 9.7. Conformity with Trust Indenture Act. Every supplemental agreement under this Section 9 executed at a time that the Certificates shall be subject to the Trust Indenture Act, shall conform to requirements of the Trust Indenture Act as in effect on the date such supplemental agreement is executed.

#### SECTION 10. AMENDMENTS AND CONSENTS TO COLLATERAL TRUST INDENTURE AND OTHER LESSOR NOTE DOCUMENTS

(a) In the event that the Pass Through Trustee, as holder of any Lessor Note in trust for the benefit of the Certificateholders, receives a request for a consent to any amendment, modification, waiver or supplement under the Collateral Trust Indenture or other Lessor Note Document that requires the consent of the holder of such Lessor Note, the Pass Through Trustee shall forthwith send a notice of such proposed amendment, modification, waiver or supplement to each Certificateholder registered on the Register as of such date. Any such notice shall describe the proposed amendment, modification, waiver or supplement (or attach a copy thereof). The Pass Through Trustee shall request from the Certificateholders Directions as to (i) whether or not to direct the applicable Indenture Trustee to take or refrain from taking any action which a holder of such Lessor Note has the option to direct, (ii) whether or not to give or execute any waivers, consents, amendments, modifications or supplements as a holder of such Lessor Note and (iii) how to vote any Lessor Note if a vote has been called for with respect thereto. Any such request shall specify a date by which Certificateholders are requested to respond. Provided such a request for Certificateholder Direction shall have been made, in

directing any action or casting any vote or giving any consent as the holder of any Lessor Note, the Pass Through Trustee shall vote or consent with respect to such Lessor Note in the same proportion as the Certificates were actually voted by Acts of Holders delivered to the Pass Through Trustee at least two Business Days prior to the date the Pass Through Trustee directs such action or casts such vote or gives such consent. Notwithstanding the foregoing, but subject to Section 6.4, in the case that an Event of Default hereunder shall have occurred and be continuing, the Pass Through Trustee may, in its own discretion and at its own direction, consent and notify the applicable Indenture Trustee of such consent to any amendment, modification, waiver or supplement under the Collateral Trust Indenture or other Lessor Note Document.

(b) With respect to consents, approvals, waivers and authorizations which under the terms of Section 8 of the Collateral Trust Indenture may be given by the Indenture Trustee without the necessity of the consent of any of the holders of Lessor Notes, no consent, approval, waiver or authorization shall be required hereunder on the part of the Pass Through Trustee or the Certificateholders.

(c) Neither the Pass Through Trustee nor any Certificateholder shall have any obligation to purchase any Additional Lessor Notes issued under the Collateral Trust Indenture.

## SECTION 11. TERMINATION OF PASS THROUGH TRUST

Section 11.1. Termination of the Pass Through Trust. The respective obligations and responsibilities of the Partnerships and the Pass Through Trustee created hereby and the Pass Through Trust created hereby shall terminate upon the distribution to all Certificateholders of all amounts required to be distributed to them pursuant to this Pass Through Trust Agreement and the disposition of all property held as part of the Trust Property; provided, however, that if and to the extent that any of the options, rights and privileges granted under this Pass Through Trust Agreement, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule or law relating to the vesting of interest in property or the suspension of the power of alienation of property, then it is agreed that notwithstanding any other provision of this Pass Through Trust Agreement, such options, rights and privileges, subject to the respective conditions hereof governing the exercise of such options, rights and privileges, will be exercisable only during (a) the longer of (i) a period which will end twenty-one (21) years after the death of the last survivor of the descendants living on the date of the execution of this Pass Through Trust Agreement of the following Presidents of the United States:

Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, Gerald R. Ford, James E. Carter, Ronald W. Reagan, George H.W. Bush and William J. Clinton or (ii) the period provided under the Uniform Statutory Rule Against Perpetuities or (b) the specific applicable period of time expressed in this Pass Through Trust Agreement, whichever of (a) or (b) is shorter.

Notice of any termination, specifying the Distribution Date (or Special Distribution Date, as the case may be) upon which the Certificateholders may surrender their Certificates to the Pass Through Trustee for payment of the final distribution and cancellation, shall be mailed promptly by the Pass Through Trustee to Certificateholders not earlier than the 60th day and not later than the 20th day next preceding such final distribution specifying (A) the

Distribution Date (or Special Distribution Date, as the case may be) upon which final payment of the Certificates will be made upon presentation and surrender of Certificates at the office or agency of the Pass Through Trustee therein specified, (B) the amount of any such final payment, and (C) that the Record Date otherwise applicable to such Distribution Date (or Special Distribution Date, as the case may be) is not applicable, payments being made only upon presentation and surrender of the Certificates at the office or agency of the Pass Through Trustee therein specified. The Pass Through Trustee shall give such notice to the Registrar at the time such notice is given to Certificateholders. Upon presentation and surrender of the Certificates, the Pass Through Trustee shall cause to be distributed to Certificateholders amounts distributable on such Distribution Date or Special Distribution Date, as the case may be, pursuant to Section 4.2 hereof.

In the event that all of the Certificateholders shall not surrender their Certificates for cancellation within six months after the date specified in the above mentioned written notice, the Pass Through Trustee shall give a second written notice to the remaining Certificateholders to surrender their Certificates for cancellation and receive the final distribution with respect thereto. In the event that any money held by the Pass Through Trustee for the payment of distributions on the Certificates shall remain unclaimed for two years (or such lesser time as the Pass Through Trustee shall be satisfied, after sixty days' written notice from the Partnerships, is one month prior to the escheat period provided under applicable law) after the final distribution date with respect thereto, the Pass Through Trustee shall pay to each Indenture Trustee the appropriate amount of money relating to such Indenture Trustee and shall give written notice thereof to the Owner Lessor, the Owner Participant and the Partnerships.

## SECTION 12. MISCELLANEOUS PROVISIONS

Section 12.1. Amendments and Waivers. No term, covenant, agreement or condition of this Pass Through Trust Agreement may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

Section 12.2. Limitation on Rights of Certificateholders. The death or incapacity of any Certificateholder shall not operate to terminate this Pass Through Trust Agreement or the Pass Through Trust, nor entitle such Certificateholder's legal representatives or heirs to claim an accounting or to take any action or commence any proceeding in any court for a partition or winding up of the Pass Through Trust, nor otherwise affect the rights, obligations and liabilities of the parties hereto or any of them.

Section 12.3. Certificates Nonassessable and Fully Paid.

Certificateholders shall not be personally liable for obligations of the Pass Through Trust, the Fractional Undivided Interests represented by the Certificates shall be nonassessable for any losses or expenses of the Pass Through Trust or for any reason whatsoever, and Certificates upon authentication thereof by the Pass Through Trustee pursuant to Section 3.2 hereof are and shall be deemed fully paid. No Certificateholder shall have any right (except as expressly provided herein) to vote or in any manner otherwise control the operation and management of the Trust Property, the Pass Through Trust established hereunder, or the obligations of the parties hereto, nor shall anything set forth

herein, or contained in the terms of the Certificates, be construed so as to constitute the Certificateholders from time to time as partners or members of an association.

Section 12.4. Notices, etc. to Partnerships and Pass Through Trustee. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein to a party hereto shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to such party and copy party at its address set forth below or at such other address as such party or copy party may from time to time designate by written notice to the other party:

**If to Tiverton:**

c/o Calpine Corporation  
50 West San Fernando Street, 5th Floor  
San Jose, California 95113  
Telephone No.: (408) 995-5115  
Facsimile No.: (408) 995-0505  
Attention: Asset Manager and General Counsel

c/o Calpine Corporation  
The Pilot House, 2nd Floor  
Lewis Wharf  
Boston, Massachusetts 02110  
Telephone No.: (617) 723-7200  
Facsimile No.: (617) 723-7635

**If to Rumford:**

c/o Calpine Corporation  
50 West San Fernando Street, 5th Floor  
San Jose, California 95113  
Telephone No.: (408) 995-5115  
Facsimile No.: (408) 995-0505  
Attention: Asset Manager and General Counsel

c/o Calpine Corporation  
The Pilot House, 2nd Floor  
Lewis Wharf  
Boston, Massachusetts 02110  
Telephone No.: (617) 723-7200  
Facsimile No.: (617) 723-7635

**If to the Pass Through Trustee:**

State Street Bank and Trust Company of Connecticut,  
National Association  
225 Asylum Street, Goodwin Square  
Hartford, Connecticut 06103  
Telephone No.: (860) 244-1822  
Facsimile No.: (860) 244-1889  
Attention: Corporate Trust Department

**With a Copy to:**

State Street Bank and Trust Company of California,  
National Association  
633 West 5th Street, 12th Floor  
Los Angeles, California 90071  
Telephone No.: (213) 362-7373  
Facsimile No.: (213) 362-7357  
Attention: Corporate Trust Department

Section 12.5. Notices to Holders; Waiver. Except as otherwise expressly provided herein, where this Pass Through Trust Agreement provides for notice to Holders of any event, such notice shall be sufficiently given if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders, then such notification as shall be made by overnight courier, or in any other manner acceptable to the Pass Through Trustee, shall constitute a sufficient notification for every purpose hereunder.

Where this Pass Through Trust Agreement provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Pass Through Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to any other Holder, and any notice which is mailed in the manner herein provided shall be conclusively presumed to have been duly given.

Section 12.6. Successors and Assigns.

(a) This Pass Through Trust Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof.

(b) Except as expressly provided herein or in the other Operative Documents, no party hereto may assign its interests or transfer its obligations herein without the consent of the other parties hereto.

Section 12.7. Business Day. In any case where any Distribution Date or Special Distribution Date relating to any Certificate is not a Business Day, then (notwithstanding any other provision of this Pass Through Trust Agreement) the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such Distribution Date or Special Distribution Date and, provided that such payment is made on such succeeding Business Day, no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

Section 12.8. Governing Law. This Pass Through Trust Agreement, the Certificates and the rights and duties of the parties hereunder and thereunder shall be in all respects governed by and construed in accordance with the law of the State of New York, including all matters of construction, validity and performance (without giving effect to the conflicts of laws provisions thereof, other than New York General Obligations Law Section 5-1401).

Section 12.9. Severability. Any provision of this Pass Through Trust Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 12.10. Benefits of Pass Through Trust Agreement. Nothing in this Pass Through Trust Agreement or in the Certificates, express or implied, shall give to any person, other than the Partnerships, the Pass Through Trustee, the Owner Lessor and each Indenture Trustee, and their respective successors, and the Holders of Certificates as expressly provided herein, any benefit or any legal or equitable right, remedy or claim under this Pass Through Trust Agreement.

Section 12.11. Counterparts. This Pass Through Trust Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

Section 12.12. Headings and Table of Contents. The headings of the sections of this Pass Through Trust Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 12.13. Further Assurances. Each party hereto will promptly and duly execute and deliver such further documents and assurances for and take such further action reasonably requested by the other party, all as may be reasonably necessary to carry out more effectively the intent and purpose of this Pass Through Trust Agreement.

Section 12.14. Effectiveness. This Pass Through Trust Agreement has been dated as of the date first above written for convenience only. This Pass Through Trust Agreement shall be effective on December 19, 2000, the date of execution and delivery by the Partnerships and the Pass Through Trustee.

Section 12.15. Statement of Intent. It is intended that, if the Pass Through Trust were ever to be classified as a partnership for Federal income tax purposes, that the Pass Through Trust be excluded from the application of Subchapter K of the Internal Revenue Code, in accordance with Treasury Regulation 1.761-2(b)(2)(ii).

IN WITNESS WHEREOF, the Partnerships and the Pass Through Trustee have caused this Pass Through Trust Agreement to be duly executed and delivered by their respective officers thereunto duly authorized.

**TIVERTON POWER ASSOCIATES  
LIMITED PARTNERSHIP**

By: /s/ ERIC PRYOR

-----  
Name: Eric Pryor  
Title: Authorized Agent

**RUMFORD POWER ASSOCIATES  
LIMITED PARTNERSHIP**

By: /s/ ERIC PRYOR

-----  
Name: Eric Pryor  
Title: Authorized Agent

**STATE STREET BANK AND TRUST COMPANY OF  
CONNECTICUT, NATIONAL ASSOCIATION,  
as Pass Through Trustee**

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President

## **SCHEDULE 1**

### **Participation Agreement**

The Participation Agreement providing for Lease Transactions to be financed by the purchase of Lessor Notes hereunder, and the parties thereto, is as follows: the Participation Agreement, dated as of December 19, 2000, among (i) Tiverton Power Associates Limited Partnership, a limited partnership organized under the laws of the State of Rhode Island, (ii) Rumford Power Associates Limited Partnership, a limited partnership organized under the laws of the State of Maine, (iii) Calpine Corporation, a Delaware corporation, as Guarantor, (iv) PMCC Calpine New England Investment LLC, a Delaware limited liability company, as Owner Lessor, (v) PMCC Calpine NEIM LLC, a Delaware limited liability company, as the Owner Participant, (vi) State Street Bank and Trust Company of Connecticut, National Association, a national banking association organized and existing under the laws of the United States, not in its individual capacity, except as expressly provided herein, but solely as Indenture Trustee under the Collateral Trust Indenture, and (vii) State Street Bank and Trust Company of Connecticut, National Association, a national banking association organized and existing under the laws of the United States, not in its individual capacity, but solely as Pass Through Trustee.

**SCH 1-1**

**EXHIBIT A**

**FORM OF CERTIFICATE**

THIS CERTIFICATE (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT") AND UNDER APPLICABLE STATE SECURITIES LAWS, AND THIS CERTIFICATE MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS CERTIFICATE IS HEREBY NOTIFIED THAT THE SELLER OF THIS CERTIFICATE MAY BE RELYING ON THE EXEMPTION FROM THE PROVISIONS OF SECTION 5 OF THE SECURITIES ACT PROVIDED BY RULE 144A THEREUNDER.

THE HOLDER OF THIS CERTIFICATE AGREES FOR THE BENEFIT OF THE ISSUER AND CALPINE CORPORATION THAT (A) THIS CERTIFICATE MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (i) IN THE UNITED STATES TO A PERSON WHOM THE SELLER REASONABLY BELIEVES IS A "QUALIFIED INSTITUTIONAL BUYER" (AS DEFINED IN RULE 144A UNDER THE SECURITIES ACT) IN A TRANSACTION MEETING THE REQUIREMENTS OF RULE 144A, (ii) OUTSIDE THE UNITED STATES IN AN OFFSHORE TRANSACTION IN ACCORDANCE WITH RULE 904 UNDER THE SECURITIES ACT, (iii) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iv) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iv) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES OR ANY OTHER APPLICABLE JURISDICTION, AND (B) THE HOLDER WILL, AND EACH SUBSEQUENT HOLDER IS REQUIRED TO, NOTIFY ANY PURCHASER OF THIS CERTIFICATE FROM IT OF THE RESALE RESTRICTION REFERRED TO IN (A) ABOVE.

**[IN CONNECTION WITH ANY TRANSFER, THE HOLDER WILL DELIVER TO THE**

**REGISTRAR AND TRANSFER AGENT SUCH CERTIFICATES AND OTHER INFORMATION AS SUCH TRANSFER AGENT MAY REASONABLY REQUIRE TO CONFIRM THAT TRANSFER COMPLIES WITH THE FOREGOING RESTRICTIONS.]**

**EXH A-1**

**TIVERTON AND RUMFORD 2000 PASS THROUGH TRUST**

9.00% Pass Through  
Certificate

**CUSIP:** \_\_\_\_\_

Final Distribution Date: July 15, 2018

evidencing a fractional undivided interest in a trust, the property of which includes certain notes secured by certain property leased to Tiverton Power Associates Limited Partnership and Rumford Power Associates Limited Partnership

**Certificate No. \_\_ \$[\_\_\_\_\_] Fractional Undivided Interest**

THIS CERTIFIES THAT Cede & Co., as nominee of The Depository Trust Company, for value received, is the registered owner of a \$\_\_\_\_\_ (\_\_\_\_\_ dollars) Fractional Undivided Interest in the Tiverton and Rumford 2000 Pass Through Trust (the "Pass Through Trust") created pursuant to a Pass Through Trust Agreement, dated as of December 19, 2000 (the "Agreement") between Tiverton Power Associates Limited Partnership, a Rhode Island limited partnership ("Tiverton"), Rumford Power Associates Limited Partnership, a Maine limited partnership (together with Tiverton, the "Partnerships"), and State Street Bank and Trust Company of Connecticut, National Association, as trustee (the "Pass Through Trustee"), a summary of certain of the pertinent provisions of which is set forth below. To the extent not otherwise defined herein, the capitalized terms used herein have the meanings assigned to them in the Agreement. This Certificate is one of the duly authorized Certificates designated as "9.00% Pass Through Certificates" (herein called the "Certificates"). This Certificate is issued under and is subject to the terms, provisions and conditions of the Agreement, to which Agreement the Holder of this Certificate by virtue of the acceptance hereof assents and by which such Holder is bound. The property of the Pass Through Trust includes certain Lessor Notes (the "Trust Property"). The Lessor Notes are secured by a security interest in certain undivided interests in the Facility, and liability thereunder is limited to the income and proceeds of such security.

Subject to and in accordance with the terms of the Agreement, from funds then available to the Pass Through Trustee, there will be distributed on each January 15 and July 15 (a "Distribution Date"), commencing on July 15, 2001, to the person in whose name this Certificate is registered at the close of business on the day of the month which is fifteen days preceding the Distribution Date, an amount in respect of the Scheduled Payments on the Lessor Notes due on such Distribution Date, the receipt of which has been confirmed by the Pass Through Trustee, equal to the product of the percentage interest in the Pass Through Trust evidenced by this

**EXH A-2**

Certificate and an amount equal to the sum of such Scheduled Payments. Subject to and in accordance with the terms of the Agreement, in the event that Special Payments on the Lessor Notes are received by the Pass Through Trustee, from funds then available to the Pass Through Trustee, there shall be distributed on the applicable Special Distribution Date, to the Person in whose name this Certificate is registered at the close of business on the day of the month which is fifteen days preceding the Special Distribution Date, an amount in respect of such Special Payments on the Lessor Notes, the receipt of which has been confirmed by the Pass Through Trustee, equal to the product of the percentage interest in the Pass Through Trust evidenced by this Certificate and an amount equal to the sum of such Special Payments so received. The Special Distribution Date shall be determined as provided in the Agreement. If a Distribution Date or Special Distribution Date is not a Business Day, distribution shall be made on the immediately following Business Day. The Pass Through Trustee shall mail notice of each Special Payment and the Special Distribution Date therefor to the Holders of the Certificates.

Distributions on this Certificate will be made by the Pass Through Trustee (i) if (A) The Depository Trust Company ("DTC"), or its nominee, is the Certificateholder of record of this Certificate, or (B) a Certificateholder holds a Certificate or Certificates in an aggregate amount greater than \$10,000,000, or (C) a Certificateholder holds a Certificate or Certificates in an aggregate amount greater than \$1,000,000 and so requests to the Pass Through Trustee, by wire transfer in immediately available funds to an account maintained by such Certificateholder with a bank, or (ii) if none of the above apply, by check mailed to such Certificateholder at the address appearing in the Register, without the presentation or surrender of this Certificate or the making of any notation hereon. Except as otherwise provided in the Agreement and notwithstanding the above, the final distribution on this Certificate will be made after notice mailed by the Pass Through Trustee of the pendency of such distribution and only upon presentation and surrender of this Certificate at the office or agency of the Pass Through Trustee specified in such notice.

Unless this Certificate is presented by an authorized representative of DTC to the Partnerships or their agent for registration of transfer, exchange or payment, and any Certificate issued is registered in the name of Cede & Co., or in such other name as is requested by an authorized representative of DTC (and any payment is made to Cede & Co., or to such other entity as is requested by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL in as much as the registered owner hereof, Cede & Co., has an interest herein.

Each Person who acquires or accepts this Certificate or an interest herein will be deemed by such acquisition or acceptance to have represented and warranted that either: (i) no Plan assets have been used to purchase this Certificate or an interest herein or (ii) the purchase and holding of this Certificate or interest herein are either exempt from the prohibited transaction restrictions of ERISA and the Code pursuant to one or more prohibited transaction statutory or administrative exemptions or do not constitute a prohibited transaction under such restrictions of ERISA and the Code.

**EXH A-3**

This Certificate shall be governed by and construed in accordance with the law of the State of New York.

Reference is hereby made to the further provisions of this Certificate set forth on the reverse hereof, which further provisions shall for all purposes have the same effect as if set forth at this place.

Unless the certificate of authentication hereon has been executed by the Pass Through Trustee, by manual signature, this Certificate shall not be entitled to any benefit under the Agreement or be valid for any purpose.

**EXH A-4**

IN WITNESS WHEREOF, the Pass Through Trustee has caused this Certificate to be duly executed.

**TIVERTON AND RUMFORD 2000 PASS  
THROUGH TRUST**

**By: STATE STREET BANK AND TRUST  
COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,  
as Pass Through Trustee**

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

Name:

Title:

**EXH A-5**

The Certificates do not represent a direct obligation of, or an obligation guaranteed by, or an interest in, the Partnerships, the Pass Through Company or the Pass Through Trustee or any affiliate thereof. The Certificates are limited in right of payment, all as more specifically set forth in the Agreement. All payments or distributions made to Certificateholders under the Agreement shall be made only from the Trust Property and only to the extent that the Pass Through Trustee shall have received sufficient income or proceeds from the Trust Property to make such payments in accordance with the terms of the Agreement. Each Holder of this Certificate, by its acceptance hereof, agrees that it will look solely to the income and proceeds from the Trust Property to the extent available for distribution to such Holder as provided in the Agreement. This Certificate does not purport to summarize the Agreement and reference is made to the Agreement for information with respect to the interests, rights, benefits, obligations, proceeds and duties evidenced hereby. A copy of the Agreement may be examined during normal business hours at the principal office of the Pass Through Trustee, and at such other places, if any, designated by the Pass Through Trustee, by any Certificateholder upon request.

The Agreement permits, with certain exceptions therein provided, the amendment thereof and the modification of the rights and obligations of the Partnerships and the rights of the Certificateholders under the Agreement at any time by the Partnerships and the Pass Through Trustee with the consent of the Holders of Certificates evidencing Fractional Undivided Interests aggregating not less than a majority in interest of the Fractional Undivided Interests evidenced by all Certificates at the time Outstanding. Any such consent by the Holder of this Certificate shall be conclusive and binding on such Holder and upon all future Holders of this Certificate and of any Certificate issued upon the transfer hereof or in exchange hereof or in lieu hereof whether or not notation of such consent is made upon this Certificate. The Agreement also permits the amendment thereof, in certain limited circumstances, without the consent of the Holders of any of the Certificates.

As provided in the Agreement and subject to certain limitations therein set forth, the transfer of this Certificate is registrable in the Register upon surrender of this Certificate for registration of transfer at the offices or agencies maintained by the Pass Through Trustee in its capacity as Registrar, or by any successor Registrar, in the Borough of Manhattan, the City of New York, duly endorsed or accompanied by a written instrument of transfer in form satisfactory to the Pass Through Trustee and the Registrar duly executed by the Holder hereof or such Holder's attorney duly authorized in writing, and thereupon one or more new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Pass Through Trust will be issued to the designated transferee or transferees.

The Certificates are issuable only as registered Certificates without coupons in minimum denominations of \$100,000 Fractional Undivided Interest and any integral multiples of \$1,000 in excess thereof. As provided in the Agreement and subject to certain limitations therein

set forth, Certificates are exchangeable for new Certificates of authorized denominations evidencing the same aggregate Fractional Undivided Interest in the Pass Through Trust, as requested by the Holder surrendering the same.

No service charge will be made for any such registration of transfer or exchange, but the Pass Through Trustee shall require payment of an amount sufficient to cover any tax or charge payable in connection therewith.

The Pass Through Trustee, the Partnerships, the Owner Lessor, the Registrar and any agent of the Pass Through Trustee or the Registrar may treat the person in whose name this Certificate is registered as the owner hereof for all purposes, and neither the Pass Through Trustee, the Partnerships, the Owner Lessor, the Registrar nor any such agent shall be affected by any notice to the contrary.

The obligations and responsibilities created by the Agreement and the Pass Through Trust created thereby shall terminate upon the distribution to Certificateholders of all amounts required to be distributed to them pursuant to the Agreement and the disposition of all property held as part of the Trust Property.

**EXH A-7**

**EXHIBIT B**

**FORM OF PASS THROUGH TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

December 19, 2000

State Street Bank and Trust Company of Connecticut, National Association 225 Asylum Street  
Goodwin Square  
Hartford, Connecticut 06103

Re: Preparation and Registration of Lessor Notes

Ladies and Gentlemen:

Reference is made to the \$366,000,000 in aggregate principal amount of the 9.00% Pass Through Certificates due July 15, 2018 (the "Pass Through Certificates") of the Tiverton and Rumford 2000 Pass Through Trust representing undivided beneficial interests in \$366,000,000 aggregate principal amount of secured lease obligation notes (the "Lessor Notes") of PMCC Calpine New England Investment LLC, a Delaware limited liability company (the "Owner Lessor"), issued pursuant to the Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000, between the Owner Lessor and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, comprising \$190,000,000 aggregate principal amount of Lessor Notes relating to the Tiverton Generating Station and \$176,000,000 aggregate principal amount of Lessor Notes relating to the Rumford Generating Station.

You are hereby directed to have the Lessor Notes prepared and registered in the name of State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee (the "Pass Through Trustee") under the Pass Through Trust Agreement, dated as of December 19, 2000, among Tiverton Power Associates Limited Partnership, a Rhode Island limited partnership, Rumford Power Associates Limited Partnership, a Maine limited partnership, and the Pass Through Trustee, and to have the Lessor Notes delivered to the Pass Through Trustee at 9:00 a.m., Eastern Standard Time, on December 19, 2000.

**EXH B-1**

**[CONTINUED ON NEXT PAGE]**

**EXH B-2**

Very truly yours,

**PMCC Calpine New England Investment LLC**

By PMCC Calpine NEIM LLC,  
its Sole Member

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

Name:

Title:

**EXH B-3**

**EXHIBIT C**

**FORM OF TRANSFER CERTIFICATE**

**CERTIFICATE**

**TIVERTON AND RUMFORD 2000 PASS THROUGH TRUST**

**PASS THROUGH CERTIFICATES**

This is to certify that as of the date hereof with respect to \$\_\_\_\_\_ (\_\_\_\_\_ dollars) Fractional Undivided Interest of the above-captioned securities presented or surrendered on the date hereof (the "Surrendered Certificates") for registration of transfer, or for exchange where the securities issuable upon such exchange are to be registered in a name other than that of the undersigned Holder (each such transaction being a "transfer"), the undersigned Holder (as defined in the Pass Through Trust Agreement) certifies that the transfer of Surrendered Certificates associated with such transfer complies with the restrictive legend set forth on the face of the Surrendered Certificates for the reason checked below:

- |  |  |
|--|--|
| <input type="checkbox"/> Transfer to Tiverton and Rumford 2000 Pass Through Trust  | <input type="checkbox"/> Transfer outside the United States in compliance with Rule 904 of the Securities Act.   |
| <input type="checkbox"/> Transfer inside the United States to a Qualified Institutional Buyer in compliance with Rule 144A under the Securities Act. | <input type="checkbox"/> Transfer inside the United States to an Institutional Accredited Investor that has previously furnished to the Pass Through Trustee a signed letter containing certain representations and agreements relating to restrictions on transfer and if such transfer is in respect of an aggregate Fractional Undivided Interest of less than \$100,000, an opinion of counsel acceptable to the Partnerships that such transfer is in compliance with the Securities Act. |
| <input type="checkbox"/> Transfer pursuant to an exemption from registration provided by Rule 144 under the Securities Act (if available).           |  |

[Name of Holder]

\_\_\_\_\_

Dated: \_\_\_\_\_, \_\_\_\_\_\*

\*To be dated the date of presentation or surrender

## EXHIBIT D

### FORM OF LETTER TO BE DELIVERED BY ACCREDITED INVESTORS

Tiverton Power Associates Limited Partnership/ Rumford Power Associates Limited Partnership c/o Calpine Corporation  
50 West San Fernando Street  
San Jose, California 95113

Credit Suisse First Boston Corporation  
As Representative of the  
Several Initial Purchasers  
c/o Credit Suisse First Boston Corporation Eleven Madison Avenue  
New York, NY 10010-3629

Dear Sirs and Madams,

We are delivering this letter in connection with an offering of Pass Through Certificates (the "Securities") evidencing a fractional interest in a pass through trust, the property of which consists of certain notes secured by certain property leased by Tiverton Power Associates Limited Partnership, a Rhode Island limited partnership, and Rumford Power Associates Limited Partnership, a Maine limited partnership (the "Lessees"), the obligations of the Lessees under the leases and the related lease documents being guaranteed by Calpine Corporation, a Delaware Corporation (the "Company"), all as described in the Confidential Offering Circular (the "Offering Circular") relating to the offering.

We hereby confirm that:

- (i) we are an "accredited investor" within the meaning of Rule 501(a)(1), (2) or (3) under the Securities Act of 1933, as amended (the "Securities Act"), or an entity in which all of the equity owners are accredited investors within the meaning of Rule 501 (a) (1), (2) or (3) under the Securities Act (an "Institutional Accredited Investor");
- (ii) (A) any purchase of the Securities by us will be for our own account or for the account of one or more other Institutional Accredited Investors or as fiduciary for the account of one or more trusts, each of which is an "accredited investor" within the meaning of Rule 501 (a) (7) under the Securities Act and for each of which we exercise sole investment discretion or (B) we are a "bank," within the meaning of Section 3(a) (2) of the Securities Act, or a "savings and loan association" or other institution described in Section 3(a) (5) (A) of the Securities Act that is acquiring the Securities as fiduciary for the account of one or more institutions for which we exercise sole investment discretion;

**EXH. D-1**

(iii) in the event that we purchase any of the Securities, we will acquire Securities having a minimum purchase price of not less than \$100,000 for our own account or for any separate account for which we are acting;

(iv) we have such knowledge and experience in financial and business matters that we are capable of evaluating the merits and risks of purchasing the Securities;

(v) we are not acquiring the Securities with a view to distribution thereof or with any present intention of offering or selling any of the Securities, except inside the United States in accordance with Rule 144A under the Securities Act or outside the United States in accordance with Regulation S under the Securities Act, as provided below; provided that the disposition of our property and the property of any accounts for which we are acting as fiduciary shall remain at all times within our control; and

(vi) we have received a copy of the Offering Circular relating to the offering of the Securities and acknowledge that we have had access to such financial and other information, and have been afforded the opportunity to ask such questions of representatives of the Lessees and the Company and receive answers thereto, as we deem necessary in connection with our decision to purchase the Securities.

We understand that the Securities are being offered in a transaction not involving any public offering within the United States within the meaning of the Securities Act and that the Securities have not been and will not be registered under the Securities Act, and we agree, on our own behalf and on behalf of each account for which we acquire any Securities, that if in the future we decide to resell, pledge or otherwise transfer such Securities, such Securities may be offered, resold, pledged or otherwise transferred only (i) in the United States to a person who we reasonably believe is a "qualified institutional buyer" (as defined in Rule 144A under the Securities Act) in a transaction meeting the requirements of Rule 144A, (ii) outside the United States in a transaction in accordance with Rule 904 under the Securities Act, (iii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available) or (iv) pursuant to an effective registration statement under the Securities Act, in each of cases (i) through (iv), in accordance with any applicable securities laws of any State of the United States or any other applicable jurisdiction. We understand that the registrar and transfer agent for the Securities will not be required to accept for registration of transfer any Securities acquired by us, except upon presentation of evidence satisfactory to the Lessees and the Company and the transfer agent that the foregoing restrictions on transfer have been complied with. We further understand that any Securities acquired by us will be in the form of definitive physical certificates and that such certificates will bear a legend reflecting the substance of this paragraph.

We acknowledge that you, the Lessees, the Company and others will rely upon our confirmations, acknowledgements and agreements set forth herein, and we agree to notify you promptly in writing if any of our representations or warranties herein ceases to be accurate and complete.

**EXH. D-2**

THIS LETTER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS.

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

\_\_\_\_\_  
(Name of Purchaser)

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

Title:

**EXH. D-3**

**EXHIBIT 4.12.2**

**EXECUTION COPY**

**PARTICIPATION AGREEMENT**

**Dated as of December 19, 2000**

among

**TIVERTON POWER ASSOCIATES LIMITED PARTNERSHIP, as a Facility Lessee,**

**RUMFORD POWER ASSOCIATES LIMITED PARTNERSHIP, as a Facility Lessee,**

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC, as Owner Lessor,**

**CALPINE CORPORATION, as Guarantor**

PMCC CALPINE NEIM LLC, as Owner Participant,

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION,**

not in its individual capacity, except  
as expressly provided herein, but solely  
as Indenture Trustee, and

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL  
ASSOCIATION, as Pass Through Trustee**

**CALPINE NEW ENGLAND PROJECT**

---

# TABLE OF CONTENTS

	PAGE
SECTION 1.	DEFINITIONS; INTERPRETATION OF THIS PARTICIPATION AGREEMENT.....3
SECTION 2.	PARTICIPATION; CLOSING DATE; TRANSACTION COSTS.....3
Section 2.1.	Agreements to Participate.....3
Section 2.2.	Closing Date; Procedure for Participation.....4
Section 2.3.	Transaction Costs.....6
SECTION 3.	REPRESENTATIONS AND WARRANTIES.....6
Section 3.1.	Representations and Warranties of the Facility Lessees.....6
Section 3.2.	Representations and Warranties of the Owner Lessor.....16
Section 3.3.	Intentionally Omitted.....17
Section 3.4.	Representations and Warranties of the Owner Participant....17
Section 3.5.	Representations and Warranties of Indenture Trustee and the Lease Indenture Company.....19
Section 3.6.	Representations, Warranties and Covenants of Pass Through Trustee and the Pass Through Company.....21
SECTION 4.	CLOSING CONDITIONS.....23
Section 4.1.	Completion of the Facility.....23
Section 4.2.	Operative Documents.....23
Section 4.3.	Certificates and the Lessor Notes.....23
Section 4.4.	Equity Investment.....23
Section 4.5.	Organizational Documents.....23
Section 4.6.	Representations and Warranties.....24
Section 4.7.	Defaults, Events of Default, Events of Loss.....24
Section 4.8.	Intentionally Omitted.....24
Section 4.9.	Consents.....24
Section 4.10.	Governmental Actions.....24
Section 4.11.	Insurance.....24
Section 4.12.	Ratings.....24
Section 4.13.	Environmental Report.....24
Section 4.14.	Surveys; Site Description.....25
Section 4.15.	Appraisal; Condition of the Facility.....25
Section 4.16.	Letter from the Appraiser.....25
Section 4.17.	Other Reports.....25
Section 4.18.	Opinion with Respect to Certain Tax Aspects.....25
Section 4.19.	Opinions of Counsel.....25
Section 4.20.	Recordings and Filings.....26
Section 4.21.	Intentionally Omitted.....26

	PAGE
	----
Section 4.22.	Taxes.....26
Section 4.23.	No Changes in Applicable Law.....26
Section 4.24.	Registered Agent for the Facility Lessees and the Owner Lessor.....26
Section 4.25.	Operating Lease Treatment.....26
Section 4.26.	Rent Adjustments.....27
Section 4.27.	Title Insurance.....27
Section 4.28.	Intentionally Omitted.....27
Section 4.29.	Intentionally Omitted.....27
Section 4.30.	Intentionally Omitted.....27
Section 4.31.	Intentionally Omitted.....27
Section 4.32.	Letter as to Number of Offerees.....27
Section 4.33.	Lien Search.....27
Section 4.34.	Intentionally Omitted.....27
Section 4.35.	Litigation.....27
Section 4.36.	No Material Adverse Change.....27
Section 4.37.	Regulatory Approvals.....27
Section 4.38.	Private Placement Number.....28
Section 4.39.	Credit Ratings.....28
Section 4.40.	Proceedings and Documents.....28
Section 4.41.	Intentionally Omitted.....28
Section 4.42.	Payment of Fees and Expenses.....28
Section 4.43.	Qualifying Letter of Credit.....28
SECTION 5.	COVENANTS OF FACILITY LESSEES AND GUARANTOR.....28
Section 5.1.	Maintenance of Existence.....28
Section 5.2.	Merger, Consolidation, Sale of Substantially All Assets....29
Section 5.3.	Intentionally Omitted.....29
Section 5.4.	Intentionally Omitted.....29
Section 5.5.	Administrator Fees.....29
Section 5.6.	Conduct of Business, Properties, Etc.....30
Section 5.7.	Obligations.....30
Section 5.8.	Books, Records, Access.....30
Section 5.9.	Other Information.....30
Section 5.10.	Warranty of Title to Facility Site.....31
Section 5.11.	ERISA.....31
Section 5.12.	Certain Contracts and Agreements.....31
Section 5.13.	Certain Costs.....31
Section 5.14.	Limitations on Liens.....32
Section 5.15.	Investments.....32
Section 5.16.	Survey (Rumford).....32
Section 5.17.	Regulations.....32

**TABLE OF CONTENTS (continued)**

PAGE

----

Section 5.18.	Partnerships.....	32
Section 5.19.	Dissolution.....	32
Section 5.20.	Termination of Contracts, Etc.....	32
Section 5.21.	Name and Location.....	33
Section 5.22.	Use of Facility Site.....	33
Section 5.23.	Abandonment of Facility.....	33
Section 5.24.	Taxes, Other Government Charges and Utility Charges.....	33
Section 5.25.	Compliance with Laws, Instruments, Etc.....	33
Section 5.26.	PUHCA.....	34
Section 5.27.	Intentionally Omitted.....	34
Section 5.28.	Intentionally Omitted.....	34
Section 5.29.	Intentionally Omitted.....	34
Section 5.30.	Intentionally Omitted.....	34
Section 5.31.	Further Assurances.....	34
Section 5.32.	Intentionally Omitted.....	35
Section 5.33.	Intentionally Omitted.....	35
Section 5.34.	Intentionally Omitted.....	35
Section 5.35.	Intentionally Omitted.....	35
Section 5.36.	Intentionally Omitted.....	35
Section 5.37.	No Subsidiaries.....	35
Section 5.38.	Permitted Business.....	35
Section 5.39.	Intentionally Omitted.....	35
Section 5.40.	Guaranty and Contingent Obligations.....	35
Section 5.41.	Assignment of Rights.....	36
Section 5.42.	Intentionally Omitted.....	36
Section 5.43.	Intentionally Omitted.....	36
Section 5.44.	Support Arrangements.....	36
Section 5.45.	Insurance.....	36
Section 5.46.	Qualifying Letter of Credit; Equity Collateral Account....	36
SECTION 6.	COVENANTS OF THE OWNER LESSOR.....	39
Section 6.1.	Compliance with the LLC Agreement.....	39
Section 6.2.	Owner Lessor's Liens.....	39
Section 6.3.	Amendments to Operative Documents.....	39
Section 6.4.	Transfer of the Owner Lessor's Interest.....	40
Section 6.5.	Owner Lessor; Lessor Estate.....	40
Section 6.6.	Limitation on Indebtedness and Actions.....	40
Section 6.7.	Change of Location.....	40
SECTION 7.	COVENANTS OF THE OWNER PARTICIPANT.....	40
Section 7.1.	Restrictions on Transfer of Member Interest.....	40
Section 7.2.	Owner Participant's Liens.....	43

**TABLE OF CONTENTS (continued)**

	PAGE
	----
Section 7.3.	Amendments or Revocation of LLC Agreement.....43
Section 7.4.	Bankruptcy Filings.....43
Section 7.5.	Instructions.....43
Section 7.6.	Intentionally Omitted.....43
Section 7.7.	Intentionally Omitted.....43
Section 7.8.	Right of First Refusal.....43
SECTION 8.	COVENANTS OF THE INDENTURE TRUSTEE AND THE PASS THROUGH TRUSTEE...44
Section 8.1.	Indenture Trustee's Liens.....44
Section 8.2.	Pass Through Trustee's Covenant Not to Transfer Lessor Notes.....44
SECTION 9.	INDEMNIFICATION.....44
Section 9.1.	General Indemnity.....44
Section 9.2.	General Tax Indemnity.....51
SECTION 10.	FACILITY LESSEE'S RIGHT OF QUIET ENJOYMENT.....60
SECTION 11.	SUPPLEMENTAL FINANCING IMPROVEMENTS; OPTIONAL REFINANCINGS.....60
Section 11.1.	Financing Improvements.....60
Section 11.2.	Optional Refinancing of Lease Debt.....62
Section 11.3.	Cooperation.....63
SECTION 12.	CERTAIN ADJUSTMENTS TO PERIODIC RENT AND TERMINATION VALUE.....63
SECTION 13.	TRANSFER OF THE FACILITY LESSEE OWNERSHIP.....64
Section 13.1.	Transfer of the Facility Lessee Ownership.....64
SECTION 14.	MISCELLANEOUS.....66
Section 14.1.	Consents; Cooperation.....66
Section 14.2.	Successor Owner Lessor.....66
Section 14.3.	Bankruptcy of Lessor Estate.....66
Section 14.4.	Waivers.....66
Section 14.5.	Notices.....66
Section 14.6.	Survival.....69
Section 14.7.	Successors and Assigns.....70
Section 14.8.	Business Day.....70
Section 14.9.	Governing Law.....70

**TABLE OF CONTENTS (continued)**

	PAGE
	----
Section 14.10.	Severability.....70
Section 14.11.	Counterparts.....70
Section 14.12.	Headings and Table of Contents.....70
Section 14.13.	Limitation of Liability.....71
Section 14.14.	Consent to Jurisdiction; Waiver of Trial by Jury; Process Agent.....72
Section 14.15.	Further Assurances.....72
Section 14.16.	Effectiveness.....73
Section 14.17.	Measuring Life.....73
Section 14.18.	No Partnership, Etc.....73
Section 14.19.	Entire Agreement.....73
Section 14.20.	Public Utility Regulation.....73
Section 14.21.	Confidentiality of Information.....74
Section 14.22.	Reliance.....74
Section 14.23.	Intentionally Omitted.....75
Section 14.24.	Amendments, Etc.....75
Section 14.25.	Credit for Certain Disbursements.....75

## APPENDICES:

### Appendix A Definitions and Rules of Interpretation

#### SCHEDULES:

Schedule 1-A	Equity Investment
Schedule 1-B	Indenture Trustee's Account
Schedule 1-C	Owner Participant's Account
Schedule 2	Pricing Assumptions
Schedule 3.1(m)	Environmental Matters - Hazardous Substances
Schedule 4.20	Recording and Filings
Schedule 5.45	Maintenance of Insurance

#### EXHIBITS:

Exhibit A-1	Description of Tiverton Facility
Exhibit A-2	Description of Rumford Facility
Exhibit B-1	Form of Tiverton Bill of Sale
Exhibit B-2	Form of Rumford Bill of Sale
Exhibit C-1	Form of Tiverton Facility Lease Agreement
Exhibit C-2	Form of Rumford Facility Lease Agreement
Exhibit D-1	Form of Tiverton Site Lease
Exhibit D-2	Form of Rumford Site Lease
Exhibit E-1	Form of Tiverton Site Sublease
Exhibit E-2	Form of Rumford Site Sublease
Exhibit F	Form of Pass Through Trust Agreement
Exhibit G	Form of OP Parent Guaranty
Exhibit H-1	Form of Calpine Guaranty (Tiverton)
Exhibit H-2	Form of Calpine Guaranty (Rumford)
Exhibit I	Form of Collateral Trust Indenture
Exhibit J	Form of OP Assignment and Assumption Agreement
Exhibit K	List of Competitors
Exhibit L	Required coverages for Qualifying Letters of Credit & Equity Collateral Account
Exhibit M	Form of Guarantor Assignment and Assumption Agreement

## PARTICIPATION AGREEMENT

This PARTICIPATION AGREEMENT, dated as of December 19, 2000 (as amended, supplemented or otherwise modified from time to time, in accordance with the provisions hereof, this "Participation Agreement" or this "Agreement"), among (i) TIVERTON POWER ASSOCIATES LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Rhode Island (the "Tiverton Lessee"), (ii) RUMFORD POWER ASSOCIATES LIMITED PARTNERSHIP, a limited partnership organized under the laws of the State of Maine (the "Rumford Lessee") (the Rumford Lessee, together with the Tiverton Lessee and each of their successors and permitted assigns, collectively, the "Facility Lessees," or individually, as the case may be, each a "Facility Lessee"), (iii) CALPINE CORPORATION, a Delaware corporation, as Guarantor (together with its successors and permitted assigns, the "Guarantor") under the Calpine Guaranty (Tiverton) and the Calpine Guaranty (Rumford) (the Calpine Guaranty (Rumford), together with the Calpine Guaranty (Tiverton), collectively, the "Calpine Guaranties," or individually, as the case may be, each a "Calpine Guaranty"), (iv) PMCC CALPINE NEW ENGLAND INVESTMENT LLC, a Delaware limited liability company (the "Owner Lessor"), (v) PMCC CALPINE NEIM LLC, a Delaware limited liability company (herein, together with its successors and permitted assigns, called the "Owner Participant"), (vi) STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, not in its individual capacity, except as expressly provided herein, but solely as trustee under the Collateral Trust Indenture (herein in its capacity as trustee under the Collateral Trust Indenture, together with its successors and permitted assigns, called the "Indenture Trustee", and herein in its individual capacity, together with its successors and permitted assigns, called the "Lease Indenture Company"), and (vii) STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, a national banking association organized and existing under the laws of the United States, not in its individual capacity, but solely as trustee under the Pass Through Trust Agreement (herein in its capacity as trustee under the Pass Through Trust Agreement, the "Pass Through Trustee").

### WITNESSETH:

WHEREAS, (a) Tiverton Lessee, an indirect, wholly-owned subsidiary of Calpine, will, as of the Closing Date, own a 265 MW gas-fired combined cycle merchant power plant located in Tiverton, Rhode Island and more fully described in Exhibit A-1 hereto ("Tiverton Facility") and (b) Rumford Lessee, an indirect, wholly-owned subsidiary of Calpine, will, as of the Closing Date, own a 265 MW gas-fired combined cycle merchant power plant located in Rumford, Maine and more fully described in Exhibit A-2 hereto ("Rumford Facility") (each of the Tiverton Facility and the Rumford Facility, a "Facility" and, collectively, the "Facilities");

WHEREAS, (a) Tiverton Lessee desires to sell to the Owner Lessor the Tiverton Facility pursuant

to the Tiverton Bill of Sale, and to lease to the Owner Lessor the Tiverton Site pursuant to the Tiverton Site Lease, and to lease the Tiverton Facility and sublease the Tiverton Site from the Owner Lessor pursuant to the Tiverton Facility Lease and the Tiverton Site Sublease, respectively and (b) Rumford Lessee desires to sell to the Owner Lessor in the Rumford Facility pursuant to the Rumford Bill of Sale, and to lease to the Owner Lessor the Rumford Site pursuant to the Rumford Site Lease, and to lease the Rumford Facility and sublease the Rumford Site from the Owner Lessor pursuant to the Rumford Facility Lease and the Rumford Site Sublease, respectively (the Tiverton Site and the Rumford Site, each a "Facility Site" and, collectively, the "Facility Sites" and the Tiverton Bill of Sale and the Rumford Bill of Sale, each a "Bill of Sale" and collectively, the "Bills of Sale");

WHEREAS, the Owner Participant desires to cause the Owner Lessor to purchase the Facilities from the Facility Lessees pursuant to the Bills of Sale, to lease the Facility Sites from the Facility Lessees pursuant to the Facility Site Leases, and to lease the Facilities and to sublease the Facility Sites to the Facility Lessees pursuant to the Facility Leases and the Facility Site Subleases, respectively;

WHEREAS, the Owner Participant has entered into the LLC Agreement, pursuant to which the Owner Participant has authorized the Owner Lessor to, among other things and subject to the terms and conditions thereof and hereof, issue the Lessor Notes and sell such Lessor Notes to the Pass Through Trust, purchase the Facilities from the Facility Lessees pursuant to the Bills of Sale, lease the Facility Sites from the Facility Lessees pursuant to the Facility Site Leases, and lease the Facilities and sublease the Facility Sites to the Facility Lessees pursuant to the Facility Leases and the Facility Site Subleases, respectively;

WHEREAS, in order to provide a portion of the Purchase Price payable by the Owner Lessor in respect of its acquisition of the Facilities pursuant to the Bills of Sale, the Owner Participant is willing to make an investment in the Owner Lessor in an amount equal to the Equity Investment, all in the manner and subject to the conditions set forth herein;

WHEREAS, on the Closing Date, the Owner Lessor intends to sell to the Pass Through Trust the Lessor Notes and to grant to the Indenture Trustee liens and security interests in the Indenture Estate to secure its obligations thereunder;

WHEREAS, concurrently with the execution and delivery of this Participation Agreement, the Pass Through Trustee has entered into the Pass Through Trust Agreement, pursuant to which the Pass Through Trustee has been directed to use the Proceeds to purchase the Lessor Notes from the Owner Lessor on the Closing Date;

WHEREAS, concurrently with the execution and delivery of this Participation Agreement, the Facility Lessees have entered into the Certificate Purchase Agreement with the Initial Purchasers and the Pass Through Trust pursuant to which the Initial Purchasers will purchase the Certificates on the Closing Date from the Pass Through Trust;

WHEREAS, concurrently with the execution and delivery of this Participation Agreement, the OP Guarantor has executed and delivered the OP Parent Guaranty pursuant to which the OP Guarantor guarantees the payment and performance obligations of the Owner Participant under the Operative Documents;

WHEREAS, pursuant to the Calpine Guaranty (Tiverton) and the Calpine Guaranty (Rumford), Calpine has guaranteed all of the respective obligations of each Facility Lessee under the Participation Agreement and as of the Closing Date shall guarantee all of the obligations of each Facility Lessee under the other Operative Documents to which such Facility Lessee is a party; and

WHEREAS, the parties hereto desire to consummate the transactions contemplated hereby.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. DEFINITIONS; INTERPRETATION OF THIS PARTICIPATION AGREEMENT

The capitalized terms used in this Participation Agreement, including the foregoing recitals, and not otherwise defined herein shall have the respective meanings specified in Appendix A hereto. The rules of interpretation set forth in Appendix A shall apply to terms used in this Participation Agreement and specifically defined herein.

## SECTION 2. PARTICIPATION; CLOSING DATE; TRANSACTION COSTS

Section 2.1. Agreements to Participate. Subject to the terms and conditions of this Agreement, and in reliance on the agreements, representations and warranties made herein, the parties agree to participate in the transactions described in this Section 2.1 on the Closing Date as follows:

- (a) the Owner Participant agrees to provide funds in an amount sufficient to (i) fund the Equity Investment and (ii) pay the Transaction Costs which the Owner Lessor is responsible to pay pursuant to Section 2.3(a) hereof (collectively, the "Owner Participant's Commitment");
- (b) the Tiverton Lessee agrees to sell the Tiverton Facility to the Owner Lessor on the terms and conditions set forth in the Tiverton Bill of Sale and to lease the related Tiverton Site to the Owner Lessor on the terms and conditions set forth in the Tiverton Site Lease; the Owner Lessor agrees to buy the Tiverton Facility and to lease the Tiverton Site from the Tiverton Lessee, and each agrees to execute and deliver the Tiverton Bill of Sale and the Tiverton Site Lease;
- (c) the Rumford Lessee agrees to sell the Rumford Facility to the Owner Lessor on the terms and conditions set forth in the Rumford Bill of Sale and to lease the related Rumford Site to the Owner Lessor on the terms and conditions set forth in the Rumford Site Lease; the Owner Lessor agrees to buy the Rumford Facility and to lease the Rumford Site from the Rumford Lessee, and each agrees to execute and deliver the Rumford Bill of Sale and the Rumford Site Lease;

(d) the Owner Lessor agrees to lease the Tiverton Facility and to sublease the Tiverton Site to the Tiverton Lessee on the terms and conditions set forth in the corresponding Tiverton Facility Lease and Tiverton Site Lease; the Tiverton Lessee agrees to lease the Tiverton Facility and sublease the corresponding Tiverton Site from the Owner Lessor, and each agrees to execute and deliver the respective Tiverton Site Sublease and Tiverton Facility Lease;

(e) the Owner Lessor agrees to lease the Rumford Facility and to sublease the Rumford Site to the Rumford Lessee on the terms and conditions set forth in the corresponding Rumford Facility Lease and Rumford Site Lease; the Rumford Lessee agrees to lease its Rumford Facility and sublease the corresponding Rumford Site from the Owner Lessor, and each agrees to execute and deliver the respective Rumford Site Sublease and Rumford Facility Lease;

(f) the Indenture Trustee agrees to act as the trustee under and enter into the Collateral Trust Indenture pursuant to which the Lessor Notes will be issued;

(g) the Pass Through Trustee agrees to use the Proceeds from the sale of the Certificates by the Pass Through Trust to purchase the Lessor Notes from the Owner Lessor;

(h) the Owner Lessor agrees to sell to the Pass Through Trust the Lessor Notes and to grant to the Indenture Trustee, for the benefit of the Pass Through Trustee, certain liens and security interests in the Indenture Estate to secure its obligations thereunder;

(i) the Owner Lessor agrees to use the funds received from the Owner Participant and the Pass Through Trust pursuant to clause (a)(i) and (g), respectively, of this Section 2.1 on the Closing Date to pay the Purchase Price;

(j) the Owner Participant and the Facility Lessees agree to enter into the Tax Indemnity Agreement; and

(k) the parties agree to enter into the agreements referred to above and the other Operative Documents (other than the Operative Documents previously entered into on the Effective Date), and to cause each Affiliate thereof that is not a party hereto but is a party to an Operative Document to enter into such Operative Document, as the case may be (in each case, if attached as an Exhibit hereto, in substantially the form attached hereto).

#### Section 2.2. Closing Date; Procedure for Participation.

(a) Closing Date. The closing of the transactions contemplated hereby (the "Closing") shall take place after 10:00 a.m., New York City time, on the Scheduled Closing Date or such other date as the parties hereto shall mutually agree (the "Closing Date"), at the offices of Latham & Watkins, 885 Third Avenue, New York, New York 10022 or at such other place as the parties hereto shall mutually agree.

(b) Procedures for Funding. Unless the Closing Date shall have been postponed pursuant to Section 2.2(c), subject to the terms and conditions of this Participation Agreement, the Owner Participant shall make the Owner Participant's Commitment available not later than 10:00 a.m., New York City time, on the Scheduled Closing Date, by transferring or delivering

such amount, in funds immediately available on such Closing Date, to the Owner Lessor in New York, New York.

(c) Postponement of the Closing. The Scheduled Closing Date may be postponed from time to time for any reason if the Facility Lessees give the Owner Participant, the Owner Lessor, the Indenture Trustee and the Pass Through Trustee a facsimile or telephonic (confirmed in writing) notice of such postponement and notice of the date to which the Closing has been postponed, such notice of postponement to be received by each party no later than noon, New York City time, on the Scheduled Closing Date. If, prior to receipt of a postponement notice under this Section 2.2(c), the Owner Participant shall have provided funds in accordance with Section 2.2(b), such funds shall be returned to the Owner Participant, as soon as reasonably practicable but in no event later than the Business Day following the date of such notice, unless the Owner Participant shall have otherwise directed. All funds made available pursuant to Section 2.2(b) will be held by the Owner Lessor in trust for the Owner Participant and shall not be part of the Indenture Estate or the Lessor Estate, shall be invested by the Owner Lessor in accordance with clause (d) below and such funds shall remain the sole property of the Owner Participant unless and until released by the Owner Participant and made available to the Owner Lessor and applied to pay the Purchase Price or Transaction Costs or returned to the Owner Participant, as provided in this Agreement.

(d) Investment of Funds. If, on the Scheduled Closing Date, the Owner Participant has made the Owner Participant's Commitment available to the Owner Lessor in accordance with Section 2.2(b), the Closing does not occur on such date and the Owner Lessor is unable to return such funds to the Owner Participant on such date, the Owner Lessor shall, subject to Section 2.2(c) above, use reasonable efforts to invest such funds from time to time at the written direction of Calpine, and at Calpine's sole expense and risk, in Permitted Investments until such funds can be returned to the Owner Participant. If, on the Scheduled Closing Date, the Owner Participant has made the Owner Participant's Commitment available to the Owner Lessor in accordance with Section 2.2(b), the Closing does not occur on such date and the Owner Lessor has not returned such funds to the Owner Participant on or before 1:00 p.m., New York City time, on such date, then Calpine shall reimburse the Owner Participant for loss of the use of such funds at the Applicable Rate for each day, from and including the day that such funds were made available to the Owner Lessor by the Owner Participant to, but excluding the earlier of (i) the day that such funds have been returned to the Owner Participant pursuant to Section 2.2(c) (funds received by the Owner Participant after 1:00 p.m., New York City time, of any day shall be deemed to be returned on the next succeeding Business Day) and (ii) the Closing Date. Subject to payment for the account of the Owner Participant of any reimbursement for loss of use of funds due to it at the Applicable Rate, any net gain realized on the investment of such funds (including interest) shall be paid to Calpine by the Owner Lessor on the earlier of (i) the date such funds are returned to the Owner Participant pursuant to Section 2.2(c) and (ii) the Closing Date. The Owner Lessor shall not be liable for any interest on or loss resulting from such investments and, if such funds are made available to the Owner Lessor and utilized to pay the Purchase Price or Transaction Costs on the Closing Date, Calpine shall reimburse the Owner Lessor for any net loss realized on the investment of such funds. If such funds are not so

utilized, Calpine shall, in addition to its obligation to reimburse the Owner Participant for loss of use as provided above, reimburse the Owner Participant on the date such funds are returned to the Owner Participant for any net loss realized on the investment of such funds. In order to obtain funds for payment of the Purchase Price or Transaction Costs or to return funds made available to the Owner Lessor by the Owner Participant, the Owner Lessor is authorized to sell any investments or obligations purchased as aforesaid.

(e) Expiration of Commitments. The obligation of the Owner Participant to make its Equity Investment shall expire at 11:59 p.m., New York City time, on December 31, 2000. If the Closing Date has not occurred on or before December 31, 2000 the Transaction Parties shall have no obligation to consummate the transactions contemplated under this Agreement and, except as provided in Sections 2.3, 9.1 and 9.2, all obligations of the Transaction Parties shall cease and terminate.

### Section 2.3. Transaction Costs.

(a) If the transactions contemplated by this Agreement are consummated, all Transaction Costs up to an amount equal to US\$9,150,000.00, which shall be substantiated or otherwise supported in reasonable detail (provided that legal bills may be redacted to preserve attorney-client privilege), shall be paid promptly after the Closing Date but in no event later than December 29, 2000 by the Owner Lessor (with funds provided by the Owner Participant), assuming all invoices have been approved by Calpine and received by the Owner Lessor by December 26, 2000. All other Transaction Costs, fees, costs and expenses incurred by the Facility Lessees, the Owner Lessor and the Owner Participant shall be paid by Calpine. If the Overall Transaction is not consummated for any reason (including as a result of the Facility Lessees' terminating this Agreement pursuant to Section 12(a)), then Calpine shall bear all Transaction Costs; provided, however, that Calpine shall not be obligated to pay Transaction Costs incurred by the Owner Participant if the Overall Transaction is not consummated on the basis of the provisions of this Agreement due to a failure of the Owner Participant to satisfy any condition to the Closing required to be satisfied by the Owner Participant.

(b) Following the Closing Date, the Facility Lessees will be responsible for, and will pay as Supplemental Rent on an After-Tax Basis to the Administrator, the annual administration fees, if any, and expenses (including reasonable and documented fees and expenses of its outside counsel) of Wilmington Trust Company (as Administrator pursuant to the LLC Administration Agreements and in its individual capacity), the Indenture Trustee (as such and in its individual capacity) and the Pass Through Trustee.

## SECTION 3. REPRESENTATIONS AND WARRANTIES

Section 3.1. Representations and Warranties of the Facility Lessees. Each of the Facility Lessees represent and warrant that (i) as of the Effective Date, as set forth in clauses (a), (b) and (c) below and (ii) as of the Closing Date, as set forth in each of the clauses of this Section 3.1:

(a) Due Incorporation, etc. Each Facility Lessee is a limited partnership duly organized, validly existing, and in good standing under the laws of the State of Rhode Island (in the case of the Tiverton Lessee) or Maine (in the case of the Rumford Lessee), is duly licensed or qualified and in good standing in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary, and has the power and authority to (i)

own or hold under lease the property it purports to own or hold under lease, (ii) carry on its business as now being conducted and as presently proposed to be conducted and (iii) take all actions as may be necessary to consummate the transactions contemplated hereunder and under the other Operative Documents. Each Facility Lessee is an indirect wholly-owned subsidiary of Calpine.

(b) Authorization; Enforceability, etc. This Agreement and each of the other Operative Documents to which such Facility Lessee is or will be a party have been, or when executed and delivered will be, duly authorized, executed and delivered by all necessary action by such Facility Lessee and, assuming the due authorization, execution and delivery by each other party thereto, this Agreement constitutes and, when executed and delivered, the other Operative Documents to which such Facility Lessee is or will be a party will constitute the legal, valid and binding obligations of such Facility Lessee which is a party hereto or thereto, enforceable against such Facility Lessee in accordance with their respective terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

(c) Non-Contravention. The execution, delivery and performance by each Facility Lessee of this Agreement and each of the other Operative Documents to which it is or will be a party, the consummation by such Facility Lessee of the transactions contemplated hereby and thereby, and compliance by such Facility Lessee with the terms and provisions hereof and thereof, do not and will not (i) contravene any Applicable Law binding on such Facility Lessee or its property, or its organizational documents, (ii) constitute a default by such Facility Lessee under, or result in the creation of any Lien upon the property of such Facility Lessee (other than pursuant to any Operative Document) under any indenture, mortgage or other material contract, agreement or instrument to which such Facility Lessee is a party or by which such Facility Lessee or any of its property is bound, (iii) contravene the Partnership Agreement of such Facility Lessee or (iv) require the consent or approval of any Person which has not already been obtained, in each case with respect to clauses (i), (ii) and (iv) above, which would reasonably be expected to have a Material Adverse Effect.

(d) Government Actions. Such Facility Lessee has all Permits with, any Governmental Entity or under any Applicable Law required (x) for the due execution, delivery or performance by such Facility Lessee of this Agreement, and the other Operative Documents to which such Facility Lessee is or will be a party or (y) without regard to any other transactions or other actions of the Owner Participant, the Owner Lessor or any Affiliate of any of them or any assignee or transferee of any of the Owner Participant, the Owner Lessor (or any Affiliate of any transferee or assignee) and assuming that none of the Owner Participant, the Owner Lessor or any Affiliate of any of them or any assignee or transferee of any of the Owner Participant (or any Affiliate of any such transferee or assignee) is an "electric utility" or a "public utility" or a "public utility holding company" or any similar entity subject to public utility regulation under any Applicable Law immediately prior to the Closing, with respect to the participation by the Owner Participant, the Owner Lessor in the Overall Transaction, other than (i) any Permit where the failure to obtain or maintain such Permit would not be reasonably likely to result in a Material Adverse Effect, (ii) the FERC Orders, (iii) as may be required under Applicable Law providing for the supervision or regulation of the Owner Participant, the Owner Lessor or any Affiliate of any of them as a result of investing, lending or other commercial activity in which

the Owner Participant, the Owner Lessor or any Affiliate of any of them is or may be engaged other than the transactions contemplated hereby or by any of the other Operative Documents, (iv) as may be required under existing Applicable Laws to be obtained, given, accomplished or renewed at any time, or from time to time, in each case, after the Closing Date and which such Facility Lessee has no reason to believe will not be timely obtained and the lack of which would not reasonably be expected to have a Material Adverse Effect or involve any danger of criminal or material civil liability being incurred by the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee, (v) in connection with any modification to or rebuilding or replacement of the Facilities or any portion thereof that may occur in the future, (vi) as may be required in connection with any refinancing of the applicable Lessor Note or the Certificates or the issuance of applicable Additional Lessor Notes or Additional Certificates, (vii) as may be required in consequence of any transfer of the Member Interest or any transfer of ownership of the applicable Facility or the Owner Lessor's Interest, or any part thereof by the Owner Lessor or the exercise by any such party of dispossessory remedies under the Operative Documents or any relinquishment of the use or operation of such Facility by such Facility Lessee,

(viii) appropriate filing and recording to perfect the Lien of the Collateral Trust Indenture, if required, and the ownership and leasehold interests conveyed pursuant to this Agreement, or (ix) as may be required under any Applicable Law enacted or adopted after the date hereof.

(e) Litigation. There is no pending or, to the Actual Knowledge of such Facility Lessee, threatened, action, suit, investigation or proceeding against such Facility Lessee or any other Calpine Party before any Governmental Entity which (i) questions the validity of the Tiverton Operative Documents or the Rumford Operative Documents, as the case may be, or the ability of such Facility Lessee or such other Calpine Party to perform its obligations under such Operative Documents to which such Facility Lessee or such other Calpine Party is or will be a party or (ii) if determined adversely to it, could reasonably be expected to have a Material Adverse Effect or otherwise materially adversely affect the Facility leased by such Facility Lessee.

(f) No Defaults. Neither such Facility Lessee nor any other Calpine Party is in default, and no condition exists that with notice or lapse of time or both would constitute a default, under any mortgage, indenture or other contract, agreement or instrument to which such Facility Lessee or such other Calpine Party is a party or by which such Facility Lessee or such other Calpine Party or its property is bound in any such case where any such default, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(g) Location of Chief Executive Office and Principal Place of Business, etc. (1) (x) The chief executive office and principal place of business of the Tiverton Lessee and the office where the Tiverton Lessee keeps its company records concerning the Tiverton Facility, the Tiverton Site and the Tiverton Operative Documents is located at: The Pilot House, 2nd Floor, Lewis Wharf, Boston, Massachusetts 02110 and 50 West San Fernando Street, San Jose, California 95113 and (y) the chief executive office and principal place of business of the Rumford Lessee and the office where the Rumford Lessee keeps its company records concerning the Rumford Facility, the Rumford Site and the Rumford Operative Documents is located in the aforementioned addresses in Boston and San Jose, respectively.

(2) The Tiverton Facility is located on the Tiverton Site and the Rumford Facility is located on the Rumford Site.

(3) The condition of such Facility Lessee's applicable Facility is substantially identical to the condition it was in when inspected by the Appraiser in connection with the Closing Appraisal.

(h) Title; Liens. (1) Each Facility Lessee has (i) good and valid title to the respective Facility leased by such Facility Lessee, free and clear of all Liens other than Permitted Closing Date Liens, and (ii) good and valid title to its interests in its respective Facility Site and Easements free and clear of all Liens other than Permitted Closing Date Liens.

(2) Upon execution and delivery of the Operative Documents and recording or filing (as appropriate) of the instruments and documents referred to in Part I of Schedule 4.20 in accordance with Section 4.20, (A) good and valid title to the applicable Facility will be duly, validly and effectively conveyed and transferred to the Owner Lessor free and clear of all Liens other than Permitted Closing Date Liens, and (B) good and valid leasehold interest in the related Facility Site will be duly, validly and effectively granted to the Owner Lessor upon the terms and conditions in the corresponding Facility Site Lease, free and clear of all Liens other than Permitted Closing Date Liens.

(3) When duly authorized, executed and delivered by each of the parties thereto, the Collateral Trust Indenture will create a valid and, when the filings and recordings to be made pursuant to Section 4.20 have been made, first priority perfected Lien in favor of the Indenture Trustee in the Indenture Estate and no filing, recording, registration or notice with, or payment of any fees to, any federal or state Governmental Entity will be necessary to establish or, except for such filings and recordings as will be made pursuant to Section 4.20, to perfect, or give record notice of, the Lien in favor of the Indenture Trustee in the Indenture Estate to the extent such Lien may be perfected by filings or recordings.

(4) None of the Permitted Encumbrances will, on and after the Closing, interfere with the use, operation or possession of the Facilities (as contemplated by the Operative Documents) or the use of or the exercise by the Owner Lessor of its rights under the applicable Bills of Sale or the Facility Site Leases with respect to the Facilities, the Facility Sites or the Easements, in each case, which could reasonably be expected to have a Material Adverse Effect.

(i) Regulation U, etc. No Calpine Party is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of Lessor Notes or the Equity Investment will be used by any Calpine Party, directly or indirectly, for the purpose of buying or carrying any margin stock within the meaning of Regulation U of the Board of Governors of the Federal Reserve System (12 CFR 221), or for the purpose of buying or carrying or trading in any securities under such circumstances as to involve such Person in a violation of Regulation X of said Board (12 CFR 224) or to involve any broker or dealer in a violation of Regulation T of said Board (12 CFR 220).

(j) Holding Company Act. Such Facility Lessee is not an "electric utility company," a "holding company", a "subsidiary company" of a "holding company" or an "affiliate" of a "holding company" within the meaning of the Holding Company Act, and the execution, delivery and performance of the Operative Documents to which such Facility Lessee is or will be a party will not subject such Facility Lessee to such regulation under the Holding Company Act and do not violate any provision of the Holding Company Act or any rule or regulation thereunder.

(k) Investment Company Act. Such Facility Lessee is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

(l) Securities Act. Neither such Facility Lessee nor anyone authorized by it has directly or indirectly offered or sold any interest in the Member Interest, the Lessor Notes or the Certificates or any part thereof, or in any similar security or lease, or in any security or lease the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the Member Interest, the Lessor Notes or the Certificates or any part thereof or solicited any offer to acquire any of the same, in any such case, in violation of the registration requirements of Section 5 of the Securities Act.

(m) Environmental Matters. Except as set forth in Schedule 3.1(m):

(1) Such Facility Lessee has not received and does not have Actual Knowledge of any written notice, letter, citation, order, warning, complaint, inquiry, claim or demand from any Governmental Entity or any other Person that:

(i) there has been a Release, or there is a threat of Release, of Hazardous Substances in, on, under or from the Facility leased by such Facility Lessee, or the related Facility Site or any of the Easements relating to such Facility;

(ii) such Facility Lessee or any other Calpine Party is or is asserted to be liable, in whole or in part, for the costs of cleaning up, remedying or responding at any location (including any location at which any Hazardous Substances have been generated, stored, treated or disposed by or on behalf of such Facility Lessee or such other Calpine Party) to a Release or threatened Release of any Hazardous Substance generated, used or stored at or Released in, on, under or from the Facility leased by such Facility Lessee, or the related Facility Site or any of the Easements relating to such Facility; (iii) either of the Facilities or either of the Facility Sites is subject to a Lien in favor of any Governmental Entity in response to a Release or threatened Release of Hazardous Substances or (iv) either of the Facility Lessees, Facilities, or the Facility Sites or any of the Easements is or is asserted to be in violation of or not in compliance with any Environmental Law, in any case with respect to clauses (ii), (iii) or (iv), which could reasonably be expected to have a Material Adverse Effect;

(2) Such Facility Lessee and the other Calpine Parties are in compliance with and have complied with all Environmental Laws, except to the extent that failure to so comply could not reasonably be expected to have a Material Adverse Effect; and

(3) To such Facility Lessee's Actual Knowledge, there is not and has not been any Environmental Condition (A) at, on, under or from the Facility leased by such Facility Lessee, or the related Facility Site or any of the Easements relating to such Facility, or (B) at, on, under or

from any other location resulting from or arising in connection with the operation by any Person of such Facility leased by such Facility Lessee, or the related Facility Site or any of the Easements relating to such Facility, that in each case could reasonably be expected to have a Material Adverse Effect or involve any danger of (i) foreclosure, sale, forfeiture or loss of, or imposition of a material lien on, such Facility leased by such Facility Lessee, or the related Facility Site or any of such Easements, (ii) the impairment of the ownership, use, operation or maintenance of such Facility, Facility Site or any of the Easements relating to such Facility in any material respect, or (iii) any criminal or material civil liability being incurred by the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee.

(4) All environmental permits necessary to own, operate, lease or maintain the Facility leased by such Facility Lessee, the related Facility Site and, to such Facility Lessees' Actual Knowledge, the Easements relating to such Facility in accordance with the Operative Documents and Environmental Laws have been obtained on behalf of the Owner Lessor or by the Lessee and they are final, in proper form, and in full force and effect, with all appeal periods expired, and such Facility Lessee is in compliance with the provisions of all such permits, except where the failure to obtain, maintain the effectiveness of, or comply with such permits would not reasonably be expected to have a Material Adverse Effect or involve any danger of (i) foreclosure, sale, forfeiture or loss of, or imposition of a material lien on, such Facility, Facility Site or Easements, (ii) the impairment of the ownership (or leasehold or easement interest in), use, operation or maintenance of such Facility, Facility Site or Easements in any material respect, or (iii) any criminal or material civil liability being incurred by the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee or the Certificateholders.

(n) Operation and Use. Assuming each Facility will continue to be operated substantially as operated as of the Closing Date, the rights and interests to be possessed on the Closing Date by (i) the Tiverton Lessee with respect to the Tiverton Facility, the Tiverton Site and the Tiverton Easements and (ii) the Rumford Lessee with respect to the Rumford Facility, the Rumford Site and the Rumford Easements, and based upon such Facility Lessee's reasonable expectations and on Applicable Law in effect on and as of the Closing Date, the rights and interests made available to the Owner Lessor pursuant to the Operative Documents and the rights contemplated by the related Facility Lease to be made available under such Operative Documents, permit on a commercially practicable basis during the applicable Facility Lease Term and the period following the expiration or termination of such Facility Lease Term, as applicable, until the end of each Facility's useful life as set forth in the Closing Appraisal, (i) the location, occupation, interconnection, maintenance and repair of each Facility, (ii) the use, operation and possession of each Facility, (iii) as of the Closing Date, the use, operation, possession, maintenance, replacement, renewal and repair of all Improvements required to be made to each Facility, (iv) adequate ingress to and egress from each Facility in connection with the ownership, use, operation, possession, maintenance or repair of each Facility and (v) the transmission of electricity from each Facility substantially in the manner currently transmitted as of the Closing Date.

(o) Tax Returns. Such Facility Lessee and each other Calpine Party has filed all federal, state and local income tax returns which are required to be filed by it and has paid all Taxes shown to be due and payable on such returns or pursuant to any assessment received by it (other than Taxes and assessments the payment of which is being contested in good faith by such

Person and with respect to which appropriate accounting reserves have to the extent required by GAAP been set aside) and neither such Facility Lessee or any other Calpine Party has any Actual Knowledge of any actual or proposed assessment in connection therewith which, either in any case or in the aggregate, would reasonably be expected to have a Material Adverse Effect.

(p) Jurisdiction. In accordance with Section 14.14 hereof, such Facility Lessee has validly submitted to the jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York.

(q) Applicable Law. Such Facility Lessee is in compliance with all Applicable Law, including all applicable zoning, use and building codes, laws, regulations and ordinances relating to the operations, maintenance, use, lease or ownership of its applicable Facility, the related Facility Site and the applicable Easements, except where the noncompliance would not reasonably be expected to have a Material Adverse Effect or involve any danger of (i) foreclosure, sale, forfeiture or loss of, or imposition of a material lien on, such Facility, such Facility Site or any of such Easements, (ii) the impairment of the ownership, use, operation or maintenance of such Facility or such Facility Site in any material respect, or (iii) any criminal or material civil liability being incurred by the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee, including subjecting the Owner Participant or the Owner Lessor to regulation as a public utility under Applicable Law. None of the Calpine Parties is in default of any judgments, orders or decrees of any Governmental Entity relating to such Facility, such Facility Site or any of such Easements.

(r) ERISA. Assuming the accuracy of the representations of the other parties hereto and the Certificateholders in the Certificates, the execution and delivery of the Operative Documents and the issuance and sale of the Lessor Notes under the Collateral Trust Indenture and the Certificates under the Pass Through Trust Agreement will be exempt from, or will not involve any transaction which is subject to, the prohibitions of either Section 406 of ERISA or Section 4975 of the Code and will not involve any transaction in connection with which a penalty could be imposed under Section 502(i) of ERISA or a tax could be imposed pursuant to Section 4975 of the Code.

(s) Insurance. All insurance required to be obtained pursuant to Schedule 5.45 is in full force and effect.

(t) No Default; No Event of Loss. No Lease Default or Lease Event of Default, exists or will exist upon execution and delivery of the Operative Documents. No Event of Loss exists or will exist upon the execution and delivery of the Operative Documents.

(u) Special Assessments. There is no action pending or, to such Facility Lessee's Actual Knowledge, threatened by a Governmental Entity or other Person to specially assess the applicable Facility or the applicable Facility Site for any public improvements constructed or to be constructed which would reasonably be expected to have a Material Adverse Effect.

(v) Utility Services. The Facilities and the Facility Sites have available all services of public utilities necessary for use and operation of the Facilities as currently being used and as contemplated by the applicable Operative Documents, except where the failure to have any such

services or public utilities available would not result in a material adverse effect with respect to either of the Facilities.

(w) Eminent Domain. There is no action pending with respect to, or threatened by a Governmental Entity or other Person to initiate, a Requisition of any of such Facility, Facility Site or any of the Easements relating to such Facility, which would reasonably be expected to have a Material Adverse Effect.

(x) Permitted Liens. There are no violations or proceedings or actions pending or threatened, with respect to any easements, reciprocal easement agreements, declarations, development agreements or recorded restrictions or covenants relating, in the case of the Tiverton Lessee, to the Tiverton Facility, the Tiverton Facility Site or any of the Tiverton Easements, and in the case of the Rumford Lessee, to the Rumford Facility, the Rumford Facility Site or any of the Rumford Easements, which would reasonably be expected to have a Material Adverse Effect.

(y) Access; Egress. Access to and egress from the Facility leased by such Facility Lease and the related Facility Site is available and provided by public streets and/or private roads fully accessible by such Facility Lessee. To such Facility Lessee's Actual Knowledge, there are no plans of any Governmental Entity to change the highway or road system in the vicinity of its related Facility or its related Facility Site, or to restrict or change access from any such highway or road to such Facility or such Facility Site, in either case, in any manner which would reasonably be expected to have a Material Adverse Effect.

(z) Notices. To such Facility Lessee's Actual Knowledge, (i) there are no outstanding written notices from any Governmental Entity of any violation of, or that its applicable Facility or Facility Site is not in compliance with, any and all Applicable Laws relating to such Facility and such Facility Site or the ownership, use, occupancy and operation thereof and (ii) there are no outstanding written notices that any repairs or work or capital improvements are required to be done at or with respect to such Facility or Facility Site by any Governmental Entity or by any insurance company which currently issues any insurance to such Facility Lessee or by any board of fire underwriters or other body exercising similar functions, except, in either case with respect to (i) or

(ii) above, where such violation, noncompliance or repairs could not reasonably be expected to have a Material Adverse Effect.

(aa) Business. Such Facility Lessee has not conducted any business other than the acquisition, construction, development, ownership, operation, maintenance, leasing and financing of such Facility Lessee's applicable Facility and Facility Site and activities incidental thereto.

(bb) Intentionally Omitted.

(cc) Intellectual Property. To the Actual Knowledge of such Facility Lessee, such Facility Lessee has the right to use all patents, trademarks, service marks, trade names, copyrights, licenses and other rights which are necessary for the operation of its business as presently conducted and to transfer all such rights to the Owner Lessor subsequent to termination

of the related Facility Lease, except to the extent failure to possess such rights would not reasonably be likely to result in a Material Adverse Effect.

(dd) Land Not in Flood Zone. No portion of the Facility leased by such Facility Lessee, or the Easements relating to such Facility or the Facility Site relating to such Facility includes improved real property that is located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

(ee) No Fraudulent Conveyances. Each Facility Lessee is consummating the transactions contemplated hereby, including transfer of certain of its assets and properties to the Owner Lessor, in good faith and without any intent to defraud creditors of such Facility Lessee or subsequent purchasers. The execution and delivery of the Operative Documents to which such Facility Lessee is a party will not render such Facility Lessee insolvent under GAAP or leave such Facility Lessee with assets whose present fair valuation of assets is less than the present fair valuation of such Facility Lessee's debts. As used in this Section 3.1(ee), "debts" includes any and all liabilities, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent, and whether or not such liabilities are required under GAAP to be shown on each Facility Lessee's balance sheet. The execution and delivery of the Operative Documents to which each Facility Lessee is a party will not leave it with property remaining in its hands which would constitute unreasonably small assets or capital, and each Facility Lessee has and, after giving effect to such transactions will have, an adequate amount of assets and capital to engage in its business now and in the future, based on the actual and anticipated needs for capital of the businesses anticipated to be conducted by such Facility Lessee, and based upon the other information described herein. After giving effect to the transactions contemplated under the Operative Documents, each Facility Lessee will be able to pay all of its debts and liabilities, including unrecorded contingent liabilities, as they mature, each Facility Lessee will have positive cash flow after paying all of its scheduled and anticipated debt as it matures, and each Facility Lessee will realize sufficient monies from current assets in the ordinary and usual course of business to pay recurring current debt, short-term debt and long-term debt as such debts mature.

(ff) No Additional Fees. Except for the fees referred to in clause (xviii) and (xix) of the definition of Transaction Costs, such Facility Lessee has not paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of arranging the financing of the transactions contemplated by the Operative Documents.

(gg) Status under Certain Statutes. Neither the Facility Lessees, the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee nor any Certificateholder solely as a result of execution, delivery and performance of, and the consummation of the transactions contemplated by the Operative Documents shall be or become (i) subject to regulation as a "public utility company," "holding company," an "affiliate" of a "holding company" or a "subsidiary company" of a "holding company" within the meaning of PUHCA or (ii) a "public utility" (except that the Facility Lessees will each be a public utility subject to the Federal Power Act with authority to sell wholesale electricity at market-based rates and with waivers of regulations customarily granted to a public utility that sells wholesale power

at market-based rates), a "transmitting utility," or an "electric utility" within the meaning of the Federal Power Act (iii) subject to state regulation of rates, or (iv) organizational requirements for electric utilities.

(hh) Material Omission. Neither the Offering Circular (including any preliminary offering circular approved by such Facility Lessee for distribution) nor the written information furnished to the Owner Lessor, the Owner Participant, the Indenture Trustee and the Pass Through Trustee by or on behalf of such Facility Lessee or any of its Affiliates in connection with the transactions contemplated hereby contains any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; provided, that no representation or warranty is made with regard to (i) any projections or other forward-looking statements provided by or on behalf of the Facility Lessee, or (ii) the descriptions of the Operative Documents or the tax consequences to beneficial owners of Certificates; provided, further, each of the Transaction Parties acknowledge and agrees that (i) Calpine has heretofore provided to the Appraiser, solely in order to assist the Appraiser in connection with the preparation of the appraisal to be delivered by the Appraiser to certain of the Transaction Parties at the Closing, certain (1) general market information, (2) information about the Maine and Rhode Island energy markets and (3) information passed along from other Persons and (ii) that the Facility Lessee makes no representation or warranty whatsoever with respect to the information described in clause (i) above except to the extent expressly set forth in Section 4(b) of the Tax Indemnity Agreement.

(ii) Exempt Wholesale Generator. Each Facility Lessee is an "exempt wholesale generator" under PUHCA. The Facility leased by such Facility Lessee is interconnected with the high voltage network operated by ISO New England and has access to transmission services and ancillary services sufficient to sell the net generating capacity of such Facility at wholesale, and such Facility Lessee has the authority to sell wholesale electric power from the net generating capacity of such generating Facility at market-based rates.

(jj) FERC Orders. The Facility Lessees have duly filed with FERC the filings referenced in Section 4.37 and, except with respect to the determination by FERC of EWG status, received from FERC the orders referenced therein.

(kk) Fully Taxable. As of the Closing Date, each Person owning an Ownership Interest (i) is fully taxable at the highest federal tax rate and (ii) expects to be fully taxable at the highest federal tax rate throughout the Lease Term; for the avoidance of doubt, this representation is not intended to be construed as nor shall it be deemed to be a guaranty as to any such Person's future taxation.

(ll) Commencement of Commercial Operations and Compliance. To the knowledge of the Tiverton Lessee, the Tiverton Facility has commenced commercial operations with at least 260 MW of capacity and complies in all material respects with the other specifications set forth in the purchase and construction contracts for such Facility, and to the knowledge of the Rumford Lessee, the Rumford Facility has commenced commercial operations with at least 260 MW of capacity and complies in all material respects with the other specifications set forth in the purchase and construction contracts for such Facility, except as disclosed in the R.W. Beck

Reports delivered to the Owner Participant, the Owner Lessor, and the Indenture Trustee prior to the Closing Date.

Section 3.2. Representations and Warranties of the Owner Lessor. The Owner Lessor represents and warrants that (i) as of the Effective Date, as set forth in clauses (a), (b) and (c) below and (ii) as the Closing Date, as set forth in each of the clauses of this Section 3.2:

(a) Due Organization. The Owner Lessor is a duly organized and validly existing limited liability company under the laws of the State of Delaware of which the Owner Participant is the sole member, and has the power and authority to enter into and perform its obligations under this Agreement and each of the other Operative Documents to which it is a party.

(b) Due Authorization, Enforceability; etc. (1) (i) This Agreement and each of the other Operative Documents (other than the Lessor Notes) to which the Owner Lessor is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the Owner Lessor, and (ii) assuming the due authorization, execution and delivery of this Agreement by each party hereto other than the Owner Lessor, this Agreement constitutes and when executed and delivered each of the other Operative Documents (other than the Lessor Notes) to which it is or will be a party will be the legal, valid and binding obligations of the Owner Lessor, enforceable against the Owner Lessor in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

(2) Upon the execution of the Lessor Notes by the Owner Lessor in accordance with the Collateral Trust Indenture and delivery of such Lessor Notes against payment therefor, the Lessor Notes will constitute legal, valid and binding obligations of the Owner Lessor, enforceable against the Owner Lessor in accordance with their terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

(c) Non-Contravention. The execution and delivery by the Owner Lessor of this Agreement and the other Operative Documents to which it is or will be a party, the consummation by the Owner Lessor of the transactions contemplated hereby and thereby, and the compliance by the Owner Lessor with the terms and provisions hereof and thereof, do not and will not contravene any Applicable Law of the United States of America or the State of Delaware, or the LLC Agreement or the Owner Lessor's other organizational documents or contravene the provisions of, or constitute a default by the Owner Lessor under any indenture, mortgage or other material contract, agreement or instrument to which the Owner Lessor is a party or by which the Owner Lessor or its property is bound, or in the creation of any Owner Lessor's Lien; provided, however, that no representation is made with respect to the right, power or authority of the Owner Lessor to act as operator of the Facilities following a Lease Event of Default.

(d) Governmental Actions. Assuming the representations and warranties of the Facility Lessees contained in paragraphs (j), (k), (l), (m), (q), (z), (gg) and (ii) of Section 3.1 are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Entity is required for the due execution, delivery or performance by the

Owner Lessor, as the case may be, of the LLC Agreement, the Collateral Trust Indenture, the Lessor Notes, this Agreement or the other Operative Documents to which the Owner Lessor is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given.

(e) Litigation. There is no pending or, to the Actual Knowledge of the Owner Lessor, threatened, action, suit, investigation or proceeding against the Owner Lessor before any Governmental Entity which (i) questions the validity of the Operative Documents or the ability of the Owner Lessor to perform its obligations under the Operative Documents to which it is or will be a party or (ii) if determined adversely to it, could reasonably be expected to materially adversely affect the ability of the Owner Lessor to perform its obligations under this Agreement or any other Operative Document to which it is or will be a party or would materially adversely affect the Facilities, the Facility Sites or any interest therein or part thereof or the Lien of the Indenture Trustee on the Indenture Estate.

(f) Liens. The Owner Lessor's right, title and interest in and to the Lessor Estate is free of all Owner Lessor's Liens.

(g) Location of Chief Executive Office; Principal Place of Business. The chief executive office and principal place of business of the Owner Lessor where the Owner Lessor will keep its corporate records concerning the Facilities, the Facility Sites and the Operative Documents is located in Stamford, Connecticut.

(h) Securities Act. Neither the Owner Lessor nor anyone authorized by it has directly or indirectly offered or sold any interest in the Member Interest, the Lessor Notes or the Certificates or any part thereof, or in any similar security or lease, the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the Member Interest, the Lessor Notes or the Certificates or any part thereof or solicited any offer to acquire any of the same in violation of the registration requirements of Section 5 of the Securities Act.

Section 3.3. Intentionally Omitted.

Section 3.4. Representations and Warranties of the Owner Participant. The Owner Participant represents and warrants (i) as of the Effective Date, as set forth in clauses (a), (b) and (c) below and (ii) as of the Closing Date, as set forth in each of the clauses of this Section 3.4:

(a) Due Organization. The Owner Participant is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to enter into and perform its obligations under this Agreement, the LLC Agreement and the Tax Indemnity Agreement. The Owner Participant is an indirect wholly owned subsidiary of Philip Morris Capital Corporation.

(b) Due Authorization, Enforceability; etc. This Agreement, the LLC Agreement and the Tax Indemnity Agreement have been or when executed and delivered will be duly authorized, executed and delivered by the Owner Participant and assuming the due authorization, execution and delivery by each other party thereto, this Agreement, the LLC Agreement, the Tax Indemnity Agreement and any other Operative Document to which the Owner Participant is or

will be a party constitute or when executed and delivered will constitute the legal, valid and binding obligations of the Owner Participant, enforceable against the Owner Participant in accordance with their respective terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

(c) Non-Contravention. The execution and delivery by the Owner Participant of this Agreement, the LLC Agreement, the Tax Indemnity Agreement and any other Operative Document to which the Owner Participant is or will be a party, the consummation by the Owner Participant of the transactions contemplated hereby and thereby, and the compliance by the Owner Participant with the terms and provisions hereof and thereof, do not and will not contravene any Applicable Law binding on the Owner Participant, or its organizational documents, or contravene the provisions of, or constitute a default under any indenture, mortgage or other material contract, agreement or instrument to which the Owner Participant is a party or by which the Owner Participant or its property is bound or result in the creation of any Owner Participant's Lien (other than any Lien created under any Operative Document) upon the Lessor Estate, the Facility Sites or any interest therein or part thereof (it being understood that no representation or warranty is being made as to (i) any Applicable Laws relating to the particular nature of the Facilities or the Facility Sites or (ii) other than its representations set forth in Section 3.4(g), ERISA or Section 4975 of the Code).

(d) Governmental Action. Assuming the representations and warranties of the Facility Lessees contained in paragraphs (j), (k), (l), (m), (q), (z), (gg) and (ii) of Section 3.1 are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Entity is required for the due execution, delivery or performance by the Owner Participant of this Agreement, the LLC Agreement, the Tax Indemnity Agreement or any other Operative Document to which the Owner Participant is or will be a party, other than any authorization or approval or other action or notice or filing as has been duly obtained, taken or given (it being understood that no representation or warranty is being made as to any Applicable Laws relating to the Facilities or the Facility Sites).

(e) Litigation. There is no pending or, to the Actual Knowledge of the Owner Participant, threatened, action, suit, investigation or proceeding against the Owner Participant before any Governmental Entity which (i) questions the validity of the Operative Documents or the ability of the Owner Participant to perform its obligations under the Operative Documents to which it is or will be a party or (ii) if determined adversely to it, could reasonably be expected to materially adversely affect the ability of the Owner Participant to perform its obligations under the LLC Agreement, this Agreement or any other Operative Document to which it is or will be a party or would materially adversely affect the Facilities, the Facility Sites or any interest therein or part thereof or the Lien of the Indenture Trustee on the Indenture Estate.

(f) Liens. Each of the Lessor Estate, the Facility Sites, the Easements and any interest therein or part thereof is free of any Owner Participant's Liens.

(g) ERISA. No part of the funds to be used by the Owner Participant to make its investment pursuant to this Agreement, directly or indirectly, constitutes or is deemed to constitute assets (within the meaning of ERISA and any applicable rules, regulations and court

decisions thereunder) of any "employee benefit plan" (as defined in Section 3(3) of ERISA) that is subject to ERISA, of any Transaction Party and ERISA Affiliate thereof.

(h) Acquisition for Investment. The Owner Participant is purchasing the Member Interest to be acquired by it for its own account with no present intention of distributing such Member Interest or any part thereof in any manner which would require registration under or would violate the Securities Act, but without prejudice, however, to the right of the Owner Participant at all times to sell or otherwise dispose of all or any part of such Member Interest under an exemption from registration available under such Act.

(i) Securities Act. Neither the Owner Participant nor anyone authorized by it has directly or indirectly offered or sold any interest in the Member Interest, the Lessor Notes or the Certificates or any part thereof, or in any similar security or lease, or in any security or lease the offering of which for the purposes of the Securities Act would be deemed to be part of the same offering as the offering of the Member Interest, the Lessor Notes or the Certificates or any part thereof or solicited any offer to acquire any of the same in violation of the registration requirements of Section 5 of the Securities Act.

(j) Holding Company Act and Federal Power Act. Immediately prior to executing this Agreement, the Owner Participant is not an "electric utility", "electric utility company", "public utility", "public-utility company", "holding company" or a "subsidiary company" or "affiliate" of any of the foregoing, under the Federal Power Act or the Holding Company Act.

(k) Investment Company Act. The Owner Participant is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

Section 3.5. Representations and Warranties of Indenture Trustee and the Lease Indenture Company. The Lease Indenture Company and the Indenture Trustee hereby severally represent and warrant (i) as of the Effective Date, as set forth in clauses (a), (b) and (c) below and (ii) as of the Closing Date, as set forth in each of the clauses of this Section 3.5:

(a) Due Organization. The Lease Indenture Company is a national banking association duly organized, validly existing and in good standing under the laws of the United States, has the corporate power and authority, as Indenture Trustee and/or in its individual capacity to the extent expressly provided herein or in the Collateral Trust Indenture, to enter into and perform its obligations under the Collateral Trust Indenture, this Agreement and each of the other Operative Documents to which it is or will be a party.

(b) Due Authorization, Enforceability; etc. (1) (i) This Agreement has been duly authorized, executed and delivered by the Indenture Trustee and the Lease Indenture Company, and (ii) assuming the due authorization, execution and delivery of this Agreement by each party hereto other than the Indenture Trustee and the Lease Indenture Company, this Agreement constitutes a legal, valid and binding obligation of the Lease Indenture Company and the Indenture Trustee, enforceable against the Lease Indenture Company or the Indenture Trustee, as the case may be, in accordance with its terms, except as the same may be limited by applicable

bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

(2) (i) Each of the other Operative Documents to which the Indenture Trustee is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the Indenture Trustee, and (ii) assuming the due authorization, execution and delivery of each of the other Operative Documents by each party thereto other than the Indenture Trustee, each of the other Operative Documents to which the Indenture Trustee is or will be a party constitutes or when executed and delivered will be a legal, valid and binding obligation of the Indenture Trustee, enforceable against the Indenture Trustee in accordance with its terms, except as the same may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally and by general principles of equity.

(c) Non-Contravention. The execution and delivery by the Lease Indenture Company, in its individual capacity or as Indenture Trustee, as the case may be, of this Agreement and the other Operative Documents to which it is or will be a party, the consummation by the Lease Indenture Company, in its individual capacity or as Indenture Trustee, as the case may be, of the transactions contemplated hereby and thereby, and the compliance by the Lease Indenture Company, in its individual capacity or as Indenture Trustee, as the case may be, with the terms and provisions hereof and thereof, do not and will not contravene any Applicable Law of the State of Connecticut or the United States of America governing the Lease Indenture Company or the banking or trust powers of the Lease Indenture Company, or its articles of association or by-laws, or contravene the provisions of, or constitute a default by the Lease Indenture Company under or pursuant to any indenture, mortgage or other material contract, agreement or instrument to which the Lease Indenture Company is a party or by which the Lease Indenture Company or its property is bound, or result in the creation of any Lien attributable to the Lease Indenture Company upon the Indenture Estate, the Facility Sites or any interest therein or any part thereof (other than the Lien of the Collateral Trust Indenture), which would materially adversely affect the ability of the Lease Indenture Company, in its individual capacity or as Indenture Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is or will be a party or would materially adversely affect the Facilities, the Facility Sites or any interest therein or part thereof or the security interest of the Indenture Trustee in the Indenture Estate; provided, however, that no representation or warranty is made with respect to the right, power or authority of the Lease Indenture Company or the Indenture Trustee to act as operator of the Facilities following a Lease Event of Default.

(d) Governmental Action. Assuming the representations and warranties of the Facility Lessees contained in paragraphs (j), (k), (l), (m), (q), (z), (gg) and (ii) of Section 3.1 are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Entity of the State of Delaware or of the United State of America governing its banking or trust powers is required for the due execution, delivery or performance by the Lease Indenture Company or the Indenture Trustee, as the case may be, of this Agreement or the other Operative Documents to which the Indenture Trustee is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given.

(e) Litigation. There is no pending or, to the Actual Knowledge of the Lease Indenture Company, threatened, action, suit, investigation or proceeding against the Lease Indenture Company before any Governmental Entity which (i) questions the validity of the Operative Documents or the ability of the Lease Indenture Company or the Indenture Trustee to perform its obligations under the Operative Documents to which it is or will be a party or (ii) if determined adversely to it, could reasonably be expected to materially adversely affect the ability of the Lease Indenture Company to perform its obligations under this Agreement or any other Operative Document to which it is or will be a party or could reasonably be expected to materially adversely affect the Facilities, the Facility Sites or any interest therein or part thereof or the Lien of the Indenture Trustee on the Indenture Estate.

### Section 3.6. Representations, Warranties and Covenants of Pass Through Trustee and the Pass Through Company.

The Pass Through Company and the Pass Through Trustee hereby severally represent and warrant (i) as of the Effective Date, as set forth in clauses (a), (b) and (c) below and (ii) as of the Closing Date, as set forth in each of the clauses of this Section 3.6:

(a) Due Organization. The Pass Through Company is a national banking association duly organized, validly existing and in good standing under the laws of the United States, has the corporate power and authority, as Pass Through Trustee and/or in its individual capacity to the extent expressly provided herein or in the Pass Through Trust Agreements, to enter into and perform its obligations under the Pass Through Trust Agreement, this Agreement and each of the other Operative Documents to which it is or will be a party.

(b) Due Authorization, Enforceability; etc.

(i) (A) This Agreement has been duly authorized, executed and delivered by the Pass Through Trustee and the Pass Through Company and (B) assuming the due authorization, execution and delivery of this Agreement by each party hereto other than each Pass Through Trustee and the Pass Through Company, as the case may be, this Agreement constitutes a legal, valid and binding obligation of the Pass Through Company and each Pass Through Trustee, enforceable against the Pass Through Company or each Pass Through Trustee, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(ii) (A) Each of the other Operative Documents to which the Pass Through Company or such Pass Through Trustee is or will be a party has been or when executed and delivered will be duly authorized, executed and delivered by the Pass Through Company or such Pass Through Trustee, as the case may be, and (B) assuming the due authorization, execution and delivery of each of the other Operative Documents by each party thereto other than the Pass Through Company or such Pass Through Trustee, as the case may be, each of the other Operative Documents to which the Pass Through Company or such Pass Through Trustee is or will be a party constitutes or when executed and delivered will constitute a legal, valid and binding obligation of the Pass Through Company or such Pass Through Trustee, enforceable

against the Pass Through Company or such Pass Through Trustee, as the case may be, in accordance with its terms, except as the same may be limited by bankruptcy, insolvency, fraudulent conveyance, reorganization, arrangement, moratorium or other laws relating to or affecting the rights of creditors generally and by general principles of equity.

(c) Non-Contravention. The execution and delivery by the Pass Through Company, in its individual capacity or as Pass Through Trustee, as the case may be, of this Agreement and the other Operative Documents to which it is or will be a party, the consummation by the Pass Through Company, in its individual capacity or as Pass Through Trustee, as the case may be, of the transactions contemplated hereby and thereby, and the compliance by the Pass Through Company, in its individual capacity or as Pass Through Trustee, as the case may be, with the terms and provisions hereof and thereof, do not and will not contravene any Applicable Law of the United States of America or the State of Connecticut governing the Pass Through Company or the banking or trust powers of the Pass Through Company, or its organizational documents or by-laws, or contravene the provisions of, or constitute a default by the Pass Through Company under, or result in the creation of any Lien attributable to the Pass Through Company upon the Certificates or any indenture, mortgage or other material contract, agreement or instrument to which the Pass Through Company is a party or by which the Pass Through Company or its property is bound which would materially adversely affect the ability of the Pass Through Company, in its individual capacity or as Pass Through Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is a party or would materially adversely affect the Facilities, the Facility Sites or any interest therein or part thereof or the security interest of any Pass Through Trustee in the Indenture Estate; provided, however, that no representation is made with respect to the right, power or authority of the Pass Through Company or any Pass Through Trustee to act as operator of the Facilities following a Lease Event of Default.

(d) Governmental Action. Assuming the representations and warranties of the Facility Lessees contained in paragraphs (j), (k), (l), (m), (q), (z), (gg) and (ii) of Section 3.1 are true, no authorization or approval or other action by, and no notice to or filing or registration with, any Governmental Entity governing its banking or trust powers is required for the due execution, delivery or performance by the Pass Through Company or any Pass Through Trustee, as the case may be, of this Agreement or the other Operative Documents to which such Pass Through Trustee is or will be a party, other than any such authorization or approval or other action or notice or filing as has been duly obtained, taken or given.

(e) Litigation. There is no pending or, to the knowledge of the Pass Through Company, threatened action, suit, investigation or proceeding against the Pass Through Company either in its individual capacity or as Pass Through Trustee, before any Governmental Entity which, if determined adversely to it, would materially adversely affect the ability of the Pass Through Company, in its individual capacity or as Pass Through Trustee, as the case may be, to perform its obligations under this Agreement or the other Operative Documents to which it is a party or would materially adversely affect the Facilities, the Facility Sites or any interest therein or part thereof or the security interest of any Pass Through Trustee in the Indenture Estate or which questions the validity or enforceability of any Operative Document to which the Pass Through Trustee or the Pass Through Company is a party.

## SECTION 4. CLOSING CONDITIONS

The obligations of the Owner Participant, the Owner Lessor, the Lease Indenture Company, the Indenture Trustee, the Pass Through Company, the Pass Through Trustee, the Guarantor and the Facility Lessees to consummate the transactions contemplated hereby on the Closing Date shall be subject to the following conditions, except that the obligations of any Person shall not be subject to such Person's own performance or compliance, and each of the Transaction Parties (other than the Certificateholders) shall provide such proof of satisfaction of these conditions as any other Transaction Party shall reasonably request.

### Section 4.1. Completion of the Facility.

(a) the Tiverton Facility shall have commenced commercial operations with at least 260 MW of capacity and shall comply in all material respects with the other specifications set forth in the purchase and construction contracts for such Facility, and the Rumford Facility shall have commenced commercial operations with at least 260 MW of capacity and shall comply in all material respects with the other specifications set forth in the purchase and construction contracts for such Facility, except as disclosed in the R.W. Beck Reports delivered to the Owner Participant, the Owner Lessor and the Indenture Trustee prior to the Closing Date.

Section 4.2. Operative Documents. On or before the Closing Date, each of the Operative Documents to be delivered at or before the Closing (as well as any other agreements, certificates and other documents relating to the Overall Transaction to be delivered at Closing (including, without limitation, the Offering Circular)) shall have been duly authorized, executed and delivered by the parties thereto (if attached as an Exhibit hereto, in substantially the form attached as such Exhibit or if not so attached, in form and substance satisfactory to each Transaction Party), shall each be in full force and effect, and executed counterparts of each shall have been delivered to each of the parties hereto (other than the Tax Indemnity Agreement, which shall only be delivered to the parties thereto). Notwithstanding any of the foregoing, the Calpine Guaranties, the OP Parent Guaranty and this Agreement shall be executed on the Effective Date and shall, on the Closing Date, remain in full force and effect.

Section 4.3. Certificates and the Lessor Notes. Each of the conditions precedent contained in the Certificate Purchase Agreement shall have been satisfied or waived by the Initial Purchasers and such Initial Purchasers shall have purchased the Certificates pursuant to and in accordance with, the terms of the Certificate Purchase Agreement and the Proceeds shall have been provided to the Owner Lessor through the purchase by the Pass Through Trustee of the Lessor Notes.

Section 4.4. Equity Investment. The Owner Participant shall have made or caused to be made the Equity Investment available to the Owner Lessor at the place and in the manner contemplated by Section 2.

Section 4.5. Organizational Documents. Each of the Transaction Parties shall have received certified copies of the organizational documents of each of the other parties hereto and resolutions of the board of directors of each such other corporate party duly authorizing the transaction and such documents and such evidence as each party may reasonably request in order to establish the authority of each such other party to consummate the transactions contemplated

by this Agreement, the taking of all corporate and other proceedings in connection therewith and compliance with the conditions herein or therein set forth and the incumbency of all officers signing any of the Operative Documents. Each of the foregoing documents shall be reasonably satisfactory to each recipient thereof.

Section 4.6. Representations and Warranties. The representations and warranties of each party hereto set forth in Section 3 shall be true and correct on and as of the Closing Date with the same effect as though made on and as of the Closing Date.

Section 4.7. Defaults, Events of Default, Events of Loss. No Lease Event of Default, Lease Indenture Event of Default or Event of Loss or event that with the passage of time or giving of notice or both would constitute a Lease Event of Default, Lease Indenture Event of Default or an Event of Loss shall have occurred and be continuing.

Section 4.8. Intentionally Omitted.

Section 4.9. Consents. All permits, licenses, approvals and consents (including management, credit and other internal approvals of the Transaction Parties) necessary to consummate the Overall Transaction and to own and operate the Facilities as currently operated shall have been duly obtained and shall be in full force and effect and in the form and substance satisfactory to each of the Transaction Parties.

Section 4.10. Governmental Actions. All actions, if any, required to have been taken by any Governmental Entity on or prior to the Closing Date in connection with the transactions contemplated by any Operative Document, including, without limitation, the FERC Orders, shall have been taken and, except with respect to the determination by FERC of EWG status, all Applicable Permits required to be in effect on the Closing Date in connection with the consummation of the transactions contemplated by the Operative Documents shall have been issued and shall be in full force and effect; and all such Applicable Permits shall be final, in full force and effect on the Closing Date and with all appeal periods expired.

Section 4.11. Insurance. Insurance (including all related endorsements) complying with the requirements of Schedule 5.45 shall be in full force and effect and all premiums thereon shall be current. The Owner Participant and the Manager shall have received a certificate or certificates (or binders, if certificates are not then available) dated the Closing Date of Marsh USA, Inc. or an independent insurance broker or carrier reasonably satisfactory to such Persons stating that such insurance complies with the requirements of Schedule 5.45, is in full force and effect and all premiums then due and payable in connection therewith have been paid.

Section 4.12. Ratings. The Certificates shall have been rated at least Ba1 by Moody's and BB+ by S&P.

Section 4.13. Environmental Report. The Owner Participant and the Manager shall have received copies of the Environmental Reports which shall be in form and substance satisfactory to such parties (with a copy to the Indenture Trustee). Each Facility Lessee shall use reasonable efforts to cause the Environmental Consultant to deliver at the same time a reliance letter addressed to the Owner Lessor, the Manager and the Owner Participant allowing them to rely on such reports as if addressed to each of them.

Section 4.14. Surveys; Site Description. With respect to the Tiverton Facility, the Owner Participant shall have received a copy of the Survey (Tiverton) in form and substance satisfactory to the Owner Participant. With respect to the Rumford Facility, the Owner Participant shall have received a "boundaries" drawing in form and substance reasonably satisfactory to the Owner Participant and a certificate of an independent engineer certifying that the Rumford Facility is located on the Rumford Facility Site.

Section 4.15. Appraisal; Condition of the Facility. The Owner Participant shall have received the Closing Appraisal prepared by the Appraiser addressed and delivered only to the Owner Participant and in form and substance satisfactory to the Owner Participant, together with a letter of the Appraiser certifying that its conclusions set forth in the Closing Appraisal are true and correct as of the Closing Date.

Section 4.16. Letter from the Appraiser. The Owner Lessor shall have received a satisfactory letter of the Appraiser setting forth the conclusions of the Closing Appraisal as to the fair market value and useful life of each Facility as of the Closing Date and the methodology of determination thereof.

Section 4.17. Other Reports. The Owner Participant shall have received copies of the reports of the Engineering Consultant, the Insurance Consultant, and the Power Market Consultant, each in form and substance reasonably satisfactory to the Owner Participant.

Section 4.18. Opinion with Respect to Certain Tax Aspects. The Owner Participant shall have received the opinion, dated the Closing Date, of Hunton & Williams LLP addressed and delivered only to the Owner Participant as to certain tax matters and in form and substance satisfactory to the Owner Participant.

Section 4.19. Opinions of Counsel. Each of the relevant Transaction Parties shall have received an opinion or opinions, dated the Closing Date, of

(a) Ronald W. Fischer, Esq., in-house counsel to the Facility Lessees and Guarantor, (b) Thelen Reid & Priest LLP, special counsel to the Facility Lessees and Guarantor, (c) Steptoe & Johnson, special regulatory counsel to the Facility Lessees, (d) Drummond Woodsom & MacMahon, Maine special counsel to the Facility Lessees, (e) Hinckley, Allen & Snyder LLP, Rhode Island special counsel to the Facility Lessees, (f) Doug Levene, Esq., in-house counsel to the Owner Participant and the Owner Lessor, (g) Hunton & Williams, counsel to the Owner Participant and to the Owner Lessor, (h) Verill & Dana, LLP, Maine counsel to the Initial Purchasers, (i) Peabody & Arnold, Rhode Island counsel to the Initial Purchasers, (j) Bingham Dana LLP, counsel to the Lease Indenture Company and the Indenture Trustee and (k) Bingham Dana LLP, counsel to the Pass Through Trustee and the Pass Through Company, (l) Dewey Ballantine LLP, special counsel to CSFB, and (m) Roger Wiegley, Esq., counsel to CSFB, in each case in form and substance reasonably satisfactory to each Transaction Party. Each such Person expressly consents to the rendering by its counsel of the opinion referred to in this Section 4.19 and acknowledges that such opinion shall be deemed to be rendered at the request and upon the instructions of such Person, each of whom has consulted with and has been advised by its counsel as to the consequences of such request, instructions and consent. Furthermore, each such counsel shall, to the extent requested, permit the Rating Agencies and the Initial Purchasers to rely on their opinion as if such opinion were addressed to such parties.

Section 4.20. Recordings and Filings. All filings and recordings listed on Schedule 4.20 hereto shall have been duly made and all filing, recordation, transfer and other fees payable in connection therewith shall have been paid; and the filing of all precautionary financing statements under the Uniform Commercial Code of Rhode Island, Maine and Delaware and any other documents as may be reasonably requested by counsel to the Owner Participant, the Indenture Trustee or the Pass Through Trustee to perfect (i) the right, title and interest of the Owner Lessor in the Facilities and its leasehold interest in the Facility Sites and Easements, or any part thereof or interest therein and (ii) and the Lien of the Indenture Trustee on the Indenture Estate.

Section 4.2.1 Intentionally Omitted.

Section 4.22. Taxes. All Taxes, if any, due and payable on or before the Closing Date in connection with the execution, delivery, recording and filing of this Agreement or any other Operative Document, or any document or instrument contemplated thereby shall have been duly paid in full.

Section 4.23. No Changes in Applicable Law. No change shall have occurred in Applicable Law or the interpretation thereof by any competent court or other Governmental Entity that would make it illegal for the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee or either of the Facility Lessees, to participate in any of the transactions contemplated by the Operative Documents or would materially adversely affect the Facilities or the Facility Sites. On the Closing Date, each Certificateholder's purchase of Lessor Notes shall (i) be permitted by the laws and regulations of each jurisdiction to which such Certificateholder is subject, (ii) not violate any Applicable Law (including Regulation U, T or X of the Board of Governors of the Federal Reserve System) and (iii) not subject any Certificateholder to any tax, penalty or liability under or pursuant to any Applicable Law, which Applicable Law was not in effect on the date hereof. If requested by any Certificateholder, such Certificateholder shall have received an Officer's Certificate of the Owner Lessor, in form and substance satisfactory to such Certificateholder, certifying as to such matters of fact as such Certificateholder may reasonably specify to enable such Certificateholder to determine whether such purchase is so permitted.

Section 4.24. Registered Agent for the Facility Lessees and the Owner Lessor. National Registered Agents, Inc. shall have been appointed by the Facility Lessees, and CT Corporation System shall have been appointed by the Owner Lessor, each as registered agent for service of process in the State of New York as provided in the Operative Documents and each of National Registered Agents, Inc. and CT Corporation System shall have accepted such appointments.

Section 4.25. Operating Lease Treatment. As to each Facility Lessee, the present value of Basic Rent payable during the Basic Lease Term under the applicable Facility Lease (taking into account any rent adjustment through or contemplated on the Closing Date), together with all rent payable under the related Facility Site Lease and Facility Site Sublease, discounted at the Discount Rate, shall satisfy the 90 percent test for operating lease classification under FASB 13. Each Facility Lessee shall have received confirmation from Arthur Andersen LLP that its applicable Facility Lease will be treated as an operating lease under FASB 13 and FASB 98 for the purposes of GAAP.

Section 4.26. Rent Adjustments. As to each Facility Lessee, the aggregate of all rent adjustments made on or before, or contemplated to be made on, the Closing Date (other than adjustments to reflect a change in Transaction Costs or the actual interest rates on the Certificates) shall not cause either

(i) the pre-tax net present value of Basic Rent discounted at 6% to increase by more than 100 basis points or (ii) the total Basic Rent to increase by more than 2%.

Section 4.27. Title Insurance. Each of the Title Policies shall have been delivered to the Owner Participant, the Owner Lessor, the Indenture Trustee, as the case may be, with copies to the Pass Through Trustee.

Section 4.28. Intentionally Omitted.

Section 4.29. Intentionally Omitted.

Section 4.30. Intentionally Omitted.

Section 4.31. Intentionally Omitted.

Section 4.32. Letter as to Number of Offerees. (i) The Owner Participant and the Certificateholders shall have received a certification from the Facility Lessees as to the number of offerees by it of the Lessor Estate and (ii) the Facility Lessees and the Initial Purchasers shall have received certification from CSFB as to the number of offerees by it of the Lessor Estate and the Certificates, respectively.

Section 4.33. Lien Search. The Owner Participant (with a copy to the Indenture Trustee) shall have received Lien searches with respect to each Facility Lessee and its partners in form and substance satisfactory to such parties.

Section 4.34. Intentionally Omitted.

Section 4.35. Litigation. There shall be no actions, investigations, suits or proceedings pending or threatened against any of the Facility Lessees and/or the Calpine Parties or their properties before any court or Governmental Entity which, individually or in the aggregate, would, if adversely determined, be reasonably likely to have a Material Adverse Effect (including, but not limited to, a Facility Lessee, the Owner Participant, the Owner Lessor or the Certificateholders being subject to or not exempted from regulation as a "public utility company" or a "holding company" under PUHCA or under state laws and regulations respecting the rates or the financial and organizational regulation of electric utilities), nor shall any order, judgment or decree have been issued or proposed by any Governmental Entity at the time of the Closing Date, to set aside, restrain, enjoin or prevent the consummation of the Operative Documents or any of the Transactions contemplated by any of the Operative Documents.

Section 4.36. No Material Adverse Change. The annual reports, information, documents and other reports referred to in Section 3.2(a) of each of the Calpine Guaranties shall have been received by the Owner Participant, and there shall have been no material adverse change in the financial condition, business assets or operation of Calpine and its Consolidated Subsidiaries since the date of such annual reports, information, documents and other reports.

Section 4.37. Regulatory Approvals. Except with respect to the determination by FERC of EWG status, the Owner Participant and the Pass Through Trustee shall have received evidence of receipt of the FERC Orders.

Section 4.38. Private Placement Number. A private placement number issued by S&P's CUSIP Service bureau (in cooperation with the Securities Valuation Office of the National Association of Insurance Commissioners) shall have been obtained for the Certificates.

Section 4.39. Credit Ratings. The Certificates shall have been rated at least Ba1 by Moody's and BB+ by S&P.

Section 4.40. Proceedings and Documents. All corporate and other proceedings in connection with the transactions contemplated by this Agreement and all documents and instruments incident to such transactions shall be reasonably satisfactory to the Facility Lessees, the Owner Participant and the Initial Purchasers and their respective special counsel, and such parties and their respective special counsel shall have received all such information and counterpart originals or certified or other copies of such documents and certificates as each such party or its special counsel may reasonably request in connection with the matters contemplated hereby and by the other Operative Documents.

Section 4.41. Intentionally Omitted.

Section 4.42. Payment of Fees and Expenses.

Without limiting the provisions of Section 2.3, all Transaction Costs invoiced at least 3 Business Days prior to Closing to the Owner Participant with a copy to the Facility Lessee shall be paid promptly after the Closing Date (but no later than December 29, 2000).

Section 4.43. Qualifying Letter of Credit.

Calpine shall have caused the Initial Letter of Credit to be issued in favor of the Owner Participant.

## SECTION 5. COVENANTS OF FACILITY LESSEES AND GUARANTOR

The Facility Lessees and the Guarantor, to the extent provided below, covenant as follows;

Section 5.1. Maintenance of Existence. Except as permitted by Section 5.2, each Facility Lessee, at its own cost and expense, will at all times do or cause to be done all things necessary to preserve and keep in full force and effect both its legal existence and its qualification to do business in any state in which the conduct of its business or the ownership or leasing of assets used in its business requires such qualification and where the failure to be so qualified would reasonably be expected to have a Material Adverse Effect.

Section 5.2. Merger, Consolidation, Sale of Substantially All Assets. Each Facility Lessee covenants and agrees as follows:

(a) Neither Facility Lessee will consolidate or merge with or into any other Person, or sell, assign, convey, lease, transfer or otherwise dispose of, all or substantially all of its properties or assets to any Person or Persons in one or a series of transactions, unless (i) immediately after giving effect to any such transaction or transactions, either (A) Calpine would own, directly or indirectly, at least a majority of the Ownership Interest of each succeeding or surviving entity (as well as at least a majority of the Ownership Interest of any Facility Lessee who does not engage in such transaction), the Calpine Guaranties remain in full force and effect (without a transferee of Calpine's obligations thereunder having succeeded thereto in accordance with Section 8.4(b) thereof) and Calpine shall have reaffirmed in writing its obligations under the Calpine Guaranties and the other Operative Documents to which Calpine is a party in a manner reasonably satisfactory to the Owner Participant and Owner Lessor or (B) Calpine's obligations under the Calpine Guaranties have been succeeded to in accordance with Section 8.4 (b) of the Calpine Guaranties, the transferee of Calpine shall own, directly or indirectly, at least a majority of the Ownership Interest of each succeeding or surviving entity (as well as at least a majority of the Ownership Interest of any Facility Lessee who does not engage in such transaction) and the Calpine Guaranties shall remain in full force and effect, (ii) immediately after giving effect to such transaction, the requirements set forth in Section 13.1(b)(i) through (vi) of this Agreement (with appropriate conforming changes to take into account the nature of the transactions referred to hereunder) have been satisfied in connection with such transfer, and (iii) each succeeding or surviving entity shall be organized under the laws of the United States, any state thereof or the District of Columbia.

(b) Upon the consummation of such transaction described in Section 5.2(a), the resulting, surviving or succeeding entity, if other than the applicable Facility Lessee, shall succeed to, and be substituted for, and may exercise every right and power and shall perform every obligation of, such Facility Lessee under this Participation Agreement and each other Operative Document to which such Facility Lessee was a party immediately prior to such transaction, with the same effect as if such entity had been named herein and therein. The applicable Facility Lessee will pay the costs and expenses (including reasonable attorneys' fees and expenses) of the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee and the Certificateholders in connection with any transaction contemplated by this Section 5.2.

Section 5.3. Intentionally Omitted.

Section 5.4. Intentionally Omitted.

Section 5.5. Administrator Fees. Each Facility Lessee and Calpine shall pay the fees, costs and expenses of the Administrator (including the reasonable compensation and expenses of its counsel) arising out of the Owner Lessor's and the Owner Participant's discharge of their duties under or in connection with the Operative Documents, all pursuant to the LLC Administration Agreements, as in effect on the Closing Date.

Section 5.6. Conduct of Business, Properties, Etc. Except as otherwise expressly permitted under this Agreement, each Facility Lessee shall (a) perform and comply with all of its contractual obligations under the Operative Documents to which it is a party and all other material agreements and contracts by which it is bound, unless (other than in connection with the Operative Documents) such noncompliance would not cause a Material Adverse Effect, and (b) engage only in the business contemplated by the Operative Documents to which it is a party.

Section 5.7. Obligations. Each Facility Lessee shall pay all of its obligations, howsoever arising, as and when due and payable except such as may be contested in good faith or as to which a bona fide dispute may exist; provided, that (i) adequate reserves consistent with GAAP requirements are maintained for such contested or disputed obligations or (ii) such Facility Lessee otherwise establishes and maintains adequate security arrangements for the payment of such contested or disputed obligations which are reasonably acceptable to the Owner Participant.

Section 5.8. Books, Records, Access. Each Facility Lessee shall maintain or cause to be maintained adequate books, accounts and records with respect to itself, its applicable Facility and Facility Site and prepare all financial statements required hereunder in accordance with GAAP and in compliance with the regulations of any Governmental Entity having jurisdiction thereof, and permit employees, agents and representatives of the Owner Lessor, the Owner Participant, and, so long as the Lien of the Collateral Trust Indenture shall have not been terminated or discharged, the Indenture Trustee, the Pass Through Trustee and the Certificateholders, and such parties' independent consultants, at all reasonable times during normal business hours and upon reasonable prior notice and at no risk or (except during the existence of a Lease Default or Lease Event of Default) expense to such Facility Lessee to inspect, such Facility and Facility Site, to examine or audit all of or any of such Facility Lessee's books, accounts and records and make copies and memoranda thereof and, together with such consultants, to observe the operation, maintenance and repair of such Facility; provided, however, any such inspection shall be conducted in accordance with Section 12 of the applicable Facility Lease.

Section 5.9. Other Information. Each Facility Lessee shall furnish, or shall cause to be furnished to, the Owner Lessor, the Owner Participant and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture Trustee and the Pass Through Trustee, and their respective authorized representatives from time to time such information as such party shall reasonably request concerning the Facilities and Facility Sites including information concerning the condition, operation, maintenance and use of the Facilities and Facility Sites and such other financial or operating information as it shall reasonably request and which is routinely made available to creditors of the applicable Facility Lessee, to the extent it possesses such information; provided that, each Facility Lessee reserves the right not to provide any information that is not otherwise publicly available to any transferee Owner Participant (or its Owner Lessor) if it reasonably believes in its good faith judgment that such transferee Owner Participant or any Affiliate thereof is a competitor or is an Affiliate of a competitor of such Facility Lessee or its Affiliates in the competitive power market, unless, before receiving any such information, such transferee Owner Participant shall have put in place (to the reasonable satisfaction of such Facility Lessee) appropriate confidentiality arrangements.

To the extent such information consists of information contained in records kept by the Facility Lessees or any Affiliate, such information shall be furnished without cost to the recipient.

#### Section 5.10. Warranty of Title to Facility Site.

(a) Each Facility Lessee shall maintain good and valid fee, title to, or easement or other surface rights in, as applicable, its Facility Site and the applicable Easements, subject only to Permitted Encumbrances. Each Facility Lessee shall use its commercially reasonable efforts to remove all mechanic's liens which constitute Permitted Encumbrances existing as of the Closing Date within 2 (two) years after the Closing Date, provided that the failure to do so shall not constitute, in whole or in part, the basis of any default under any Operative Document.

(b) Each Facility Lessee shall maintain good and valid title to all of its other properties and assets (other than properties and assets disposed of in the ordinary course of business including any sale, transfer or other disposition of any obsolete, surplus or worn out equipment, parts, supplies or other materials or assets to the extent permitted by the Operative Documents), subject only to Permitted Liens or to the extent that failure to do so would have a Material Adverse Effect.

Section 5.11. ERISA. Neither Facility Lessee shall establish, maintain or contribute to, any Plan. If any Plan is established, maintained or contributed to by either Facility Lessee or any ERISA Affiliate, or if such Facility Lessee or any ERISA Affiliate becomes obligated to contribute to any Plan, (a) with respect to each such Plan, such Facility Lessee or such ERISA Affiliate (i) shall have at all times fulfilled in all material respects their obligations under the minimum funding standards of ERISA and the Code, (ii) shall not allow any such Plan to have an Unfunded Current Liability, (iii) shall, with respect to each Plan (and each related trust, if any) which is intended to be qualified under Sections 401(a) and 501(a) of the Code, obtain a determination letter from the Internal Revenue Service to the effect that such Plan (and trust, if any) meets the requirements of Sections 401(a) and 501(a) of the Code, and (iv) shall at all times be in compliance in all material respects with applicable provisions of ERISA and the Code, and (b) within fifteen (15) days after (i) the occurrence of any reportable event (as defined in Section 4043(c) of ERISA) with respect to any Plan, (ii) the complete or partial withdrawal by such Facility Lessee or any ERISA Affiliate from any Multiemployer Plan, (iii) to the extent such Facility Lessee or any ERISA Affiliate is notified that any Multiemployer Plan has entered reorganization status, has become insolvent, or has terminated (or any Multiemployer Plan notifies such Facility Lessee or any ERISA Affiliate of its intent to terminate) under Section 4041A of ERISA, (iv) the institution of any action to terminate a Plan in a distress termination under Section 4041(c) of ERISA, or (v) in the case of the breach of any other covenant contained in this Section 5.11, such Facility Lessee shall report such occurrence or breach to the Indenture Trustee, the Pass Through Trustee, the Owner Lessor and the Owner Participant and furnish such information as such Persons may reasonably request with respect thereto.

Section 5.12. Certain Contracts and Agreements. Without the consent of the Owner Participant, each Facility Lessee agrees that, except as required by the Operative Documents, it will not enter into or become bound by any contract or agreement providing for the sale of energy produced from the Facilities, or the purchase of services to be performed at, for or in connection with, the Facilities or any other contract or agreement relating to the Facilities that

(i)

31

has a term that extends beyond the Lease Term or the scheduled expiration of any Renewal Lease Term then in effect or elected by such Facility Lessee, unless such contract or agreement may be terminated by such Facility Lessee without material costs or obligation prior to the Lease Term or the scheduled expiration of such Renewal Lease Term, as the case may be or (ii) results in any lien, encumbrance, restriction or agreement relating to a Facility which extends beyond the expiration of the Lease Term for such Facility or which binds a Facility or the owner of a Facility beyond the expiration of the Lease Term; provided that nothing in this Section 5.12 shall prevent the Operator from entering agreements to operate the Facilities in accordance with the Operative Documents.

Section 5.13. Certain Costs. The Facility Lessees, jointly and severally, agree to pay to the Owner Lessor as Supplemental Rent (i) overdue interest with respect to the Lessor Notes issued under the Collateral Trust Indenture if the same is due and payable because of the occurrence of a Lease Indenture Event of Default which is attributable to a Lease Event of Default and (ii) an amount equal to any Make-Whole Amount which has become due and payable with respect to the Lessor Notes under the Collateral Trust Indenture.

Section 5.14. Limitations on Liens. Neither Facility Lessee shall, directly or indirectly, create, assume or permit to exist any Lien, securing a charge or obligation on the Facilities, the Facility Sites, the Easements or on any of its other properties real or personal, whether now owned or hereafter acquired, except Permitted Liens.

Section 5.15. Investments. The Facility Lessees shall not make or permit to remain outstanding any advances, loans or extensions of credit to, or purchase or own any stock, bonds, notes, debentures or other securities of any Person, except Permitted Investments.

Section 5.16. Survey (Rumford). The Rumford Lessee shall use diligent and commercially reasonable efforts to deliver a copy of the Survey (Rumford) as soon as practicable, such survey to be an ALTA survey or other survey in form and substance reasonably satisfactory to the Owner Participant, provided that the failure to do so shall not constitute, in whole or in part, the basis of any default under any Operative Document.

Section 5.17. Regulations. The Facility Lessees shall not, directly or indirectly, apply the proceeds of the sale of Lessor Notes or any other revenues to the purchasing or carrying of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

Section 5.18. Partnerships. The Facility Lessees shall not become a general or limited partner in any partnership or a joint venturer in any joint venture.

Section 5.19. Dissolution. The Facility Lessees shall not liquidate or dissolve, except pursuant to transactions permitted under Section 5.2.

Section 5.20. Termination of Contracts, Etc. Each Facility Lessee shall not without the prior written consent of the Owner Participant and, except as otherwise provided in Section 8 of the Collateral Trust Indenture and so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture Trustee, (a) cause or consent to or (b) permit, any

amendment, modification, extension, termination, variance or waiver of timely compliance with any terms or conditions of any Operative Document.

Section 5.21. Name and Location. Neither Facility Lessee shall change its name or the location of its chief executive office or place of business without notice to the Owner Lessor, the Indenture Trustee, the Pass Through Trustee and the Owner Participant at least thirty (30) days prior to such change.

Section 5.22. Use of Facility Site. Each Facility Lessee shall not use, or permit to be used, its applicable Facility Site or the related Easements for any purpose other than for the operation and maintenance of the applicable Facility, except as otherwise required or permitted under the Operative Documents.

Section 5.23. Abandonment of Facility. Neither Facility Lessee shall voluntarily abandon the operation, maintenance or repair of its applicable Facility, except as otherwise permitted by the Operative Documents.

Section 5.24. Taxes, Other Government Charges and Utility Charges. Each Facility Lessee shall pay, or cause to be paid, as and when due and prior to delinquency, all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to such Facility Lessee, the related Facility or its leasehold interests in the related Facility Site, all utility and other charges incurred in the operation, maintenance, use, occupancy and upkeep of such Facility or such Facility Site, and all assessments and charges lawfully made by any Governmental Entity for public improvements that may be secured by a Lien on any part of such Facility; provided, that each such Facility Lessee may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when such Facility Lessee is in good faith contesting the same, so long as (a) adequate reserves consistent with GAAP requirements (or other security arrangements reasonably satisfactory to the Indenture Trustee and the Owner Participant) are established and maintained in an amount sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made, and (b) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is immediately paid after resolution of such contest.

Section 5.25. Compliance with Laws, Instruments, Etc. At its expense, each Facility Lessee shall promptly (a) comply or cause compliance with all Applicable Laws, including those relating to pollution control, environmental protection, equal employment opportunity plans, Plans and employee safety, with respect to each such Facility Lessee, the related Facility, Facility Site or Easements, whether or not compliance therewith shall require structural changes in such Facility or any part thereof or require major changes in operational practices or interfere with the use and enjoyment of such Facility or any part thereof, and (b) procure, maintain and comply, or cause to be procured, maintained and complied with, all Applicable Permits, except (1) as may be contested in accordance with Section 7 or 8 of the related Facility Lease and (2) each Facility Lessee may, in good faith and by appropriate proceedings, diligently contest the validity or application of any such Applicable Laws in any reasonable manner which does not

involve any danger of (i) foreclosure, sale, forfeiture or loss of, or imposition of a material Lien on the related Facility, (ii) impair the use, operation or maintenance of the Facility in any material respect, (iii) any criminal liability being incurred by the Owner Participant, the Owner Lessor, the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee, the Pass Through Company or any Certificateholder, (iv) the Owner Participant, the Owner Lessor, the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee, the Pass Through Company or any Certificateholder being subjected to any unindemnified civil liability or of the Owner Participant or the Owner Lessor being subject to regulation as a public utility under Applicable Law, or (v) any Material Adverse Effect.

Section 5.26. PUHCA. No Facility Lessee shall take any action or fail to take any action within its control that would subject the Owner Lessor, the Owner Participant, the Indenture Trustee or the Pass Through Trustee to regulation under PUHCA.

Section 5.27. Intentionally Omitted.

Section 5.28. Intentionally Omitted.

Section 5.29. Intentionally Omitted.

Section 5.30. Intentionally Omitted.

Section 5.31. Further Assurances. Each Facility Lessee, at its own cost, expense and liability, will cause to be promptly and duly taken, executed, acknowledged and delivered all such further acts, documents and assurances as may be necessary in order to carry out the intent and purposes of this Participation Agreement and the other Operative Documents, and the transactions contemplated hereby and thereby. The Facility Lessee, at its own cost, expense and liability, will cause such financing statements and fixture filings (and continuation statements with respect thereto) as may be necessary and such other documents as the Owner Participant, the Owner Lessor and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall reasonably request to be recorded or filed at such places and times in such manner, and will take all such other actions or cause such actions to be taken, as may be necessary in order to establish, preserve, protect and perfect the right, title and interest of the Owner Lessor in and to the Facilities, the Facility Sites under the Facility Site Leases, any Component or any portion of any thereof or any interest therein and the first priority Lien intended to be created by the Collateral Trust Indenture therein and with respect to the Equity Collateral Account. Each Facility Lessee shall promptly from time to time furnish to the Owner Participant, the Owner Lessor or, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee or the Pass Through Trustee such information with respect to the Facilities or the Facility Sites or the transactions contemplated by the Operative Documents to which the Facility Lessee is a party as may be required to enable the Owner Participant, the Owner Lessor or, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee or the Pass Through Trustee, as the case may be, to timely file with any Governmental Entity any reports and obtain any licenses or permits required to be filed or obtained by the Owner Lessor under any Operative Document, the Owner Participant as the owner of the Member Interest or the Indenture Trustee. Each Facility Lessee will preserve,

protect, defend and enforce, or cause to be preserved, protected, defended and enforced, the rights of such Facility Lessee, the Owner Lessor and the Owner Participant under each and every Operative Document to which it is a party (including by assignment and assumption of the rights thereunder), including using commercially reasonable efforts to prosecute suits to enforce any such rights and, at the request of Indenture Trustee, so long as the Lien of the Collateral Trust Indenture has not been discharged or terminated (and thereafter at the request of the Owner Participant), permit the Indenture Trustee and the Owner Participant, at their respective cost and expense, to participate in such capacity as it may choose in any such suit, any defense thereof or in the preparation therefor; provided, however, that upon the occurrence and during the continuance of any Lease Event of Default, if the Indenture Trustee or the Owner Participant request that certain actions be taken and such Facility Lessee fails to take the requested action, or to cause the requested action to be taken within (5) Business Days, the Indenture Trustee, so long as the Lien of the Collateral Trust Indenture has not been discharged or terminated, and the Owner Lessor may, at such Facility Lessee's reasonable expense, enforce, in its own name, or such Facility Lessee's name, such rights of such Facility Lessee.

Section 5.32. Intentionally Omitted.

Section 5.33. Intentionally Omitted.

Section 5.34. Intentionally Omitted.

Section 5.35. Intentionally Omitted.

Section 5.36. Intentionally Omitted.

Section 5.37. No Subsidiaries. Neither Facility Lessee shall create or suffer to exist any Subsidiaries of such Facility Lessee.

Section 5.38. Permitted Business. Neither Facility Lessee shall engage in any business or activities other than the lease, operation, maintenance and marketing and sale of the output, fuel or other products from, the Facility leased by such Facility Lessee. Notwithstanding any of the foregoing, no Facility Lessee may change the nature of its business.

Section 5.39. Intentionally Omitted.

Section 5.40. Guaranty and Contingent Obligations. Neither Facility Lessee will create, incur, assume or suffer to exist any guaranty or other contingent obligations except (i) by reason of endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of each such Facility Lessee's business, (ii) indemnities in respect of unfiled mechanics' liens and other liens permitted by clause (d) of the definition of "Permitted Liens", (iii) contingent obligations set forth in, or incurred in connection with, or indemnities set forth in, the Operative Documents, (iv) customary indemnities provided by each such Facility Lessee in connection with easements relating to its applicable interest in the Facilities or the Facility Sites, (v) customary indemnities in favor of the title insurers providing the title policies covering the Facility Sites or any portion thereof or any easement or appurtenant right relating thereto in respect of claims by the holder of mechanics' liens, and (vi) the indemnities referred to in Section 9.1 and 9.2 of the Participation Agreement or pursuant to the Tax Indemnity Agreement.

Section 5.41. Assignment of Rights. Neither Facility Lessee shall assign any of its rights or obligations except as permitted by the Operative Documents.

Section 5.42. Intentionally Omitted.

Section 5.43. Intentionally Omitted.

Section 5.44. Support Arrangements.

(a) Intentionally Omitted

(b) Each Facility Lessee agrees that, to the extent that the rights described in Section 3.1(n) which have already been made available to the Owner Lessor prior to the expiration or termination of the related Facility Lease Term, and any rights assigned pursuant to the last sentence of this Section 5.44(b), are insufficient to permit on a commercially practicable basis during the period following the expiration or termination of such Facility Lease Term, until the end of the applicable Facility's useful life as set forth in the Closing Appraisal, (i) the location, occupation, interconnection (including with respect to electricity, steam, gas and water), maintenance and repair of such Facility, (ii) the use, operation and possession of such Facility, (iii) the use, operation, possession, maintenance, replacement, renewal and repair of all Improvements then required to be made to such Facility, (iv) adequate ingress to and egress from such Facility in connection with the ownership, use, maintenance or operation of such Facility, (v) adequate transmission of electricity from such Facility to enable such Person to deliver the net electrical and steam output of such Facility on a commercially reasonable basis and (vi) the ownership by the Owner Lessor (or any successor) of such Facility, such Facility Lessee will cause Calpine to provide, and Calpine will provide, the Owner Lessor with any additional services relating to the ownership and operation of the applicable Facility substantially in the same manner as operated as of the Closing Date (to the extent Calpine or any Affiliate thereof then owns or controls the physical assets and/or contractual rights necessary to provide such services (or can enter into contracts on a commercially reasonable basis for such ownership, control or other rights) and remains in the business of providing such services) necessary to permit the Owner Lessor to use such Facility as described in (i) through (vi) above. Such arrangements will provide for fair market value compensation to Calpine (payable periodically on no more frequently than a monthly and no less frequently than on a quarterly basis) and will terminate upon the expiration or termination of the related Facility Site Lease, or earlier at the option of the Owner Lessor. Each Facility Lessee shall also, subject to obtaining any required third party consents, assign to the Owner Lessor upon termination of the applicable Facility Lease any support or similar agreements to the extent relating to the Facility it has with third parties.

Section 5.45. Insurance. The Facility Lessee shall comply with the covenants set forth in Schedule 5.45.

Section 5.46. Qualifying Letter of Credit; Equity Collateral Account.

(a) The Guarantor shall cause the Initial Letter of Credit to be issued on the Closing Date for the benefit of the Owner Participant and shall maintain for the benefit of the Owner

Participant a Qualifying Letter of Credit (I) prior to January 1, 2011 or at all times when the outstanding aggregate principal amount of either the Tiverton Notes or the Rumford Notes is \$50,000,000 or greater, if the Guarantor's long-term unsecured indebtedness is not rated at least A- by S&P and A3 by Moody's (and the Guarantor is not on credit watch with either such agency), and (II) after January 1, 2011 and at all times so long as the aggregate principal amount of each of (A) the Tiverton Notes or (B) the Rumford Notes is less than \$50,000,000 but the aggregate principal amount of the Tiverton Notes and Rumford Notes is greater than \$5.2 million, if such ratings are not at least BBB- by S&P and Baa3 by Moody's, respectively (and the Guarantor is not on credit watch with either credit agency). Each Qualifying Letter of Credit shall (i) be issued in favor of the Owner Participant by a Qualifying Letter of Credit Bank, (ii) have a drawing amount, as of the date of original issuance and thereafter, equal to the applicable amounts of L/C Termination Value set forth in Exhibit L hereto for the date set forth in such Exhibit L, as adjusted pursuant to Section 5.46(j), and (iii) have a stated expiration date not earlier than 364 days after the date of issuance of such Qualifying Letter of Credit. The Guarantor shall not be required to maintain the Qualifying Letter of Credit after the aggregate principal amount of the Tiverton Notes and the Rumford Notes has been reduced to \$5.2 million or less. The Qualifying Letter of Credit shall secure the Guarantor's obligation under the respective Calpine Guaranties to pay the Equity Portion of Termination Value as set forth in Sections 2.1(a) and 2.1(b) of each Calpine Guaranty.

(b) If the Guarantor or the issuer of any Qualifying Letter of Credit elects to terminate any Qualifying Letter of Credit (other than the Initial Qualifying Letter of Credit) prior to the maturity date thereof, the Guarantor and such issuer shall notify the Owner Participant and the Owner Lessor of its intent to terminate the Qualifying Letter of Credit not less than 120 days prior to the proposed termination date and the Guarantor shall replace such Qualifying Letter of Credit on or before a date that is not less than 45 days prior to the proposed termination date with a replacement Qualifying Letter of Credit.

(c) If at any time subsequent to the issuance of a Qualifying Letter of Credit, the issuer of such Qualifying Letter of Credit ceases to be a Qualifying Letter of Credit Bank, the Guarantor shall, within 30 days of receiving Actual Knowledge of such issuer failing to be a Qualifying Letter of Credit Bank, replace such previously Qualifying Letter of Credit with a replacement Qualifying Letter of Credit issued by a Qualifying Letter of Credit Bank.

(d) The Guarantor shall replace any Qualifying Letter of Credit that is scheduled to expire with a replacement Qualifying Letter of Credit no later than 30 days prior to the scheduled expiration date of any such Qualifying Letter of Credit. The Guarantor will promptly forward to the Owner Participant any notice of non-renewal or scheduled termination of a Qualifying Letter of Credit that it receives from the issuer.

(e) The Guarantor shall be permitted, from time to time, to replace any Qualifying Letter of Credit with a replacement Qualifying Letter of Credit (other than the Initial Qualifying Letter of Credit) as long as there shall be no interruption in the coverage provided by the Qualifying Letter of Credit in consequences of such optional replacement and so long as such replacement occurs at least 30 days before any expiration of the Qualifying Letter of Credit being replaced.

(f) As provided in the Qualifying Letter of Credit, in the event that the Qualifying Letter of Credit is not replaced as provided in paragraphs (b), (c) or (d) above, the Owner Participant shall be entitled to draw the full amount thereof and cause the proceeds of such drawing to be deposited into the Equity Collateral Account. Any such drawing or deposit shall not relieve the Guarantor from its obligations under paragraphs (a), (b), (c) and (d) above to maintain a Qualifying Letter of Credit, unless the Guarantor is unable to discharge such obligations using its commercial efforts, but the failure to maintain a Qualifying Letter of Credit shall not constitute, in whole or in part, the basis of any Lease Default or Lease Event of Default under any Operative Document. The Guarantor shall ensure at all times that the amounts on deposit in the Equity Collateral Account from time to time are at least equal to the applicable L/C Termination Values set forth in Exhibit L hereto for each date set forth in such Exhibit L, as adjusted pursuant to Section 5.46(j) hereof and subject to Section 5.46(k) hereof, provided that the failure to do so shall not constitute, in whole or in part, the basis of any Lease Default or Lease Event of Default under any Operative Document, and except to the extent expressly provided in Section 16(e) of each Facility Lease. If the Guarantor, subsequent to the Equity Collateral Account deposit described above (and prior to application of such proceeds to the account of the Owner Participant as set forth in paragraph (g) below) establishes a new Qualifying Letter of Credit and is otherwise in compliance with its obligations under paragraphs (a), (b), (c) and (d) above, the Owner Lessor shall forthwith return by wire transfer of immediately available funds, the amounts held in the Equity Collateral Account to the Guarantor.

(g) The Equity Collateral Account shall be a segregated pledged account, the documentation of which will be in form and substance satisfactory to the Owner Participant, subject to a first priority security interest in favor of the Owner Participant, and maintained by the Owner Participant to secure the Guarantor's obligation under the Calpine Guaranties to pay the Equity Portion of Termination Value as set forth in Section 2.1 of both such Calpine Guaranties. The Owner Lessor shall be entitled (1) to retain control over the amounts on deposit therein, and (2) to foreclose upon the funds therein upon the occurrence and during the continuance of a Drawing Event. The Owner Participant shall direct the Owner Lessor to, and the Owner Lessor shall, forthwith pay over, by wire transfer of immediately available funds, to the Guarantor, any balance of amounts remaining in the Equity Collateral Account after the Equity Portion of Termination Value as specified in Section 2.1(b) of each Calpine Guaranty, together with other amounts then due and payable to the Owner Participant and Owner Lessor by the Facility Lessees or the Guarantor under the Operative Documents, have been paid.

(h) Costs and Expenses. The Guarantor shall pay the reasonable and documented costs and expenses incurred by the Owner Participant in connection with the actions referred to in this Section 5.46, except costs and expenses attributable to a transfer by the Owner Participant of its rights in the Member Interest pursuant to Section 7.1 of the Participation Agreement.

(i) Gross Ups For Withholding Taxes. (i) If at any time the issuer of any Qualifying Letter of Credit shall not be a United States person (within the meaning of Section 7701 of the Code) and any deduction or withholding of tax is required by Applicable Law (in effect at the time of issuance of the Qualifying Letter of Credit) to be made in respect of any drawing or payment thereunder, then Guarantor shall cause the Qualifying Letter of Credit to provide that the amount to be paid thereunder shall be increased by the amount of such deduction or

withholding such that the amount received by the Owner Participant is not less than the amount it would have received in the absence of the application of any such deduction or withholding.

(ii) In the event that there occurs a change in Applicable Law subsequent to the date any Qualifying Letter of Credit is issued such that deduction or withholding of tax is applicable to any payment under any such Qualifying Letter of Credit, the Guarantor shall (within 30 days after a Responsible Officer has Actual Knowledge of such change) furnish to the applicable Owner Participant an additional Qualifying Letter of Credit in an available amount equal in aggregate to the amount of withholding tax that would be required to be deducted or withheld on any given date in connection with a payment under the Qualifying Letter of Credit on such date.

(j) Adjustment to L/C Termination Value. Any time an adjustment is made to Termination Value pursuant to Section 3.4 of either of the Tiverton Facility Lease or the Rumford Facility Lease, appropriate adjustments shall be made to the L/C Termination Values set forth in such Facility Lease.

(k) In the event of a failure by the Guarantor to comply with its obligation under Sections 5.46(f) or (g) within 10 Business Days after receipt of written notice of non-compliance from the Owner Participant, the Owner Participant shall be entitled to deliver a notice of ECA Shortfall Event referred to in Section 16(e) of each Facility Lease.

## SECTION 6. COVENANTS OF THE OWNER LESSOR

Section 6.1. Compliance with the LLC Agreement. The Owner Lessor hereby covenants and agrees that it will:

(a) comply with all of the terms of the LLC Agreement applicable to it; and

(b) not amend, supplement, or otherwise modify Section 10 of the LLC Agreement without the prior written consent of the applicable Facility Lessee so long as no Significant Lease Default or Lease Event of Default has occurred and is continuing and the Indenture Trustee so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged.

Section 6.2. Owner Lessor's Liens. The Owner Lessor covenants that it will not directly or indirectly create, incur, assume or suffer to exist any Owner Lessor's Lien attributable to it and will promptly notify the applicable Facility Lessee, the Owner Participant and the Indenture Trustee of the imposition of any such Lien of which it has Actual Knowledge and shall promptly, at its own expense, take such action as may be necessary to duly discharge such Owner Lessor's Lien attributable to it.

Section 6.3. Amendments to Operative Documents. The Owner Lessor covenants that it will not unless such action is expressly permitted by the Operative Documents (a) through its own action terminate any Operative Document to which it is a party, (b) amend, supplement, waive or modify (or consent to any such amendment, supplement, waiver or modification) such Operative Documents in any manner or (c) except as provided in Section 11 hereof or Section

2.10 of the Collateral Trust Indenture, take any action to prepay or refund the Lessor Notes or amend any of the payment terms of the Lessor Notes without, in each case, the prior written consent of the applicable Facility Lessee so long as no Significant Lease Default or Lease Event of Default shall have occurred and be continuing and, in the case of clause (a) or (b), the Indenture Trustee so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged.

Section 6.4. Transfer of the Owner Lessor's Interest. Other than as permitted by the Operative Documents, the Owner Lessor covenants that it will not assign, pledge, sell, lease, convey or otherwise transfer any of its then existing right, title or interest in and to the Owner Lessor's Interest, the Lessor Estate or the other Operative Documents.

Section 6.5. Owner Lessor; Lessor Estate. The Owner Lessor covenants that it will not voluntarily take any action to subject the Owner Lessor or the Lessor Estate to the provisions of any applicable bankruptcy, insolvency or similar law (as now or hereafter in effect).

Section 6.6. Limitation on Indebtedness and Actions. The Owner Lessor covenants that it will not incur any indebtedness nor enter into any business or activity except as required or expressly permitted by any Operative Document.

Section 6.7. Change of Location. The Owner Lessor shall provide the Owner Participant, the Indenture Trustee, the Certificateholders, the Pass Through Trustee and the Facility Lessees 30 days' written notice of any relocation of the Owner Lessor's chief executive office or the place where documents and records relating to the Owner Lessor or the Lessor Estate are kept from the location set forth in Section 3.2(g) and of any change in its name.

## SECTION 7. COVENANTS OF THE OWNER PARTICIPANT

Section 7.1. Restrictions on Transfer of Member Interest.

(a) The Owner Participant covenants and agrees that it shall not during the Facility Lease Term assign, convey or transfer any of its right, title or interest in the Member Interest without the prior written consent of the Facility Lessees and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, without the prior written consent of the Indenture Trustee; provided, however, that the Owner Participant may, without such consent, assign to CSFB, on a contingent basis, the rights of the Owner Participant to receive certain revenues and assets deriving from or attributable to the Owner Participant's ownership of the Member Interest, pursuant to the CSFB-OP Letter Agreement as in effect on the Closing Date, a copy of which has been delivered to the Facility Lessees and the Indenture Trustee, and provided, further, that the Owner Participant may, subject to Section 7.8, assign, convey or transfer all or any part of its interest in the Member Interest without such consent to a Person (the "Transferee") which shall assume the duties and obligations of the Owner Participant under the Operative Documents with respect to the interest being transferred pursuant to an OP Assignment and Assumption Agreement substantially in the form of Exhibit J hereto, if each of the following conditions shall have been satisfied on or prior to such transfer:

(i) The Facility Lessees, the Indenture Trustee and the Pass Through Trustee shall have received an opinion(s) of counsel (including an opinion with respect to a guaranty pursuant to clause (iii) of this Section 7.1, if applicable), which opinion(s) and counsel are reasonably satisfactory to the Facility Lessees and consistent in scope to the opinions delivered on behalf of the Owner Participant at the Closing, including that all regulatory approvals required in connection with such transfer or necessary to assume the Owner Participant's obligations under the Operative Documents shall have been obtained;

(ii) the Transferee shall be a "United States person" within the meaning of Section 7701(a)(30) of the Code;

(iii) the Transferee shall be either (A) an Affiliate of the transferor Owner Participant which does not otherwise qualify under clause (B) below (but in any event, such Affiliate shall not be a Competitor of Calpine); provided that all of the payment and performance obligations of the Transferee with respect to the interest being transferred under the Operative Documents shall be guaranteed by the transferor Owner Participant, or a Person then providing a guaranty of the transferor Owner Participant's obligations hereunder, pursuant to an OP Parent Guaranty or (B) a Person which meets, or the payment and performance obligations of which with respect to the interest being transferred under the Operative Documents are guaranteed (pursuant to a OP Parent Guaranty) by a Person (the transferor Owner Participant or such other guarantor, the "Transferee Guarantor") which meets, the following criteria: (1) the tangible net worth of the Transferee or Transferee Guarantor, is at least equal to \$75 million calculated in accordance with GAAP; and (2) unless waived in writing by the Facility Lessees prior to such transfer, such Transferee is not a Competitor of Calpine; and

(iv) upon consummation of such transfer, there shall not be more than four (4) Owner Participants for the Overall Transaction; provided that any related Owner Participants that shall have the same decision maker and vote their interest together as a single vote shall count as one for purposes of this clause (iv).

Notwithstanding the foregoing, the restrictions set forth in Section 7.1 shall not inure to the benefit of the Facility Lessee if such transfer occurs during the continuance of a Significant Lease Default or Lease Event of Default.

(b) For purposes of determining whether a Transferee is a "Competitor" of Calpine, Calpine shall provide to the transferor Owner Participant on or prior to the Closing Date a list of entities which Calpine reasonably believes in its good faith judgment are competitors of Calpine or any of its Affiliates, in the business in which Calpine or any of its Affiliates is engaged as of the Closing Date, which list shall be attached to the Participation Agreement as Exhibit K. Any such Person on such list shall be deemed to be a "Competitor" for purposes of Section 7.1(a). The initial list of Competitors may be modified or supplemented (in a manner consistent with the first sentence of this clause (b)), from time to time, but no later than five Business Days after the Facility Lessees receives each notice from the Owner Participant of its intent to transfer its interest and, in addition, no more than once in any calendar year plus each time the Facility Lessees receives such notice of transfer from the Owner Participant, and such list as modified shall govern for the purposes of this Section 7.1(b).

(c) No Facility Lessee shall be responsible for any adverse tax consequence to the Owner Lessor or the Owner Participant resulting from any transfer pursuant to this Section 7.1 and the Pricing Assumptions shall not be changed as a result of any such transfer.

(d) The Owner Participant shall give the Owner Lessor, the Indenture Trustee and the Facility Lessees 10 Business Days' prior written notice of such transfer, specifying the name and address of any proposed Transferee and such additional information as shall be necessary to determine whether the proposed transfer satisfies the requirements of this Section 7.1. If requested by the Owner Participant or the Indenture Trustee, the Facility Lessees will acknowledge qualifying transfers. All reasonable fees, expenses and charges of the Indenture Trustee, the Pass Through Trustee, any Qualifying Letter of Credit Bank (if it should impose fees, expenses and charges), and the Facility Lessees (including reasonable attorneys' fees and expenses in connection with any such transfer or proposed transfer), including any of the foregoing relating to any amendments to the Operative Documents required in connection therewith, shall be paid by the Owner Lessor, without any right of indemnification from the Facility Lessees or any other Person; provided, however, that the Owner Participant shall have no obligation to pay fees, expenses or charges of the Facility Lessees as a result of any transfer while a Significant Lease Default or a Lease Event of Default is continuing, in which case the Facility Lessees shall be obligated to pay such costs.

(e) Upon any such transfer in compliance with this Section 7.1, (i) such Transferee shall (x) be deemed the "Owner Participant" for all purposes, and (y) enjoy the rights and privileges and perform the obligations of the Owner Participant hereunder and under each of the OP Assignment and Assumption Agreement, the Calpine Guaranties and each other Operative Document to which such Owner Participant is a party, and each reference in this Agreement, the Calpine Guaranties and each other Operative Document to the "Owner Participant" shall thereafter be deemed to include such Transferee for all purposes and (ii) the transferor Owner Participant and the OP Guarantor, if any, of such transferor Owner Participant's obligations shall be released from all obligations hereunder and under each other Operative Document to which such transferor or OP Guarantor is a party or by which such transferor Owner Participant or OP Guarantor is bound to the extent such obligations are expressly assumed by a Transferee meeting the requirements of this Section 7.1; provided, however, that in no event shall any such transfer waive or release the transferor or its OP Guarantor from any liability accruing or existing in respect of any period occurring on or prior to or occurring simultaneously with such transfer.

(f) The transfer restrictions set forth in Section 7.1 (other than the requirement that the Owner Participant and the Transferee enter into an OP Assignment and Assumption Agreement) shall also apply to any transfer of the equity ownership interests of an Owner Participant which has as its sole (or substantially equivalent to sole) business activity its participation in the transactions contemplated by the Operative Documents. In the case of such a transfer of equity ownership interests which satisfies such restrictions of this Section 7.1, the Owner Participant's obligations under the Operative Documents shall continue, but the Owner Participant shall, except in the case of a transfer to a transferee described in clause (a)(iii)(A) above, procure a new OP Parent Guaranty from a guarantor meeting the requirements of clause (a)(iii)(B) above.

Section 7.2. Owner Participant's Liens. The Owner Participant covenants that it will not directly or indirectly create, incur, assume or suffer to exist any Owner Participant's Lien and the Owner Participant shall promptly notify the Facility Lessees and the Indenture Trustee of the imposition or existence of any such Lien of which the Owner Participant has Actual Knowledge and shall promptly, at its own expense, take such action as may be necessary to duly discharge such Owner Participant's Lien.

Section 7.3. Amendments or Revocation of LLC Agreement. Notwithstanding anything to the contrary contained in the LLC Agreement, the Owner Participant covenants that it will not (a) amend, supplement, or otherwise modify Section 10 of the LLC Agreement without the prior written consent of the Facility Lessees so long as no Significant Lease Default or Lease Event of Default has occurred and is continuing, and without the prior written consent of the Indenture Trustee so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, or (b) revoke, or otherwise waive compliance with or terminate the LLC Agreement without the prior written consent of the Facility Lessees so long as no Significant Lease Default or Lease Event of Default has occurred and is continuing, and the Indenture Trustee so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged.

Section 7.4. Bankruptcy Filings. The Owner Participant agrees that it will not file a petition, or join in the filing of a petition, seeking reorganization, arrangement, adjustment or composition of, or in respect of, the Owner Lessor under the Bankruptcy Code, or any other applicable federal or state law or the law of the District of Columbia.

Section 7.5. Instructions. The Owner Participant agrees that it will not instruct the Owner Lessor to take any action prohibited by this Agreement or any other Operative Document.

Section 7.6. Intentionally Omitted.

Section 7.7. Intentionally Omitted.

Section 7.8. Right of First Refusal. In the event the Owner Participant desires to sell, lease, convey or otherwise transfer its Member Interest or cause the Owner Lessor to sell all or substantially all of the Owner Lessor's Interest at any time during the three (3) year period commencing on the termination or expiration of the Facility Lease (except in the event that a Lease Event of Default shall have existed at such time of termination or expiration), any such sale or other transfer shall be subject to each Facility Lessee's right of first refusal on the terms and conditions set forth in this

Section 7.8. The Owner Participant shall give the Facility Lessees prompt written notice of all bona fide offers that have been received from any other Person to purchase or acquire its interest of the Owner Lessor's Interest or the Member Interest of the Owner Participant, and which offers it wishes to accept, together with a full and complete statement of the price and all of the terms, conditions and provisions contained in such offers. The Facility Lessees shall thereafter have the right within a period of 45 days from and after the receipt by them of such notice (the "Notice Period") to notify the Owner Participant of its intent to exercise its right of first refusal; provided however, if both Facility Lessees exercise their right of first refusal hereunder, then the Facility Lessees shall collectively purchase or acquire 100% of the interest to be conveyed in the Owner Lessor's Interest or the Member Interest of the Owner Participant, as the case may be. If a Facility Lessee elects to exercise the right provided in the

preceding sentence, it will within 60 days of such notice (the "Agreement Period") execute a contract on the same terms and conditions as the offer giving rise to such right. If neither of the Facility Lessees give such notice to the Owner Participant within the 45 day period or execute such a contract within 60 days of such notice, the Owner Participant will be free to proceed under the terms and conditions set forth in its notice to the Facility Lessees, unless the failure to execute the contract within 60 days is attributable to acts or omissions of the Owner Participant. In the event that such terms are revised in any way that changes the agreement for sale, lease, conveyance or transfer such that the terms of the sale are less favorable to the Owner Participant (it being understood and agreed that any reduction in the price or a change in the terms of payment thereof in a manner beneficial to the potential purchaser shall be deemed to be less favorable to the Owner Participant), the Owner Participant shall again comply with the notice and right of first refusal provisions of this Section prior to entering into such revised agreement; provided that, for such revised offer, the Notice Period shall be 10 Business Days from the date of such new notice, and the Agreement Period shall not exceed 45 days from the date of the Facility Lessees' notice accepting such new terms.

## SECTION 8. COVENANTS OF THE INDENTURE TRUSTEE AND THE PASS THROUGH TRUSTEE

Section 8.1. Indenture Trustee's Liens. Neither the Lease Indenture Company, nor the Indenture Trustee will directly or indirectly create, incur, assume or suffer to exist any Indenture Trustee's Lien attributable to it and arising out of events or conditions not related to its rights in the Indenture Estate or the administration thereof, and will promptly notify the Owner Participant, the Owner Lessor and the Facility Lessees of the imposition of any such Lien of which it has Actual Knowledge and shall promptly (and in any event within 30 days of obtaining Actual Knowledge of such Lien), at its own expense, take such action as may be necessary to duly discharge such Indenture Trustee's Lien.

Section 8.2. Pass Through Trustee's Covenant Not to Transfer Lessor Notes.

Section 8.2. The Pass Through Trustee agrees that it will not transfer any Lessor Note (or any part thereof) to any entity (except to a successor Pass Through Trustee appointed pursuant to the terms of the Pass through Trust Agreement) until it receives from such entity a certification which makes a representation and warranty as of the date of such transfer that no part of the funds to be used by it for the purchase and holding of such Lessor Note (or any part thereof) constitutes assets of any Plan or that such purchase and holding will be covered by a prohibited transaction class exemption issued by the U.S. Department of Labor.

## SECTION 9. INDEMNIFICATION

Section 9.1. General Indemnity.

(a) Claims Indemnified. Subject to the exclusions stated in paragraph

(b) below, the Facility Lessees, jointly and severally, agree to indemnify, protect, defend and hold harmless, and do hereby indemnify the Owner Participant, the Owner Lessor, the Administrator (but only in connection with the performance of its duties under the LLC Administration Agreements), the

Lease Indenture Company in its individual capacity, the Indenture Trustee, each Certificateholder, the Pass Through Company in its individual capacity, the Pass Through Trustee, and their respective Affiliates, successors, assigns, agents, directors, officers and employees (each an "Indemnitee") against any and all Claims (whether or not any of the transactions contemplated by the Operative Documents are consummated) imposed on, incurred or suffered by or asserted against any Indemnitee in any way relating to or resulting from or arising out of or attributable to:

(i) the construction, financing, refinancing, acquisition, operation, rebuilding, warranty, ownership, possession, maintenance, repair, lease, condition, alteration, modification, restoration, refurbishing, return, purchase, sale or other disposition, insuring, sublease, or other use or non-use of the Facilities, the Facility Sites, the Easements or any Component or any portion of any thereof or any interest therein;

(ii) the conduct of the business or affairs of any applicable Facility Lessee or Calpine and any other business or affairs conducted at the Facilities, the Easements or the Facility Sites;

(iii) the manufacture, design, purchase, acceptance, rejection, delivery or condition of, or improvement to, the Facilities, the Facility Sites, the Easements or any Component, or any portion of any thereof or any interest therein;

(iv) the Facility Leases, the Facility Site Leases, the Facility Site Subleases, or any other Operative Document, the execution or delivery thereof or the performance, enforcement, attempted enforcement or amendment of any terms thereof, or the transactions contemplated thereby or resulting therefrom;

(v) any Environmental Condition at, related to or caused by the Facilities, the Easements or the Facility Sites or any Component, or any portion thereof, including, for the avoidance of doubt, any such Environmental Condition existing prior to the Closing Date;

(vi) the offer, issuance, sale, acquisition or delivery of the Lessor Notes, the Certificates, any Additional Lessor Notes, any Additional Certificates or any refinancing thereof;

(vii) the reasonable costs and expenses of the Transaction Parties in connection with amendments or supplements to the Operative Documents requested by an applicable Facility Lessee, or resulting from the actions of an applicable Facility Lessee or in connection with any Lease Default or Lease Event of Default;

(viii) the imposition of any Lien other than with respect to a particular Indemnitee (or a Related Party), an Owner Lessor's Lien, an Owner Participant's Lien or Indenture Trustee's Lien attributable to such Indemnitee;

(ix) any violation by, or liability relating to, any Facility Lessee or any other Calpine Party of, or under, any Applicable Law, whether now or hereafter in effect (including Environmental Laws), or any action of any Governmental Entity or other Person taken with respect to the Facilities, the Facility Sites, the Operative Documents or the interests of the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee, or under the

Operative Documents or the presence, use, storage, release, threatened release, transportation, arrangement for transportation, treatment, arrangement for treatment, manufacture, disposal or arrangement for disposal of any Hazardous Substance in, at, under or from the Facilities, the Easements or the Facility Sites, including, for the avoidance of doubt, any of the foregoing existing or occurring prior to the Closing Date;

(x) the non-performance or breach by any Person of any obligation contained in this Agreement or any other Operative Document or the falsity or inaccuracy of any representation, warranty or obligation of any Person contained in this Agreement or any other Operative Document;

(xi) the continuing fees (if any) and expenses of the Owner Lessor and the Administrator pursuant to the LLC Administration Agreements (including the reasonable compensation and expenses of their respective counsel) arising out of the Owner Lessor's discharge of its duties under or in connection with the Operative Documents (other than the Facility Leases and the Facility Site Leases);

(xii) the continuing fees (if any) and expenses of the Lease Indenture Company, the Indenture Trustee, the Pass Through Company, the Pass Through Trustee, (including the reasonable compensation and expenses of their respective counsel, accountants and other professional persons) arising out of the discharge of their respective duties as provided in the Operative Documents; or

(xiii) any Applicable Permits including any obligations imposed by FERC in connection with the Facilities or the Facility Sites.

(b) Claims Excluded. Any Claim, to the extent relating to or resulting from or arising out of or attributable to any of the following, is excluded from the Facility Lessees' obligations to indemnify, defend, protect and hold harmless any Indemnitee under this Section 9.1:

(i) (A) acts, omissions or events with respect to a particular Facility first occurring after the later of (x) expiration or early termination of a related Facility Lease and, where required by such Facility Lease, surrender to the Owner Lessor or its successor of the relevant Facility Lessee's interest in the related Facility in compliance with the provisions of such Facility Lease and (y) if the Owner Lessor exercises its option set forth in Article VI of the related Facility Site Lease, the performance by the applicable Facility Lessee of all obligations required to be performed by it thereunder, or (B), if the Closing Date does not occur, acts, omission or events occurring after the date set forth in Section 2.2 (e);

(ii) with respect to a particular Indemnitee and Related Parties, any offer, sale, assignment, transfer or other disposition (voluntary or involuntary) by or on behalf of (A) in the case of the Owner Participant, the Owner Participant of its Member Interest or with respect to any Related Party, its direct or indirect interest in the Owner Participant, (B) in the case of the Owner Lessor, and if such action is taken at the written direction of the Owner Participant, the Owner Participant, and Related Parties, the Owner Lessor of all or any of the Owner Lessor's Interest, (C) the Indenture Trustee of all or any of its interest in the Lessor Notes, unless, in any such case referred to in this paragraph (ii), such transfer is required by the terms of the Operative

Documents or occurs during the continuance of a Lease Event of Default; (provided that this paragraph (ii) shall not serve to cap the indemnity to be received by a transferee Indemnitee for a Claim (other than a Claim relating solely to or arising solely out of any offer, transfer, sale, assignment or other disposition of any such rights or interests) based on what the relevant transferor Indemnitee would have received had no such transfer occurred);

(iii) with respect to any Indemnitee, any Claim attributable to (i) the gross negligence or willful misconduct of such Indemnitee or a Related Party except to the extent such gross negligence or willful misconduct is attributable to any breach by the Facility Lessees (or any of them) or any other Calpine Party of any covenant, representation or warranty contained in any Operative Document or (ii) any violation of Applicable Law by any such Person except to the extent attributable to a violation of Applicable Law by the Facility Lessees (or either of them) or any other Calpine Party or to any breach by the Facility Lessees (or any of them) or such other Calpine Party of any covenant, representation or warranty contained in any Operative Document;

(iv) as to any Indemnitee, any Claim to the extent attributable to the noncompliance of such Indemnitee or a Related Party, with any of the terms of, or any misrepresentation or breach of warranty by such Indemnitee or Related Party contained in any Operative Document made by such Indemnitee or Related Party or any breach by such Indemnitee or a Related Party of any covenant contained in any Operative Document or any breach by such Indemnitee or a Related Party of any covenant contained in any Operative Document made by such Indemnitee or Related Party except to the extent attributable to any breach by a Facility Lessee or any other Calpine Party of any covenant, representation or warranty contained in any Operative Document;

(v) any Claim constituting or arising from an Owner Lessor's Lien;

(vi) with respect to the Indenture Trustee and the Lease Indenture Company, any Claim constituting or arising from a Indenture Trustee's Lien;

(vii) with respect to the Owner Participant, any claim constituting or arising from an Owner Participant's Lien;

(viii) any Claim that is a Tax, or is a cost of contesting a Tax whether or not the relevant Facility Lessee is required to indemnify therefor pursuant to Section 9.2 hereof or under the Tax Indemnity Agreement;

(ix) any failure on the part of the Administrator to distribute in accordance with the LLC Agreement or the LLC Administration Agreements any amounts received by it under the Operative Documents and distributable by it thereunder;

(x) a Claim arising out of a Indenture Default or Lease Indenture Event of Default that is not also (or attributable to) a Lease Default or Lease Event of Default;

(xi) with respect to a particular Indemnitee and Related Party, any obligation or liability expressly assumed in any Operative Document by the Indemnitee seeking indemnification;

(xii) any Claim that constitutes scheduled principal and/or interest on the Lessor Notes, Additional Lessor Notes, or the corresponding payments under the Certificates or any Additional Certificates; and

(xiii) any Claim relating to the payment of any amount which constitutes Transaction Costs which the Owner Participant is obligated to pay pursuant to Section 2.3(a) hereof or any other amount to the extent such Indemnitee or a Related Party has expressly agreed in any Operative Document to pay such amount without express right of reimbursement;

provided that the terms "omission," "gross negligence" and "willful misconduct," when applied with respect to the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any Affiliate of any thereof, shall not include any liability imputed as a matter of law to such Indemnitee solely by reason of any such entity's interest in the Facilities or the Facility Sites or such Indemnitee's failure to act in respect of matters which are or were the obligation of the Facility Lessees under this Agreement or any other Operative Document. Nothing herein shall be deemed to constitute a guaranty of any useful life or any present or future residual value of the Facilities or a guaranty that any amount of any Secured Indebtedness will be paid.

(c) Insured Claims. Subject to the provisions of paragraph (e) of this Section 9.1, in the case of any Claim indemnified by the Facility Lessees hereunder which is covered by a policy of insurance maintained by the Facility Lessees, each Indemnitee agrees, unless it and each other Indemnitee shall waive its rights to indemnification (for itself and each Related Party thereto) in a manner reasonably acceptable to the Facility Lessees, to cooperate, at the sole cost and expense of the Facility Lessees, with insurers in exercise of their rights to investigate, defend or compromise such Claim.

(d) After-Tax Basis. The Facility Lessees agree that any payment or indemnity pursuant to this Section 9.1 in respect of any Claim shall be made on an After-Tax Basis to the Indemnitees.

(e) Claims Procedure. Each Indemnitee shall promptly after such Indemnitee shall have Actual Knowledge thereof notify the Facility Lessees of any Claim as to which indemnification is sought; provided, that the failure so to notify the Facility Lessees shall not reduce or affect the Facility Lessees' liability which it may have to such Indemnitee under this Section 9.1, and no payment hereunder by the Facility Lessees to an Indemnitee shall be deemed to constitute a waiver or release of any right or remedy that the Facility Lessee may have against any such Indemnitee for actual damages resulting directly from the failure or delay of such Indemnitee to give the Facility Lessees such notice. Subject to the foregoing, any amount payable to any Indemnitee pursuant to this Section 9.1 shall be paid within thirty (30) days after receipt of such written demand therefor from such Indemnitee, accompanied by a certificate of such Indemnitee stating in reasonable detail the basis for the indemnification thereby sought and (if such Indemnitee is not a party hereto) an agreement to be bound by the terms hereof as if such Indemnitee were such a party. The foregoing shall not, however, constitute an obligation to disclose confidential information of any kind without the execution of an appropriate confidentiality agreement. Promptly after the Facility Lessees receive notification of such Claim accompanied by a written statement describing in reasonable detail the Claims which are the

subject of and basis for such indemnity and the computation of the amount so payable, the Facility Lessees shall, without affecting its obligations hereunder, notify such Indemnitee whether it intends to pay, object to, compromise or defend any matter involving the asserted liability of such Indemnitee. The Facility Lessees shall have the right to investigate and so long as no Significant Lease Default or Lease Event of Default shall have occurred and be continuing, the Facility Lessees shall have the right in its sole discretion, to defend or compromise any Claim for which indemnification is sought under this Section 9.1 which the Facility Lessees acknowledge is subject to indemnification hereunder; provided that no such defense or compromise shall involve any danger of (i) foreclosure, sale, forfeiture or loss of, or imposition of a Lien on any part of the Facilities, the Facility Sites, the Lessor Estate or the Indenture Estate or the impairment of the Facilities in any material respect or (ii) any criminal liability being incurred or any material adverse effect on such Indemnitee; provided, further, that no Claim shall be compromised by the Facility Lessees on a basis that admits any criminal violation or gross negligence or willful misconduct on the part of such Indemnitee without the express written consent of such Indemnitee; and provided, further, that to the extent that other Claims unrelated to the transactions contemplated by the Operative Documents are part of the same proceeding involving such Claim, the Facility Lessees may assume responsibility for the contest or compromise of such Claim only if the same may be and is severed from such other Claims (and each Indemnitee agrees to use reasonable efforts to obtain such a severance). In the event that in the course of the investigation or defense of a claim, the Facility Lessees shall in good faith reasonably determine that it is not liable for indemnification with respect thereto under this Section 9.1, it may give notice to the applicable Indemnitee of such fact; and, in such case, any acknowledgment, theretofore made by the Facility Lessees of liability with respect to such claim under this Section 9.1 shall be deemed revoked, and the Facility Lessees may thereupon cease to defend such claim; provided that (i) the Facility Lessees shall have given the Indemnitee reasonable prior notice of its intention to renounce such acknowledgment, (ii) the Facility Lessees' conduct regarding the defense of such claim or any decision to withdraw from such defense shall not prejudice or have prejudiced the Indemnitee's ability to contest such claim (taking into account, among other things, the timing of the Facility Lessees' withdrawal and the theory or theories upon which the Facility Lessees shall have based its defense), and (iii) the Facility Lessees shall have given such Indemnitee all materials, documents and records relating to its defense of such claim as such Indemnitee shall have reasonably requested in connection with the assumption by such Indemnitee of the defense of such claim at the cost and expense of such Facility Lessee. In the event that the Facility Lessees shall cease to defend any claim pursuant to the preceding sentence, the Facility Lessees shall indemnify each Indemnitee, without regard to any exclusion that might otherwise apply hereunder, to the extent that the actions of the Facility Lessees in defending such claim or the manner or time of the Facility Lessees' election to withdraw from the defense of such claim shall have caused such Indemnitee to incur any loss, cost, liability or expense which such Indemnitee would not have incurred had the Facility Lessees not ceased to defend such claim in such manner or such time. If the Facility Lessees elect, subject to the foregoing, to compromise or defend any such asserted liability, it may do so at its own expense and by counsel selected by it. Upon the Facility Lessees' election to compromise or defend such asserted liability and prompt notification to such Indemnitee of its intent to do so, such Indemnitee shall cooperate at the Facility Lessees' expense with all reasonable requests of the Facility Lessees in connection therewith and will provide the Facility Lessee with all information not within the control of the Facility Lessees as is reasonably

available to such Indemnitee which the Facility Lessees may reasonably request; provided, however, that such Indemnitee shall not, unless otherwise required by Applicable Law, be obligated to disclose to the Facility Lessees or any other Person, or permit the Facility Lessees or any other Person to examine (i) any income tax returns of the Owner Participant or (ii) any confidential information or pricing information not generally accessible by the public possessed by the Owner Participant (and, in the event that any such information is made available, the Facility Lessees shall treat such information as confidential and shall take all actions reasonably requested by such Indemnitee for purposes of obtaining a stipulation from all parties to the related proceeding providing for the confidential treatment of such information from all such parties). Where the Facility Lessees, or the insurers under a policy of insurance maintained by the Facility Lessees, undertake the defense of such Indemnitee with respect to a Claim (with counsel reasonably satisfactory to such Indemnitee and without reservation of rights against such Indemnitee), no additional legal fees or expenses of such Indemnitee in connection with the defense of such Claim shall be indemnified hereunder unless such fees or expenses were incurred at the request of the Facility Lessees or such insurers. Notwithstanding the foregoing, an Indemnitee may participate at its own expense in any judicial proceeding controlled by the Facility Lessees pursuant to the preceding provisions, but only to the extent that such party's participation does not in the reasonable opinion of counsel to the Facility Lessees interfere with such control or defense of such claim; provided, however, that such party's participation does not constitute a waiver of the indemnification provided in this Section 9.1; provided, further, that if and to the extent that (i) such Indemnitee is advised by counsel that an actual or potential conflict of interest exists where it is advisable for such Indemnitee to be represented by separate counsel or (ii) there is a risk that such Indemnitee may be subject to criminal liability and such Indemnitee informs the Facility Lessees that such Indemnitee desires to be represented by separate counsel, such Indemnitee shall have the right to control its own defense of such Claim and the reasonable fees and expenses of such defense (including, without limitation, the reasonable fees and expenses of such separate counsel) shall be borne by the Facility Lessees. So long as no Lease Event of Default described in clause (a), (b), (g) or (h) of Section 16 of a Facility Lease shall have occurred and be continuing, no Indemnitee shall enter into any settlement or other compromise with respect to any Claim without the prior written consent of the Facility Lessees unless (i) the Indemnitee waives its rights to indemnification hereunder or (ii) the Facility Lessees have not acknowledged their indemnity obligation with respect thereto and there is a significant risk that a default judgment will be entered against such Indemnitee. Nothing contained in this Section 9.1(e) shall be deemed to require an Indemnitee to contest any Claim or to assume responsibility for or control of any judicial proceeding with respect thereto.

(f) Subrogation. To the extent that a Claim indemnified by the Facility Lessees under this Section 9.1 is in fact paid in full by the Facility Lessees or an insurer under an insurance policy maintained by the Facility Lessees, the Facility Lessees (so long as no Lease Event of Default shall have occurred and be continuing) or such insurer shall be subrogated to the rights and remedies of the Indemnitee on whose behalf such Claim was paid to the extent of such payment (other than rights of such Indemnitee under insurance policies maintained at its own expense) with respect to the transaction or event giving rise to such Claim. Should an Indemnitee receive any refund, in whole or in part, with respect to any Claim paid by the Facility Lessees hereunder, it shall promptly pay over to the Facility Lessees the lesser of (i) the amount refunded reduced by the amount of any Tax incurred by reason of the receipt or accrual of such refund and increased by the amount of any Tax (but not in excess of the amount of such

reduction) saved as a result of such payment or (ii) the amount the Facility Lessees or any of their insurers has paid in respect of such Claim; provided that, so long as a Significant Lease Default or Lease Event of Default shall have occurred and is continuing such amount may be held by the Owner Lessor as security for the Facility Lessees' obligations under the Facility Leases and the other Operative Documents.

(g) Minimize Claims. The Owner Participant, the Owner Lessor, and each of the other Transaction Parties will use their respective reasonable and diligent efforts to minimize Claims indemnifiable by the Facility Lessees under this Section 9.1, including by complying with reasonable requests by the Facility Lessees to do or to refrain from doing any act if such compliance is, in the good faith opinion of the Owner Participant, the Owner Lessor, or such other Transaction Party, as the case may be, of a purely ministerial nature or otherwise has no unindemnified adverse impact on the Owner Participant, the Owner Lessor, or such Transaction Party, as the case may be, or any Affiliate of any thereof or on the business or operations of any of the foregoing.

#### Section 9.2. General Tax Indemnity.

(a) Indemnity. Except as provided in paragraph (b), the Facility Lessees jointly and severally agree to indemnify each of the Owner Participant, the Owner Lessor, the Lease Indenture Company in its individual capacity, the Indenture Trustee, the Pass Through Company in its individual capacity, the Pass Through Trustee, each Certificateholder and their respective successors and assigns, the past and present partners or members of or holders of the ownership interests in, as the case may be, the Owner Participant (each of the foregoing, together with any Affiliate thereof, a "Tax Indemnitee") for, to hold each Tax Indemnitee harmless from and to defend each Tax Indemnitee against all Taxes that are imposed upon or with respect to or borne by or asserted against any Tax Indemnitee, the Facilities, the Easements, the Facility Sites, or any portion or Component thereof or any interest therein, or upon any Operative Document or interest therein, or in any way arising out of, in connection with or relating to, any of the following:

(i) the construction, financing, refinancing, acquisition, operation, warranty, ownership, possession, maintenance, repair, lease, condition, alteration, modification, restoration, refurbishing, rebuilding, return, transport, assembly, repossession, servicing, dismantling, abandonment, retirement, decommissioning, preparation, installation, storage, replacement, purchase, sale or other disposition, insuring, sublease, or other use or non-use of, the imposition of any lien (or incurrence of any liability to refund or pay over any amount as a result of any lien) on, the Facilities, the Facility Sites, the Easements or any portion or Component thereof or any interest therein;

(ii) the Facilities, the Facility Sites, the Easements, any portion thereof or Component or interest therein, the applicability of the Facility Leases to the Facilities, or the conduct of the business or affairs of the Facility Lessees or Calpine, the Facilities or the Facility Sites;

(iii) the manufacture, design, purchase, acceptance, rejection, delivery, non-delivery, redelivery or condition of, or improvement to, the Facilities, the Easements, the Facility Sites or any portion or Component thereof, or any interest therein;

(iv) the Facility Leases, or any other Operative Document, the execution or delivery thereof, any other documents contemplated thereby or the performance, enforcement or amendment of any terms thereof;

(v) the payment or receipt of Periodic Rent, Basic Rent and Supplemental Rent or any other payment, receipt or earning under the Facility Leases or the Facility Site Subleases or arising from the Facilities, the Facility Sites, the Easements, or any portion or Component thereof or any interest therein;

(vi) any other amount paid or payable pursuant to the Operative Documents;

(vii) the conveyance of title to the Facilities; or

(viii) otherwise relating to the transactions contemplated by the Operative Documents.

Notwithstanding anything herein to the contrary and without regard to paragraph (b) hereof, the Facility Lessees will indemnify the Owner Participant and the Owner Lessor on an After-Tax Basis for any Taxes collected by way of withholding (and any interest, penalties or additions to tax associated therewith) (or for the failure to withhold taxes) imposed on the Lessor Notes or the Additional Lessor Notes or any other payments to each Certificateholder or the Indenture Trustee (each a "Certificateholder Indemnatee"), including any penalties, interest, or additions to tax applicable in connection therewith; provided, however, that if the Facility Lessees are required, for any reason, to indemnify the Owner Participant or the Owner Lessor with respect to any failure to withhold such tax, and the withholding tax would otherwise be an Excluded Tax under Section 9.2(b) without regard to the first sentence of this paragraph, then the Certificateholder Indemnatee with respect to which such withholding was not made will pay the amount of tax not withheld to the relevant taxing authority if such taxes remain unpaid or will reimburse the Facility Lessees for the amount of tax not withheld, but paid to such taxing authority, on demand, plus interest at (a) the Lease Debt Rate during the period commencing on the date the Facility Lessees shall have made the indemnity payment to such taxing authority and ending the earlier of the date of repayment by such Tax Indemnatee and five Business Days after the date the Facility Lessees demand reimbursement thereof pursuant to this sentence, and (b) the Overdue Rate for the period thereafter to the date the Facility Lessees actually receive such payment.

(b) Excluded Taxes. The indemnity provided for in paragraph (a) above shall not extend to any of the following Taxes (the "Excluded Taxes"):

(i) Taxes imposed by the United States federal government or any state or local government, any political subdivision of any of the foregoing, imposed on, based on or measured by gross or net income, receipts, capital gain, capital or net worth, or conduct of business (other than, in each case, Taxes that are in the nature of sales, use, rental, license, value added (to the extent value added taxes are not imposed in clear and direct substitution for income

taxes), property or similar taxes ("Income Taxes")), including any such Taxes collected by way of withholding, minimum or alternative minimum taxes, and franchise taxes; provided that this exclusion (i) shall not affect any express requirement that payments be made on an "after-tax" basis nor shall it apply to Taxes that would have been imposed on a Certificateholder Indemnitee had the transactions contemplated by the Operative Documents been the sole connection between the jurisdiction imposing such Taxes and the Certificateholder Indemnitee with respect to which such Taxes were imposed;

(ii) Taxes imposed on a Tax Indemnitee other than a Certificateholder Indemnitee that are attributable to any act, event or omission by such Tax Indemnitee that occurs after expiration or other termination of the Facility Leases and surrender of the Facilities to the Owner Lessor or its successors (or in the case of a Certificateholder Indemnitee, Taxes imposed for any period after the repayment of the Lease Debt) in accordance with the Facility Leases, (in contrast to an act, event or omission occurring prior to or simultaneous with such expiration, termination or surrender (or, in the case of a Certificateholder Indemnitee, such repayment)), provided that this exclusion shall not apply so long as a Lease Event of Default shall have occurred and be continuing;

(iii) Taxes imposed on a Tax Indemnitee that are attributable to the gross negligence or willful misconduct of such Tax Indemnitee, unless such negligence or misconduct is imputed to such Tax Indemnitee solely as a result of its participation in the transactions contemplated by the Operative Documents and not as a result of any action or inaction by such Tax Indemnitee;

(iv) Taxes imposed on a Tax Indemnitee arising from a breach by such Tax Indemnitee of any of its representations, warranties or covenants under any Operative Document except to the extent attributable to any breach by the Facility Lessees or any other Calpine Party of any covenant, representation or warranty contained in any Operative Document;

(v) Taxes (A)(x) arising out of, or caused by any voluntary direct or indirect assignment, sale, transfer or other voluntary disposition or (y) an involuntary direct or indirect transfer or disposition resulting from a bankruptcy or similar proceeding for relief of debtors in which such Tax Indemnitee is a debtor or a foreclosure by a creditor of such Tax Indemnitee, in the case of either (x) or (y), (1) by the Owner Participant of all or part of its Member Interest, (2) by the Owner Lessor of all or part of its interest in the Facilities or the Facility Sites, or (3) by the Indenture Trustee of any interest in the Lease Debt or the Indenture Estate, or (4) in the case of the Owner Lessor or the Owner Participant of any direct or indirect interest in the Owner Lessor or the Owner Participant, in each case to the extent imposed directly by reason of any transfer described in this clause (v)(A), or (B) imposed after any such transfer to the extent that, under law in effect on the date of the transfer such Taxes exceed the amount of Taxes that would be indemnified hereunder had there been no such assignment, sale, transfer or other voluntary disposition, unless such transfer or disposition occurs during the continuance of a Lease Event of Default or is otherwise pursuant to the Facility Lessees' exercise of their rights under the Operative Documents;

(vi) Taxes imposed on a Tax Indemnitee that would not have been imposed but for the creation or existence of any Owner Lessor's Lien or Owner Participant's Lien attributable to such Tax Indemnitee;

(vii) Taxes that are included as a part of the cost of the Facilities;

(viii) Intentionally Omitted.

(ix) With respect to the Owner Participant, Taxes for which the Facility Lessees are obligated to indemnify the Owner Participant under the Tax Indemnity Agreement (or which are expressly excluded from indemnification thereunder);

(x) Taxes that are imposed on a Tax Indemnitee (other than a Certificateholder Indemnitee) resulting from the Owner Lessor not being treated as a grantor trust or other conduit entity for federal, state or local income tax purposes, but only to the extent such Taxes exceed Taxes indemnified hereunder that otherwise would have been imposed and are otherwise indemnifiable;

(xi) Taxes imposed on a Tax Indemnitee that are attributable to the failure of such Tax Indemnitee to comply with certification, information, documentation, reporting or other similar requirements concerning the nationality, residence, identity or connection with the jurisdiction imposing such Taxes; provided that the foregoing exclusion shall only apply if such compliance is required by statute or regulation of the jurisdiction imposing such Taxes as a precondition to relief or exemption from or reduction in such Taxes, such Tax Indemnitee is eligible to comply with such requirement, the Facility Lessees shall have given such Tax Indemnitee timely written notice of such requirement and the Tax Indemnitee shall have determined in good faith that compliance with any such requirement shall not result in any identified non-immaterial adverse effect to its interests or to those of its Affiliates;

(xii) Taxes consisting of interest, penalties, additions to tax or fines resulting from a failure of such Tax Indemnitee to properly and timely file returns as required by a taxing authority unless such failure is attributable to the Facility Lessees not providing information that it is expressly required to provide under the Operative Documents;

(xiii) Taxes imposed on any Tax Indemnitee resulting from an amendment, modification, supplement to or waiver of any provision of, any Operative Document which amendment, modification, supplement or waiver was not requested by or consented to by the Facility Lessees, and as to which the Facility Lessees are not a party and the Tax Indemnitee (or, in the case of the Owner Participant, the Owner Lessor if acting at the express direction of the Owner Participant or any Related Party) is a party, unless such amendment, modification, supplement or waiver (A) was required by applicable law or the Operative Documents, (B) may be necessary or appropriate to, and is in conformity with, any amendment to any Operative Document requested by the Facility Lessee in writing, or (C) was consented to by a Calpine Party;

(xiv) Taxes imposed as a result of, or in connection with, any "prohibited transaction," within the meaning of Section 4975 of the Code, Section 406 of ERISA or any comparable laws of any Governmental Entity, engaged in by any Tax Indemnitee (which for this

purpose shall include any ERISA Affiliate thereof) resulting from the breach by such Tax Indemnitee of any of its representations or warranties contained in

Section 3.4(g) or Section 8.2 of the Participation Agreement;

(xv) Taxes to the extent such Taxes would not have been imposed on a Tax Indemnitee if such Tax Indemnitee or any related Tax Indemnitee were a United States Person; and

(xvi) Taxes imposed that would not have been imposed on a Tax Indemnitee but for the activities in the taxing jurisdiction of such Tax Indemnitee or any Affiliate thereof unrelated to the transactions contemplated by the Operative Documents.

(c) Payment. Notwithstanding anything to the contrary herein and without regard to paragraph (b) hereof, any payment by the Facility Lessees pursuant to this Section 9.2 shall be increased by amounts necessary to ensure that all such payments are made on an After-Tax Basis. Each payment required to be made by the Facility Lessees to a Tax Indemnitee pursuant to this Section 9.2 shall be paid either (i) when due directly to the applicable taxing authority by the Facility Lessees if they are permitted to do so, or (ii) where direct payment is not permitted, and with respect to gross up amounts, in immediately available funds to such Tax Indemnitee by the later of (A) 10 days following the Facility Lessees' receipt of the Tax Indemnitee's written demand for the payment pursuant to clause (g)(i) below (which demand shall be accompanied by a written statement of the Tax Indemnitee describing in reasonable detail the Taxes for which the Tax Indemnitee is demanding payment and the computation of such Taxes), (B) subject to paragraph (g) below, in the case of amounts which are being contested pursuant to such paragraph (g), at the time and in accordance with a final determination of such contest or (C) in the case of any indemnity demand for which the Facility Lessees have requested review and determination pursuant to paragraph (d) below, the completion of such review and determination; provided, however, in no event later than the date which is one Business Day prior to the date on which such Taxes are required to be paid to the applicable taxing authority. Any amount payable to the Facility Lessees pursuant to paragraph (e) or (f) below shall be paid promptly after the Tax Indemnitee realizes a Tax Benefit giving rise to a payment under paragraph (e) or receives a refund or credit giving rise to a payment under paragraph (f), as the case may be, and shall be accompanied by a statement of the Tax Indemnitee computing in reasonable detail the amount of such payment. Upon the final determination of any contest pursuant to paragraph (g) below in respect of any Taxes for which the Facility Lessees have made a Tax Advance, the amount of the Facility Lessees' obligation under paragraph (a) above shall be determined as if such Tax Advance had not been made. Any obligation of the Facility Lessees under this Section 9.2 and the Tax Indemnitee's obligation to repay the Tax Advance will be satisfied first by set off against each other, and any difference owing by either party will be paid within 10 days of such final determination.

(d) Independent Examination. Within 10 days after the Facility Lessees receives any computation from the Tax Indemnitee, the Facility Lessees may request in writing that an independent public accounting firm selected by the Tax Indemnitee and reasonably acceptable to the Facility Lessees review and determine on a confidential basis the amount of any indemnity payment by the Facility Lessees to the Tax Indemnitee pursuant to this Section 9.2 or any payment by a Tax Indemnitee to the Facility Lessees pursuant to paragraph (e) or (f) below. The

Tax Indemnitee shall cooperate with such accounting firm and supply it with all information reasonably necessary for the accounting firm to conduct such review and determination (but not tax returns and books); provided that such accounting firm shall agree in writing in a manner reasonably satisfactory to the Tax Indemnitee to maintain the confidentiality of such information. The parties hereto agree that the independent public accounting firm's sole responsibility shall be to verify the computation of any payment pursuant to this Section 9.2 and that matters of interpretation of this Participation Agreement or any other Operative Document are not within the scope of the independent accountant's responsibility. The fees and disbursements of such accounting firm will be paid by the Facility Lessees; provided that such fees and disbursements will be paid by the Tax Indemnitee if the verification results in an adjustment in the Facility Lessees' favor of 5 percent or more of the indemnity payment or payments computed by the Tax Indemnitee.

(e) Tax Benefit. If, as the result of any Taxes paid or indemnified against by the Facility Lessees under this Section 9.2, the aggregate Taxes actually paid by the Tax Indemnitee for any taxable year and not subject to indemnification pursuant to this Section 9.2 are less (whether by reason of a deduction, credit, allocation or apportionment of income or otherwise) than the amount of such Taxes that otherwise would have been payable by such Tax Indemnitee (a "Tax Benefit"), then to the extent such Tax Benefit was not taken into account in determining the amount of indemnification payable by the Facility Lessees under paragraph (a) or (c) above and provided no Significant Lease Default or Lease Event of Default shall have occurred and be continuing (in which event the payment provided under this Section 9.2(e) shall be deferred until the Significant Lease Default or Lease Event of Default has been cured), such Tax Indemnitee shall pay to the Facility Lessees the lesser of (A) (y) the amount of such Tax Benefit, plus (z) an amount equal to any United States federal, state or local income tax benefit resulting to the Tax Indemnitee from the payment under clause (y) above and this clause (z) (determined using the same assumptions as set forth in the second sentence under the definition of After-Tax Basis) and (B) the amount of the indemnity paid pursuant to this Section 9.2 giving rise to such Tax Benefit; provided, however, that any excess of (A) over (B) shall be carried forward and reduce the Facility Lessees' obligations to make subsequent payments to such Tax Indemnitee pursuant to this Section 9.2. If it is subsequently determined that the Tax Indemnitee was not entitled to such Tax Benefit, the portion of such Tax Benefit that is required to be repaid or recaptured will be treated as Taxes for which the Facility Lessees must indemnify the Tax Indemnitee pursuant to this Section 9.2 without regard to paragraph (b) hereof.

Notwithstanding anything to the contrary herein, each Certificateholder Indemnitee shall determine the allocation of any tax benefits, savings, credit, deduction or allocation in its sole good faith discretion and each position to be taken on its tax return shall be in its sole control and it shall not be required to disclose any tax return or related documentation to any Person.

(f) Refund. If a Tax Indemnitee obtains a refund or credit of all or part of any Taxes paid, reimbursed or advanced by the Facility Lessees pursuant to this Section 9.2, the Tax Indemnitee promptly shall pay to the Facility Lessees (x) the amount of such refund or credit (net of any Tax payable by the Tax Indemnitee as a result of the receipt or accrual of such refund or credit) plus (y) an amount equal to any United States federal, state or local income tax benefit realized by such Tax Indemnitee by reason of such payment to the Facility Lessees (determined using the same assumptions as set forth in the second sentence under the definition of After-Tax

Basis); provided that (A) if at the time such payment is due to the Facility Lessees a Significant Lease Default or Lease Event of Default shall have occurred and be continuing, such amount shall not be payable until such Significant Lease Default or Lease Event of Default has been cured, and (B) the amount payable to the Facility Lessees pursuant to this sentence shall not exceed the amount of the indemnity payment in respect of such refunded or credited Taxes that was made by the Facility Lessees. Any excess of (x) and (y) over (B) in this Section 9.2(f) shall be carried forward and reduce the Facility Lessees' obligations to make subsequent payments to such Tax Indemnitee pursuant to this Section 9.2. If it is subsequently determined that the Tax Indemnitee was not entitled to such refund or credit, the portion of such refund or credit that is required to be repaid or recaptured will be treated as Taxes for which the Facility Lessees must indemnify the Tax Indemnitee pursuant to this Section 9.2 without regard to paragraph (b) hereof. If, in connection with a refund or credit of all or part of any Taxes paid, reimbursed or advanced by the Facility Lessees pursuant to this Section 9.2, a Tax Indemnitee receives an amount representing interest on such refund or credit, the Tax Indemnitee promptly shall pay to the Facility Lessees (1) the amount of such interest that shall be fairly attributable to such Taxes paid, reimbursed or advanced by the Facility Lessees prior to the receipt of such refund or credit (net of Taxes payable in respect of the receipt or accrual of such interest) and (2) any Tax savings resulting from payments made by the Tax Indemnitee under (1) and (2).

(g) Contest.

(i) Notice of Contest. If a written claim for payment is made by any taxing authority against a Tax Indemnitee for any Taxes with respect to which the Facility Lessees may be liable for indemnity hereunder (a "Tax Claim"), such Tax Indemnitee shall give the Facility Lessees written notice of such Tax Claim promptly after its receipt, and shall furnish the Facility Lessees with copies of such Tax Claim and all other writings received from the taxing authority to the extent relating to such claim; provided that failure to so notify the Facility Lessees shall not relieve the Facility Lessees of any obligation to indemnify the Tax Indemnitee hereunder except to the extent that such failure effectively precludes the ability to conduct a contest hereunder (and without limiting any damage claim or remedy the Facility Lessees may otherwise have for such failure).

(ii) Control of Contest. Subject to subsection (g)(iii) below, the Facility Lessee will be entitled to contest (acting through counsel selected by the Facility Lessees and reasonably satisfactory to the Tax Indemnitee), and control the contest of, any Tax Claim if (A) such Tax Claim may be pursued in the name of the Facility Lessees and may be segregated procedurally from tax claims for which the Facility Lessees are not obligated to indemnify the Tax Indemnitee or (B) the Tax Indemnitee requests that the Facility Lessees control such contest. In the case of all other Tax Claims, the Tax Indemnitee will contest the Tax Claim if the Facility Lessees shall request that the Tax be contested (subject to subsection (g)(iii) below), and the following rules shall apply with respect to such contest:

(1) the Tax Indemnitee will control the contest of such Tax Claim (acting through counsel selected by the Tax Indemnitee and reasonably satisfactory to the Facility Lessees) at the Facility Lessees' expense,

(2) the decisions regarding what actions to be taken shall be made by the Tax Indemnitee in its sole judgment, and

(3) the Tax Indemnitee shall not otherwise settle, compromise or abandon such contest without the Facility Lessees' prior written consent except as provided in paragraph (g)(iv) below.

In either case, the party conducting such contest shall consult in good faith with the other party and its designated counsel with respect to such Tax Claim and shall provide the other party with copies of any reports or claims (or extracts therefrom) issued by the relevant auditing agents or taxing authority relating to such Tax Claim.

(iii) Conditions of Contest. Notwithstanding the foregoing, no contest with respect to a Tax Claim will be required or permitted pursuant to this Section 9.2, and the Facility Lessees shall be required to pay the applicable Taxes without contest, unless:

(1) within 30 days after written notice by the Tax Indemnitee to the Facility Lessees of such Tax Claim (or such shorter period, to be specified by the Tax Indemnitee in such notice, as required for taking action with respect to such Tax Claim), the Facility Lessees shall request in writing to the Tax Indemnitee that such Tax Claim be contested,

(2) no Significant Lease Default or Lease Event of Default has occurred and is continuing, unless the Facility Lessees have provided security for the indemnity payment and the expenses of contest in a manner reasonably acceptable to the Tax Indemnitee, both as to coverage and credit,

(3) there is no risk of sale, forfeiture or loss of, or the creation of any Lien on any Facilities, the Facility Sites, or any portion or Component thereof or any interest therein as a result of such Tax Claim; provided that this clause (3) shall not apply if the Facility Lessees post security satisfactory to the Tax Indemnitee, both as to coverage and credit, in its sole discretion,

(4) there is no risk of imposition of any criminal penalties or liabilities,

(5) if such contest involves payment of such Tax, the Facility Lessees will advance such amount necessary to pay the Tax to the Tax Indemnitee or its Affiliates on an interest-free basis and with no after-tax cost to such Tax Indemnitee (a "Tax Advance"),

(6) The Facility Lessees agree to pay (and pays on demand) and with no after-tax cost to such Tax Indemnitee or its Affiliates all reasonable costs, losses and expenses incurred by the Tax Indemnitee in connection with the contest of such claim (including, without limitation, all reasonable legal, accounting and investigatory fees and disbursements and penalties, interest and additions to tax),

(7) the Tax Indemnitee has been provided at the Facility Lessees' sole expense with an opinion, reasonably acceptable to such Tax Indemnitee, of independent tax counsel selected by the Tax Indemnitee and reasonably acceptable to the Facility Lessees to the effect that there is a Reasonable Basis for contesting such Tax Claim,

(8) in the case of a judicial appeal, the appeal is not to the U.S. Supreme Court,

(9) if such contest is controlled by the Facility Lessees, prior to commencement of a judicial action with respect to the contest, the Facility Lessees shall have admitted in writing its liability to pay an indemnity pursuant to this Section 9.2 with respect to such Tax, which admission shall be binding on the Facility Lessees unless and to the extent such contest is determined in a manner that conclusively demonstrates that the Facility Lessees are not so liable,

(10) if the amount of Taxes at issue is in excess of \$20,000, and

(11) if the subject matter of such claim shall be of a continuing or recurring nature and shall have previously been decided pursuant to this paragraph (g), there shall have been a change in law after such previously decided claim and such Tax Indemnitee receives, at the Facility Lessees' sole cost, an opinion of counsel selected by such Tax Indemnitee and reasonably acceptable to the Facility Lessees to the effect that such change is favorable to the position asserted in the previous contest.

(iv) Waiver of Indemnification. Notwithstanding anything to the contrary contained in this Section 9.2, the Tax Indemnitee at any time may elect to decline to take any action or any further action with respect to (and the Facility Lessees shall not be permitted to contest) a Tax Claim and may in its sole discretion settle or compromise any contest with respect to such Tax Claim without the Facility Lessees' consent if the Tax Indemnitee:

(1) waives its right to any indemnity payment by the Facility Lessees pursuant to this Section 9.2 in respect of such Tax Claim (and any other claim for Taxes with respect to any other taxable year the contest of which is effectively precluded by the Tax Indemnitee's declination to take action with respect to the Tax Claim), and

(2) promptly repays to the Facility Lessees any Tax Advance and any amount paid to such Tax Indemnitee under Section 9.2(a) above in respect of such Taxes, but not any costs or expenses with respect to any such contest.

Except as provided in the preceding sentence, any such waiver shall be without prejudice to the rights of the Tax Indemnitee with respect to any other Tax Claim.

(h) Reports.

(i) If any report, statement or return is required to be filed by a Tax Indemnitee with respect to any Tax that is subject to indemnification under this Section 9.2, the Facility Lessees will (1) notify the Tax Indemnitee in writing of such requirement not later than 30 days prior to the date such report, statement or return is required to be filed (determined without regard to extensions) and (2) either (y) unless directed by the Tax Indemnitee otherwise, if permitted by applicable law, prepare such report, statement or return for filing by the Facility Lessees in such manner as will show the ownership of the Facilities by the Owner Lessor for United States federal, state and local income tax purposes (if applicable), send a copy of such report, statement or return to the Tax Indemnitee and timely file such report, statement or return

with the appropriate taxing authority, or (z) in all other cases, prepare and furnish to such Tax Indemnitee not later than 30 days prior to the date such report, statement or return is required to be filed (determined without regard to extensions) a proposed form of such report, statement or return for filing by the Tax Indemnitee; provided that the only consequence for failure to file after compliance by the Facility Lessees with the requirements hereof shall be a loss of indemnification from the Facility Lessees in respect of any Tax to the extent resulting from such failure.

(ii) Each of the Tax Indemnitee and the Facility Lessees, as the case may be, will timely provide the other, at the Facility Lessees' expense, with all information in its possession that the other party may reasonably require and request to satisfy its tax filing obligations.

(i) Non-Parties. If a Tax Indemnitee is not a party to this Agreement, the Facility Lessees may require such Tax Indemnitee to agree in writing, in a form reasonably acceptable to the Facility Lessees, to the terms of this Section 9.2 prior to making any payment to such Tax Indemnitee under this Section. Subject to the preceding sentence, the Facility Lessees' obligations under this Section 9.2 shall inure to the benefit of each and every Tax Indemnitee without regard to whether such Tax Indemnitee is a party to this Agreement.

#### SECTION 10. FACILITY LESSEE'S RIGHT OF QUIET ENJOYMENT

Each party to this Agreement acknowledges notice of, and consents in all respects to, the terms of the Facility Leases and the Facility Site Subleases and expressly, severally and as to its own actions only, agrees that, so long as no Lease Event of Default has occurred and is continuing, it shall not take or cause to be taken any action or direct that any action be taken, which is contrary to or inconsistent with any Facility Lessee's rights under its Facility Lease and Facility Site Sublease, including the right to possession, use and quiet enjoyment of such Facility, Easements and Facility Site.

#### SECTION 11. SUPPLEMENTAL FINANCING IMPROVEMENTS; OPTIONAL REFINANCINGS

Section 11.1. Financing Improvements. Upon the request of a Facility Lessee delivered at least 90 days prior to financing a portion of the cost of any Improvement, the Owner Lessor and the Indenture Trustee agree to cooperate with such Facility Lessee to (a) issue Additional Lessor Notes under the Collateral Trust Indenture to finance such Improvement which will rank *pari passu* with the applicable Lessor Notes and/or any applicable Additional Lessor Notes then outstanding; (b) execute and deliver one or more supplements to the Collateral Trust Indenture for purpose of subjecting the Owner Lessor's interest in any such Improvements to the Liens thereof, and (c) execute and deliver an amendment to the applicable Facility Lease to reflect the adjustments required by clause (iv) below; provided, however, that (x) the Owner Participant shall have been given the opportunity, but shall have no obligation, to provide all or part of the funds required to finance any such Improvement by making an Additional Equity Investment in such amount, if any, as it may determine in its sole and absolute discretion, but such Facility Lessee shall have no obligation to accept such Additional Equity Investment; and (y) the

conditions set forth below and in Section 2.12 of the Collateral Trust Indenture shall have been satisfied. The obligation to finance such Improvements through the issuance of Additional Lessor Notes under Section 2.12 of the Collateral Trust Indenture (any financing of Improvements through the issuance of such Additional Lessor Notes under the Collateral Trust Indenture being called a "Supplemental Financing") is subject to the following additional conditions:

- (i) there shall be no more than one such financing in any calendar year;
- (ii) the applicable Additional Lessor Notes (A) shall have a final maturity no later than the final maturity of the Lessor Notes issued on the Closing Date and (B) will be fully repaid out of additional Basic Rent, as adjusted pursuant to the applicable Facility Lease, during the Facility Lease Term;
- (iii) the applicable Additional Lessor Notes shall have an average life to maturity equal to the average life to maturity of the Lessor Notes issued on the Closing Date;
- (iv) appropriate adjustments to Basic Rent and Termination Value (determined without regard to any tax benefits associated with such Improvements, unless the Owner Participant is making an Additional Equity Investment) shall be made to protect the Owner Participant's Net Economic Return;
- (v) the applicable Facility Lessee shall have paid, on an After-Tax Basis, all reasonable costs and expenses of the Transaction Parties, including the reasonable fees and expenses of counsel to the Owner Participant, the Owner Lessor, the Indenture Trustee, the Lease Indenture Company, the Pass Through Company and the Pass Through Trustee, in each case to the extent incurred in connection with any financing or refinancing pursuant to this Section 11 whether or not the financing is consummated;
- (vi) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing unless the Improvements to be constructed with the proceeds of the applicable Additional Lessor Notes shall cure such Significant Lease Default or Lease Event of Default and such Improvements shall be made in compliance with the Operative Documents;
- (vii) such Additional Lessor Notes represent an aggregate amount not less than \$20 million, nor greater than 100% of the costs of the Improvements being financed; provided that the aggregate balance of the Notes for such Facility never exceeds 80% of the fair market value (which fair market value shall be determined by an appraiser selected by the Facility Lessees and reasonably acceptable to the Owner Participant) of such Facility taking into account the fair market value of such Improvements;
- (viii) the Owner Participant shall have received a favorable opinion of its tax counsel satisfactory to such Owner Participant to the effect that such financing creates no incremental tax risk not indemnified to the Owner Participant's satisfaction (including additional indebtedness incurred to finance the Improvements not constituting "qualified nonrecourse indebtedness" within the meaning of Treasury Regulations Section 1-861-10T(b));

(ix) the Owner Participant shall suffer no adverse accounting effects under GAAP as a result of such financing;

(x) the Facility Lessees shall have made or delivered such representations, warranties, covenants, opinions or certificates as the Owner Participant, the Indenture Trustee may reasonably request;

(xi) the applicable Facility Lessee or the Guarantor shall have, at such time, a credit rating of at least investment grade from S&P and Moody's;

(xii) the applicable Facility Lessee shall pay to (a) the Owner Participant a fee of \$100,000 and (b) the Pass Through Trustee for the benefit of the Certificateholders, to be shared by such Certificateholders on a pro rata basis, a fee of \$100,000 for each such financing, in each case other than the first financing; and

(xiii) Calpine shall have affirmed to the Transaction Parties that the Calpine Guaranties cover the additional indebtedness contemplated by this Section 11.1.

Notwithstanding the prior provision dealing with the financing of Improvements through the Facility Leases, the Facility Lessees shall at all times have the right to fund Improvements to the Facilities other than through the Facility Leases; provided that Required Improvements and non-Severable Improvements may only be financed other than through the Facility Leases on an unsecured basis. Notwithstanding any of the foregoing of this Section 11.1, except for Required Improvements and Improvements relating to pollution control, no Improvement shall materially decrease the value, residual value, utility or remaining useful life of such Facility immediately prior to such Improvement or cause such Facility to become limited-use property.

Section 11.2. Optional Refinancing of Lease Debt. Each Facility Lessee shall have the right, exercisable at any time on no more than three occasions, to request the Owner Lessor (and the Owner Lessor shall reasonably consider and not unreasonably withhold its consent), to refund or refinance the Lease Debt (and all Certificates then outstanding), in whole but not in part, through the issuance of Additional Lessor Notes; provided that all conditions to the issuance of such Additional Lessor Notes contained in Section 2.12 of the Collateral Trust Indenture shall have been satisfied and all applicable Make-Whole Amounts shall have been paid. Any refinancing under this Section 11.2 shall also be subject to satisfaction of the following additional conditions:

(i) the Owner Lessor shall be able to issue and sell such debt in an amount adequate to accomplish such refunding or refinancing;

(ii) such Additional Lessor Notes shall have a final maturity no later than the final maturity date of the Lessor Notes issued on the Closing Date and will be fully repaid out of Basic Rent during the Facility Lease Term;

(iii) appropriate adjustments to Basic Rent and Termination Value shall be made to protect the Owner Participant's Net Economic Return; provided that no adjustments shall be made to the amortization schedule;

(iv) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing;

(v) the Owner Participant shall suffer no adverse accounting effects under GAAP;

(vi) such Facility Lessee shall have made or delivered such representations, warranties, covenants, opinions and certificates as the Owner Participant may reasonably request, which representations, warranties, covenants and agreements shall be of no greater scope than those provided by such Facility Lessee under the Operative Documents to which it is a party (except to the extent necessitated by differences between existing Operative Documents and the terms and conditions of the proposed refinancing);

(vii) all documentation in connection with such refinancing shall be reasonably satisfactory to the Owner Lessor and the Owner Participant;

(viii) the Owner Participant shall receive a consent fee of \$100,000 in the aggregate for each refinancing after the first such refinancing;

(ix) the Lease Debt as financed constitutes qualified nonrecourse indebtedness within the meaning of Treasury Regulations Section 1-861-10T (b) and the Owner Participant shall have received an opinion satisfactory to it to such effect; and

(x) the Owner Participant shall receive an opinion satisfactory to it that the refinancing (as opposed to the right to request such refinancing) shall not result in any incremental tax risk not indemnified to the Owner Participant's satisfaction.

Calpine shall have affirmed in writing to the Transaction Parties that the Calpine Guaranties cover the additional indebtedness contemplated by this

Section 11.1.

Section 11.3. Cooperation. The Owner Participant will cooperate with and assist the Facility Lessees in connection with any refinancing and/or assumption of the Lease Debt, so long as such refinancing and/or assumption of the Lease Debt is in accordance with the terms of the Operative Documents. The Owner Participant will execute such agreements and documents as may be necessary with respect to any such refinancing and will instruct the Owner Lessor to act accordingly.

## SECTION 12. CERTAIN ADJUSTMENTS TO PERIODIC RENT AND TERMINATION VALUE

(a) Prior to or on the Closing Date, Periodic Rent and Termination Value shall be adjusted, either upward or downward, in accordance with the Facility Leases:

(i) at the request of a Facility Lessee, to re-optimize the Lease Debt; provided such re-optimization shall not adversely affect the Owner Lessor or the Owner Participant;

(ii) at the request of a Facility Lessee or the Owner Participant, to reflect any changes in the Pricing Assumptions, including, without limitation, (x) the initial interest rate on any of the applicable Lessor Notes which is different from the applicable interest rate set forth in the Pricing Assumptions, (y) an increase in the Transaction Costs from the amount assumed in the Pricing Assumptions, unless the Facility Lessees have elected to pay such increase, and (z) a Closing Date other than the Scheduled Closing Date; and

(iii) at the request of a Facility Lessee or the Owner Participant to reflect any enactment, promulgation, release or adoption of, amendment to or change in the Code, Treasury Regulations, Revenue Rulings or Revenue Procedures ("Tax Law Change") enacted prior to the Closing;

provided that if any adjustment required by this paragraph (a) would result in

(i) a Facility Lease not qualifying as an operating lease for a Facility Lessee under FASB 13 or FASB 98, or (ii) the aggregate of all rent adjustments made on or before, or contemplated to be made on, the Closing Date (other than adjustments to reflect a change in Transaction Costs or the actual interest rate of the Certificates) shall cause either (x) the after-tax net present value of Basic Rent discounted at 6% to increase by more than 100 basis points or (y) the total Basic Rent to increase by more than 2%, then in either such case, the Facility Lessees shall not be obligated to close the Overall Transaction.

(b) After the Closing Date, Periodic Rent and Termination Value, as well as the coverage under the Qualifying Letter of Credit, shall be adjusted at the request of a Facility Lessee or the Owner Participant in accordance with the terms of the related Facility Lease to which it is a party.

(c) Any adjustment pursuant to this Section 12 shall be calculated (A) to preserve the Owner Participant's Net Economic Return through the Basic Lease Term and (B) to the extent consistent with (A) above, to maintain operating lease treatment for each Facility Lessee; provided, however, that to the extent consistent with preserving the Owner Participant's Net Economic Return, all adjustments shall at the option of the Facility Lessees be calculated to (x) minimize the average annual Periodic Rent over the Basic Lease Term for the Facility Lessees' GAAP accounting purposes and/or (y) minimize the present value to each Facility Lessee of Periodic Rent; and provided, further, that no such adjustment shall require the Owner Participant to record a loss as of the date such adjustment is made. Adjustments will be computed by the Owner Participant based upon the Pricing Assumptions and the Tax Assumptions originally used to calculate the Basic Rent and Termination Value. Adjustments made pursuant to this Section 12 shall be subject to verification as provided in Section 3.4 of each Facility Lease.

## SECTION 13. TRANSFER OF THE FACILITY LESSEE OWNERSHIP

### Section 13.1. Transfer of the Facility Lessee Ownership.

(a) Each Facility Lessee covenants and agrees that it shall not during the Facility Lease Term assign any Facility Lease or any other Operative Document, or any interest therein, without the prior written consent of the Owner Lessor, the Owner Participant and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture

Trustee and the Pass Through Trustee. Notwithstanding the foregoing, upon satisfaction of the conditions in paragraph (b) below, either Facility Lessee may assign its respective Facility Lease or any other Operative Document to which it is a party, or any interest therein to any Person, without the consent of the Owner Lessor, the Owner Participant, the Indenture Trustee or any other Transaction Party.

(b) Assignment under Section 13(a) above by either Facility Lessee or by both Facility Lessees shall be permitted if (A) after giving effect to such assignment or assignments, either (x) Calpine owns, directly or indirectly, at least a majority of the Ownership Interest of each assignee (as well as at least a majority of the Ownership Interest of any non-assigning Facility Lessee), the Calpine Guaranties remain in full force and effect (without a transferee of Calpine's obligations thereunder having succeeded thereto in accordance with Section 8.4(b) thereof), and Calpine shall have reaffirmed in writing its obligations under the Calpine Guaranties or (y) Calpine's obligations under the Calpine Guaranties have been succeeded to in accordance with Section 8.4(b) thereof, the transferee of Calpine shall own, directly or indirectly, at least a majority of the Ownership Interest of each assignee (as well as at least a majority of the Ownership Interest of any non-assigning Facility Lessee) and the Calpine Guaranties shall remain in full force and effect and (B) satisfaction of the following conditions:

(i) the transferee shall assume all the obligations of the applicable Facility Lessee under the Operative Documents pursuant to an assignment and assumption agreement in form and substance satisfactory to the Owner Participant;

(ii) the Owner Participant, the Owner Lessor and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Opinion of Counsel as to such assignment and assumption agreement and the satisfaction of the requirements and conditions set forth in this Section 13.1(b) (except for clauses (iii) and (vi) hereof);

(iii) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing at the time of or immediately following such transfer;

(iv) the transfer shall not subject either of the Facility Lessees, the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee or any Certificateholder to regulation under PUHCA or state laws and regulations regarding the rate and financial or organizational regulation of electric utilities in the affected party's reasonable opinion, nor result in a Regulatory Event of Loss;

(v) the transferee shall be organized under the laws of the United States, any state thereof or the District of Columbia; and

(vi) the applicable Facility Lessee shall have paid, at no after-tax cost to such parties, all reasonable documented out-of-pocket expenses (including reasonable attorneys' fees and expenses) of the Owner Lessor, the Administrator, the Owner Participant, the Indenture Trustee, the Lease Indenture Company and the Pass Through Trustee in connection with such assignment.

## SECTION 14. MISCELLANEOUS

Section 14.1. Consents; Cooperation. The Owner Participant covenants and agrees that it shall not unreasonably withhold its consent to any consent requested of the Owner Lessor under the terms of the Operative Documents that by its terms is not to be unreasonably withheld by the Owner Lessor.

Section 14.2 Successor Owner Lessor. The parties hereto agree that the transfer or assignment pursuant to the terms of the LLC Agreement by the Owner Lessor to a successor Owner Lessor, will not violate the terms of any Operative Document.

Section 14.3. Bankruptcy of Lessor Estate. If (i) all or any part of the Lessor Estate becomes the property of a debtor subject to the reorganization provisions of Title 11 of the United States Code, as amended from time to time, (ii) pursuant to such reorganization provisions the Owner Participant is required, by reason of the Owner Participant being held to have recourse liability to the debtor or the trustee of the debtor directly or indirectly, to make payment on account of any amount payable as principal or interest on the Lessor Notes, and (iii) the Indenture Trustee actually receives any Excess Amount, as defined below, which reflects any payment by the Owner Participant on account of clause (ii) above, the Indenture Trustee upon written request of the Owner Participant shall promptly refund to the Owner Participant such Excess Amount (and, to the extent so refunded, such amount owing under the Lessor Notes shall be reinstated). For purposes of this Section 14.3, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received by the Indenture Trustee if the Owner Participant had not become subject to the recourse liability referred to in clause (ii) above, as stated in the Owner Participant's written request to the Indenture Trustee. Nothing contained in this Section 14.3 shall prevent the Indenture Trustee from enforcing any personal recourse obligations (and retaining the proceeds thereof) of the Owner Participant as contemplated by this Participation Agreement (other than referred to in clause (ii)).

Section 14.4. Waivers. No term, covenant, agreement or condition of this Agreement may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by each party hereto.

Section 14.5. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof; provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to each party hereto at its address set forth below or, in the case of any such party hereto, at such other address as such party may from time to time designate by written notice to the other parties hereto:

**If to the Tiverton Lessee:**

Tiverton Power Associates Limited Partnership The Pilot House, 2nd Floor Lewis Wharf  
Boston, MA 02110  
Attention: Asset Manager  
Telephone: (617) 723-7200 Facsimile: (617) 723-7635

with a copy to:

Calpine Corporation 50 West San Fernando Street, 5th Floor San Jose, California 95113 Attention: Asset Manager and General Counsel,  
Telephone: (408) 995-5115 Facsimile: (408) 995-0505

**If to the Rumford Lessee:**

Rumford Power Associates Limited Partnership The Pilot House, 2nd Floor Lewis Wharf  
Boston, MA 02110  
Attention: Asset Manager Telephone: (617).723-7200 Facsimile: (617) 723-7635

with a copy to:

Calpine Corporation 50 West San Fernando Street, 5th Floor San Jose, California 95113 Attention: Asset Manager and General Counsel,  
Telephone: (408) 995-5115 Facsimile: (408) 995-0505

**If to the Guarantor:**

Calpine Corporation  
50 West San Fernando Street, 5th Floor  
San Jose, California 95113

Attention: Asset Manager and General Counsel, Telephone: (408) 995-5115 Facsimile: (408) 995-0505

**If to the Owner Lessor:**

PMCC Calpine New England Investment LLC

c/o Philip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, CT 06905  
Telephone: (914) 335-8170 Facsimile: (914) 335-8287 Attention: Vice President - Leasing

with a copy to:

Philip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, CT 06905 Telephone: (914) 335-8347 Facsimile: (914) 335-8256  
Attention: General Counsel

**If to the Owner Participant:**

PMCC Calpine NEIM LLC

c/o Philip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, CT 06905  
Telephone: (914) 335-8170 Facsimile: (914) 335-8287 Attention: Vice President - Leasing

with a copy to:

Philip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, CT 06905 Telephone: (914) 335-8347 Facsimile: (914) 335-8256  
Attention: General Counsel

**If to the Indenture Trustee:**

State Street Bank and Trust Company of Connecticut, National Association  
225 Asylum Street, Goodwin Square Hartford, CT 06103  
Telephone No.: (860) 244-1822 Facsimile No.: (860) 244-1889 Attn: Corporate Trust Department

copy to:

State Street Bank and Trust Company of California, National Association  
633 West 5th Street, 12th floor Los Angeles, California 90071 Telephone No.: (213) 362-7373 Facsimile No.: (213) 362-7357 Attention:  
Corporate Trust Department

**If to the Pass Through Trustee:**

State Street Bank and Trust Company of Connecticut, National Association  
225 Asylum Street, Goodwin Square Hartford, CT 06103  
Telephone No.: (860) 244-1822 Facsimile No.: (860) 244-1889 Attn: Corporate Trust Department

copy to:

State Street Bank and Trust Company of California, National Association  
633 West 5th Street, 12th floor Los Angeles, California 90071 Telephone No.: (213) 362-7373 Facsimile No.: (213) 362-7357 Attention:  
Corporate Trust Department

A copy of all notices provided for herein shall be sent by the party giving such notice to each of the other parties hereto. In addition, the Facility Lessees shall (unless otherwise directed by the applicable Rating Agency) provide to each Rating Agency a copy of any information, report or notice it gives to the Indenture Trustee hereunder or any other Operative Documents.

Section 14.6. Survival. All warranties, representations, indemnities and covenants made by any party hereto, herein or in any certificate or other instrument delivered by any such party or on behalf of any such party under this Agreement shall be considered to have been relied upon by each other party hereto and shall survive the consummation of the transactions contemplated hereby and in the other Operative Documents regardless of any investigation made by any such party or on behalf of any such party. In addition, the indemnifications by the Facility Lessees

under Sections 9.1 and 9.2 of this Agreement, subject to Sections 9.1(b) and 9.2(b), respectively, the Facility Site Leases and the Calpine Guaranties, shall expressly survive the expiration or early termination (in either case, for whatever reason) of the Facility Lease or the transfer or other disposition of the respective interests of the Owner Participant, the Owner Lessor, the Administrator, the Lease Indenture Company, the Indenture Trustee, the Pass Through Trustee and the Certificateholders in, to and under this Agreement, the Bills of Sale and the other Operative Documents. Except as expressly provided above or in Section 22.3 of the Facility Leases, the Tax Indemnity Agreement or as otherwise expressly provided in the Operative Documents, the representations, warranties, covenants and agreements of the Transaction Parties under the Operative Documents shall terminate and be of no further force and effect effective upon the expiration or earlier termination of the Facility Leases.

Section 14.7. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of, and shall be enforceable by, the parties hereto and their respective successors and assigns as permitted by and in accordance with the terms hereof, including each successive holder of the Member Interest of the Owner Participant permitted under Section 7.1 and each successive transferee or transferees of Lessor Notes permitted under Section 2.8 of the Collateral Trust Indenture. Except as expressly provided herein or in the other Operative Documents, no party hereto may assign its interests herein without the prior written consent of the other parties hereto.

Section 14.8. Business Day. Notwithstanding anything herein or in any other Operative Document to the contrary, if the date on which any payment is to be made pursuant to this Agreement or any other Operative Document is not a Business Day, the payment otherwise payable on such date shall be payable on the next succeeding Business Day with the same force and effect as if made on such scheduled date and (provided such payment is made on such succeeding Business Day) no interest shall accrue on the amount of such payment from and after such scheduled date to the time of such payment on such next succeeding Business Day.

Section 14.9. Governing Law. This Agreement has been delivered in the State of New York and shall be in all respects governed by and construed in accordance with the laws of the State of New York including all matters of construction, validity and performance without giving effect to the conflicts of laws provisions thereof except New York General Obligations Law Section 5-1401.

Section 14.10. Severability. If any provision hereof shall be invalid, illegal or unenforceable under Applicable Law, the validity, legality and enforceability of the remaining provisions hereof shall not be affected or impaired thereby.

Section 14.11. Counterparts This Agreement may be executed in any number of counterparts, each executed counterpart constituting an original but all together only one agreement.

Section 14.12. Headings and Table of Contents The headings of the sections of this Agreement and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

### Section 14.13. Limitation of Liability

(a) None of the Owner Participant, the Owner Lessor, the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee, the Pass Through Trustee Company or the Certificateholders shall have any obligation or duty to the Facility Lessees or to others with respect to the transactions contemplated hereby, except those obligations or duties expressly set forth in this Agreement and the other Operative Documents to which such Person is a party, and none of the Owner Participant, the Owner Lessor, the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee, the Pass Through Company or the Certificateholders shall be liable for performance by any other party hereto of such other party's obligations or duties hereunder. Without limitation of the generality of the foregoing, under no circumstances whatsoever shall the Owner Participant be liable to the Facility Lessees for any action or inaction on the part of the Owner Lessor in connection with the transactions contemplated herein, whether or not such action or inaction is caused by willful misconduct or gross negligence of the Owner Lessor, unless such action or inaction is at the written direction of the Owner Participant.

(b) Neither Facility Lessee or any other Calpine Party shall have any obligation or duty to the Owner Participant, the Owner Lessor, the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee, the Pass Through Company, the Certificateholders or to others with respect to the transactions contemplated hereby, except those obligations or duties expressly set forth in this Agreement and the other Operative Documents, and neither of the Facility Lessee or any other Calpine Party (except Calpine to the extent set forth in the Calpine Guaranties) shall be liable for performance by any other party hereto of such other party's obligations or duties hereunder.

(c) The Lease Indenture Company and the Pass Through Company are entering into the Operative Documents to which it is a party solely as trustees under the Collateral Trust Indenture and the Pass Through Trust Agreement, respectively, and not in their individual capacities, except as expressly provided herein or therein, and in no case whatsoever shall the Lease Indenture Company and the Pass Through Company be personally liable for, or for any loss in respect of, any of the statements, representations, warranties, agreements or obligations of the Owner Lessor hereunder or under any other Operative Document, as to all of which the other parties hereto agree to look solely to the Indenture Estate and the Lessor Estate, respectively; provided, however, that the Lease Indenture Company and the Pass Through Trust Company shall be liable hereunder for their own negligence or willful misconduct or for a breach of their representations, warranties and covenants made in their individual capacity under any Operative Document.

(d) The right of the Indenture Trustee or the Pass Through Trustee to perform any discretionary act enumerated herein or in any other Operative Document (including, without limitation, the right to consent to any action which requires their consent and the right to waive any provision of, or consent to any change or amendment to, any of the Operative Documents) shall not be construed as a duty, and neither the Indenture Trustee nor the Pass Through Trustee shall be liable or answerable for other than its negligence or willful misconduct in the performance of such acts. In connection with any such discretionary acts, the Indenture Trustee may in its sole discretion (but shall not, except as otherwise provided herein or in the Collateral Trust Indenture or as otherwise required by Applicable Law, have any obligation to) request the

approval or instruction of the Pass Through Trustee as the holder of the Lessor Notes, and the Pass Through Trustee may in its sole discretion (but shall not, except as otherwise provided in the Operative Documents or as otherwise required by Applicable Law, have any obligation to) request the approval of the Certificateholders.

(e) The Owner Participant will give the Facility Lessees at least 15 days' prior notice of any proposed amendment or supplement to the LLC Agreement (other than an amendment solely effecting a transfer of the Owner Participant's interest in the Lessor Estate) and deliver true, complete and fully executed copies to the Facility Lessees of any amendment or supplement to the LLC Agreement. No amendment or supplement to the LLC Agreement that would reasonably be expected to materially adversely affect the interests of the Facility Lessees or the Indenture Trustee shall become effective without the written consent of the Indenture Trustee and the Facility Lessees.

Section 14.14. Consent to Jurisdiction; Waiver of Trial by Jury; Process Agent.

(a) Each of the parties hereto (i) hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of any party to remove to the United States District Court for the Southern District of New York) and to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Agreement, the other Operative Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the parties hereto or their successors or assigns;

(ii) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or in such federal court; and (iii) to the extent permitted by Applicable Law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement, the other Operative Documents, or the subject matter hereof or thereof may not be enforced in or by such court.

**(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES THE RIGHT TO DEMAND A TRIAL BY JURY, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS AGREEMENT, THE OTHER OPERATIVE DOCUMENTS, OR THE SUBJECT MATTER HEREOF OR THEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY BROUGHT BY ANY OF THE PARTIES HERETO OR THEIR SUCCESSORS OR ASSIGNS.**

(c) By the execution and delivery of this Agreement, the Facility Lessees designate, appoint and empower National Registered Agents, Inc., 440 Ninth Avenue, 5th Floor, New York, New York 10001, and the Owner Lessor designates, appoints and empowers CT Corporation System, with an office at 111 Eighth Avenue, New York, New York 10011, as its authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any such action, suit or proceeding in the State of New York for so long as any obligation of the Facility Lessees or the Owner Lessor, as applicable, shall remain outstanding

hereunder or under any of the other Operative Documents. Each Facility Lessee shall grant an irrevocable power of attorney to CT Corporation System, in respect of such appointment and shall maintain such power of attorney in full force and effect for so long as any obligation of such Facility Lessee shall remain outstanding hereunder or under any of the Operative Documents.

Section 14.15. Further Assurances Each party hereto will promptly and duly execute and deliver such further documents to make such further assurances for and take such further action reasonably requested by any party to whom such first party is obligated, all as may be reasonably necessary to carry out more effectively the intent and purpose of this Participation Agreement and the other Operative Documents.

Section 14.16. Effectiveness. The Participation Agreement has been dated as of the date first above written for convenience only. This Participation Agreement shall be effective on the date of execution and delivery by each of the parties hereto.

Section 14.17. Measuring Life. If and to the extent that any of the options, rights and privileges granted under this Agreement, would, in the absence of the limitation imposed by this sentence, be invalid or unenforceable as being in violation of the rule against perpetuities or any other rule or law relating to the vesting of interests in property or the suspension of the power of alienation of property, then it is agreed that notwithstanding any other provision of this Agreement, such options, rights and privileges, subject to the respective conditions hereof governing the exercise of such options, rights and privileges, will be exercisable only during (a) the longer of (i) a period which will end twenty-one (21) years after the death of the last survivor of the descendants living on the date of the execution of this Agreement of the following Presidents of the United States: Franklin D. Roosevelt, Harry S. Truman, Dwight D. Eisenhower, John F. Kennedy, Lyndon B. Johnson, Richard M. Nixon, Gerald R. Ford, James E. Carter, Ronald W. Reagan, George H.W. Bush and William J. Clinton or (ii) the period provided under the Uniform Statutory Rule Against Perpetuities or (b) the specific applicable period of time expressed in this Agreement, whichever of (a) and (b) is shorter.

Section 14.17. No Partnership, Etc. The parties hereto intend that nothing contained in this Participation Agreement or any other Operative Document shall be deemed or construed to create a partnership, joint venture or other co-ownership arrangement by and among any of them.

Section 14.18. Entire Agreement. This Agreement, together with the other applicable Operative Documents, constitutes the entire agreement of the parties hereto and thereto with respect to the subject matter hereof and thereof and supersedes all oral and all prior written agreements and understandings with respect to such subject matter; provided that, notwithstanding the foregoing, the obligations of Calpine with respect to fees, expenses and indemnifications set forth in the letter agreement, dated October 16, 2000 between Calpine and CSFB shall not be superceded hereby and shall remain in full force and effect.

Section 14.19. Public Utility Regulation The Facility Lessees, the Owner Lessor and the Owner Participant agree to cooperate and to take reasonable measures to alleviate the source or consequence of any regulation constituting a Regulatory Event of Loss, at the cost and expense

of the Facility Lessees, so long as there shall be no adverse consequences to the Owner Lessor or the Owner Participant as the result of such cooperation or taking of reasonable measures.

Section 14.21. Confidentiality of Information. Each of the parties hereto agrees that any information (x) contained herein or in the other Operative Documents (including any terms, conditions, agreements, financial projections, and other financial and operating information contained herein or therein, and the terms of any insurance policies required or otherwise maintained pursuant hereto), (y) disclosed or to be disclosed by one such party to another such party (for purposes of this Section 14.21, each of the parties to this Agreement being referred to herein as a "Receiving Party") in connection with this Agreement or any other Operative Document, or (z) otherwise received in connection with this Agreement or any other Operative Document (or the transactions contemplated thereby) and designated by the disclosing party in writing as confidential, shall, in each case, be kept confidential by the Receiving Party and shall not be used otherwise than in connection with the business of the Parties contemplated hereunder except:

- (a) to the extent such information is generally available to the public prior to the Receiving Party's receipt thereof, or which becomes public after such receipt, but through no violation by such Receiving Party of this Section 14.21;
- (b) as may be required by Applicable Law or, upon prompt prior written notice to the affected party, by judicial process;
- (c) as may be independently developed by the Receiving Party other than in connection with the transactions contemplated hereby with respect to the Facilities or the Facility Sites;
- (d) as may be disclosed to counsel, auditors or accountants to the Receiving Party, or to the National Association of Insurance Commissioners;
- (e) to the extent used in connection with any litigation to which the Receiving Party is a party, provided that the other parties hereto shall have been given prompt prior written notice (to the extent permitted by law) of such proposed disclosure;
- (f) as may be disclosed to any transferee or proposed transferee of the Receiving Party; provided, however, that, prior to any such disclosure, any such transferee or proposed transferee, as the case may be, shall have agreed in writing to be bound by the terms of this Section 14.20; or
- (g) as may be necessary or desirable in connection with the enforcement of remedies by any party to any of the Operative Documents.

The foregoing obligation as to confidentiality and non-use shall survive the termination of this Agreement for a period of five years.

Section 14.22. Reliance. Calpine and the Facility Lessees agree that the Transaction Parties may rely on the Environmental Reports.

#### Section 14.23. Intentionally Omitted

Section 14.24. Amendments, Etc. No Operative Document nor any of the terms thereof (including the terms of this Section 14.24) may be terminated, amended, supplemented, waived or modified, except by an instrument in writing (a) signed in the case of a waiver, by the party against which enforcement of such waiver is sought, and no such waiver shall become effective unless signed copies thereof shall have been delivered to each such party or (b) in the case of termination, amendments, supplements or modifications, consented to by all parties hereto; provided, however, that the consent of the Facility Lessees is not required in the case of amendments to any Operative Document to which the Facility Lessees are not a party and which would not increase or accelerate the Facility Lessees' or the Guarantor's obligations under any of the Operative Documents nor impair the Facility Lessees' or the Guarantor's rights under any of the Operative Documents; provided further, that the consent of the Facility Lessees, the Indenture Trustee or the Pass Through Trustee shall not be required (but the consent of the Guarantor shall be so required) for the amendment, termination, replacement, supplement, waiver or modification of any Qualifying Letter of Credit. Notwithstanding the foregoing, Section 5.6 of the Collateral Trust Indenture shall not be amended without the Guarantor's consent.

Section 14.25. Credit for Certain Disbursements. Notwithstanding any other provision of this Agreement or any provision of any other Operative Document, any payment to the Owner Participant under a Qualified Letter of Credit (exclusive of any deposit into the Equity Collateral Account) or from the Equity Collateral Account shall reduce, dollar-for-dollar, the obligation of the Guarantor under the Calpine Guaranty (Tiverton), on the one hand, and the Guarantor under the Calpine Guaranty (Rumford), on the other hand, the aggregate amount of such reductions to be allocated between the respective amounts of the Equity Portion of Termination Value applicable, on the date of such reduction, to the Calpine Guaranty (Tiverton) and to the Calpine Guaranty (Rumford), respectively. Upon the reduction referred to in the prior sentence becoming effective, comparable and parallel reductions will automatically be made in the Termination Values specified in the Facility Leases.

IN WITNESS WHEREOF, the parties hereto have caused this Participation Agreement to be executed and delivered by their respective officers thereunto duly authorized.

**TIVERTON POWER ASSOCIATES LIMITED PARTNERSHIP,**  
a Rhode Island limited partnership

By: Calpine Tiverton, Inc.,  
a Delaware corporation  
its general partner

By: /s/ ERIC PRYOR

-----  
Name:  
Title:  
Date:

**RUMFORD POWER ASSOCIATES LIMITED PARTNERSHIP,**  
a Maine limited partnership

By: Calpine Rumford, Inc.,  
a Delaware corporation  
its general partner

By: /s/ ERIC PRYOR

-----  
Name:  
Title:  
Date:

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC, a Delaware  
limited liability company**

By: PMCC Calpine NEIM LLC, a Delaware limited liability  
company, its managing member

By: General Foods Credit Corporation, a Delaware  
corporation, its managing member

Name:

Title:

Date:

By: /s/ ILLEGIBLE  
-----

Name:

Title:

Date:

**PMCC CALPINE NEIM LLC**

By: General Foods Credit Corporation, its managing  
member

By: /s/ ILLEGIBLE  
-----

Name:

Title:

Date:

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,**  
not in its individual capacity, except to  
the extent expressly provided herein, but  
solely as Indenture Trustee under the  
Collateral Trust Indenture

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President  
Date:

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,**  
not in its individual capacity, except to  
the extent expressly provided herein, but  
solely as Pass Through Trustee under the  
Pass Through Trust Agreement

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President  
Date:

**CALPINE CORPORATION**

By: /s/ ERIC PRYOR

-----  
Name:

Title:

Date:

**EXHIBIT 4.12.3**

**EXECUTION COPY**

**APPENDIX A - DEFINITIONS AND RULES OF INTERPRETATION**

**RULES OF INTERPRETATION**

In this Appendix A and each Operative Document (as hereinafter defined), unless otherwise provided herein or therein:

- (a) the terms set forth in this Appendix A or in any such Operative Document shall have the meanings herein provided for and any term used in an Operative Document and not defined therein or in this Appendix A but in another Operative Document shall have the meaning herein or therein provided for in such other Operative Document;
- (b) any term defined in this Appendix A by reference to another document, instrument or agreement shall continue to have the meaning ascribed thereto whether or not such other document, instrument or agreement remains in effect;
- (c) words importing the singular include the plural and vice versa;
- (d) words importing a gender include any gender;
- (e) a reference to a part, clause, section, paragraph, article, party, annex, appendix, exhibit, schedule or other attachment to or in respect of an Operative Document is a reference to a part, clause, section, paragraph, or article of, or a party, annex, appendix, exhibit, schedule or other attachment to, such Operative Document unless, in any such case, otherwise expressly provided in any such Operative Document;
- (f) a reference to any statute, regulation, proclamation, ordinance or law includes all statutes, regulations, proclamations, ordinances or laws varying, consolidating or replacing the same from time to time, and a reference to a statute includes all regulations, policies, protocols, codes, proclamations and ordinances issued or otherwise applicable under that statute unless, in any such case, otherwise expressly provided in any such statute or in such Operative Document;
- (g) a definition of or reference to any document, schedule, exhibit, instrument or agreement includes an amendment or supplement to, or restatement, replacement, modification or novation of, any such document, schedule, exhibit, instrument or agreement unless otherwise specified in such definition or in the context in which such reference is used;
- (h) a reference to a particular section, paragraph or other part of a particular statute shall be deemed to be a reference to any other section, paragraph or other part substituted therefor from time to time;

(i) if a capitalized term describes, or shall be defined by reference to, a document, instrument or agreement that has not as of any particular date been executed and delivered and such document, instrument or agreement is attached as an exhibit to the Participation Agreement (as hereinafter defined), such reference shall be deemed to be to such form and, following such execution and delivery and subject to paragraph (g) above, to the document, instrument or agreement as so executed and delivered;

(j) a reference to any Person (as hereinafter defined) includes such Person's successors and permitted assigns;

(k) any reference to "days" shall mean calendar days unless "Business Days" (as hereinafter defined) are expressly specified;

(l) if the date as of which any right, option or election is exercisable, or the date upon which any amount is due and payable, is stated to be on a date or day that is not a Business Day, such right, option or election may be exercised, and such amount shall be deemed due and payable, on the next succeeding Business Day with the same effect as if the same was exercised or made on such date or day (without, in the case of any such payment, the payment or accrual of any interest or other late payment or charge, provided such payment is made on such next succeeding Business Day);

(m) any reference to the satisfaction, release and/or discharge of the Collateral Trust Indenture or the Collateral Documents (each as hereinafter defined) or the Lien (as hereinafter defined) thereof or words of similar import shall, whether or not so expressly stated, be deemed to be a reference to the satisfaction, release and discharge in full and cancellation of the Lien of the Collateral Trust Indenture or the Collateral Documents, as the case may be, in accordance with the express provisions thereof.

(n) words such as "hereunder", "hereto", "hereof" and "herein" and other words of similar import shall, unless the context requires otherwise, refer to the whole of the applicable document and not to any particular article, section, subsection, paragraph or clause thereof; and

(o) a reference to "including" shall mean including without limiting the generality of any description preceding such term, and for purposes hereof and of each Operative Document the rule of ejusdem generis shall not be applicable to limit a general statement, followed by or referable to an enumeration of specific matters, to matters similar to those specifically mentioned.

## **DEFINED TERMS**

"467 LOAN PRINCIPAL BALANCE" with respect to a Facility Lease, shall have the meaning set forth in Section 3.2(d) of such Facility Lease.

"ACCEPTABLE BANK" shall mean, for the purposes of Section 5.3 of each Facility Lease, a banking institution the senior long-term unsecured debt of which is rated at least A by

S&P and by Moody's, and which maintains an office or corresponding bank located in New York City.

"ACTUAL KNOWLEDGE" shall mean, with respect to any Transaction Party, actual knowledge of, or receipt of written notice by, an officer (or other employee whose responsibilities include the administration of the Overall Transaction) of such Transaction Party.

"ADDITIONAL CERTIFICATES" shall mean any additional certificates issued by the Pass Through Trust in connection with the issuance of Additional Lessor Notes.

"ADDITIONAL EQUITY INVESTMENT" shall mean the amount, if any, the Owner Participant shall provide (in its sole and absolute discretion) to finance all or a portion of the cost of any Improvement financed pursuant to Section 11.1 of the Participation Agreement.

"ADDITIONAL LESSOR NOTES" shall mean, collectively, the Tiverton Additional Lessor Notes and the Rumford Additional Lessor Notes.

"ADMINISTRATOR" shall mean Wilmington Trust Company pursuant to an LLC Administration Agreement between the Owner Lessor and Wilmington Trust Company dated as of the Closing Date.

"AFFILIATE" of a particular Person shall mean, at any time, (a) any Person directly or indirectly controlling, controlled by or under common control with such particular Person and (b) any Person beneficially owning or holding, directly or indirectly, 10% or more of any class of voting or equity interest of such first Person or any corporation of which such first Person beneficially owns or holds, in the aggregate, directly or indirectly, 10% or more of any class of voting or equity interest. For purposes of this definition, "control" when used with respect to any particular Person shall mean the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms "controlling" and "controlled" have meanings correlative to the foregoing; provided, however, that under no circumstances shall the Lease Indenture Company be considered to be an Affiliate of either the Indenture Trustee or any Certificateholder, nor shall any of the Indenture Trustee or any Certificateholder be considered to be an Affiliate of the Lease Indenture Company, nor shall the Lease Indenture Company, the Indenture Trustee, solely because any Operative Document contemplates that any of them may request or act at the instruction of any such Person or such Person's Affiliate.

"AFTER-TAX BASIS" shall mean, in the context of determining the amount of a payment to be made on such basis, the payment of an amount which, after reduction by the net increase in Taxes of the recipient (actual or constructive) of such payment, which net increase shall be calculated by taking into account any reduction in such Taxes resulting from any Tax benefits realized or to be realized by the recipient as a result of such payment, shall be equal to the amount required to be paid. In calculating the amount payable by reason of this provision, all income taxes payable and tax benefits realized or to be realized shall be determined on the assumptions that (i) the recipient shall be subject to the applicable income taxes at the highest marginal tax rates then applicable to corporate taxpayers taxed on the same basis as the recipient that are in effect in the applicable jurisdictions at the time such amount is received or properly

accrued, and (ii) all related tax benefits are utilized at the highest marginal rates then applicable to corporate taxpayers taxed on the same basis as the recipient that are then in effect in the applicable jurisdictions.

"AGREEMENT PERIOD" shall have the meaning set forth in Section 7.8 of the Participation Agreement.

"ALLOCATED RENT" with respect to a Facility Lease, shall have the meaning specified in Section 3.2(b) of such Facility Lease.

"APPLICABLE LAW" shall mean, without limitation, all applicable laws, including, without limitation, all Environmental Laws, and treaties, judgments, decrees, injunctions, writs and orders of any court, arbitration board or Governmental Entity and rules, regulations, orders, ordinances, licenses and permits of any Governmental Entity.

"APPLICABLE PERMIT" shall mean any Permit, including any zoning, environmental protection, pollution, sanitation, FERC, safety, siting or building Permit, (a) that is necessary at any given time in light of the stage of development, construction or operation of the Facilities or Facility Sites to acquire, operate, maintain, repair, own or use the Facilities or Facility Sites as contemplated by the Operative Documents, to sell electricity therefrom, to enter into any Operative Document or to consummate any transaction contemplated thereby, or (b) that is necessary so that none of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any Certificateholder nor any Affiliate of any of them may be deemed by any Governmental Entity to be subject to regulation under PUHCA or under any other Applicable Law relating to electric utilities, generators, wholesalers or retailers, in each case as a result of the operation of the Facilities or either of them or the sale of electricity therefrom.

"APPLICABLE RATE" shall mean the Prime Rate plus 1% per annum.

"APPRAISER" shall mean Deloitte & Touche LLP Valuation Group.

"APPRAISAL PROCEDURE" shall mean (except with respect to the Closing Appraisal and any appraisal to determine Fair Market Sales Value or Fair Market Rental Value during any period when a Lease Event of Default shall have occurred and be continuing), an appraisal conducted by an appraiser or appraisers in accordance with the following procedures. Within ten (10) Business Days of written notice from the initiating party of the commencement of an Appraisal Procedure, the Owner Participant and the applicable Facility Lessee will each appoint one Independent Appraiser, which Independent Appraisers shall attempt to agree upon the Fair Market Sales Value or Fair Market Rental Value that is the subject of the appraisal. If either the Owner Participant or the applicable Facility Lessee does not appoint its appraiser within such ten Business Day period, the determination of the other appraiser shall be conclusive and binding on the Owner Participant and such Facility Lessee. If the appraisers appointed by the Owner Participant and such Facility Lessee are unable to agree upon the value, period, amount or other determination in question within thirty (30) days, such appraisers shall jointly appoint a third Independent Appraiser or, if such appraisers do not appoint a third Independent Appraiser, the Owner Participant and such Facility Lessee shall jointly appoint the third Independent Appraiser. In such case, the average of the determinations of the three appraisers shall be conclusive and

binding on the Owner Participant and such Facility Lessee, unless the determination of one appraiser is disparate from the middle determination by more than twice the amount by which the third determination is disparate from the middle determination, in which case the determination of the most disparate appraiser shall be excluded, and the average of the remaining two determinations shall be conclusive and binding on the Owner Participant and such Facility Lessee. Any appraisal determined in accordance with the foregoing must be delivered within thirty (30) days after the date on which the last of the appraisers is appointed pursuant to the process set forth above.

"ASSIGNED DOCUMENTS" shall have the meaning specified in clause (2) of the Granting Clause of the Collateral Trust Indenture.

"ATTRIBUTABLE DEBT" in respect of a Sale/Leaseback Transaction means, as at the time of determination, the present value (discounted at the rate of interest set forth or implicit in the terms of such lease (or, if not practicable to determine such rate, the weighted average rate of interest borne by the Certificates outstanding under the Pass Through Trust Agreement (calculated, in the event of the issuance of any original issue discount Lessor Notes, based on the imputed interest rate with respect thereto)), compounded annually) of the total obligations of the lessee for rental payments during the remaining term of the lease included in such Sale/Leaseback Transaction (including any period for which such lease has been extended).

"AVERAGE LIFE" means, as of the date of determination, with respect to any Indebtedness or Preferred Stock, the quotient obtained by dividing (i) the sum of the products of (A) the numbers of years from the date of determination to the dates of each successive scheduled principal payment of such Indebtedness or scheduled redemption or similar payment with respect to such Indebtedness or Preferred Stock multiplied by (B) the amount of such payment by (ii) the sum of all such payments.

"BANKRUPTCY CODE" shall mean the United States Bankruptcy Code of 1978, as amended from time to time, 11 U. S.C. Section 101 et seq.

"BANKRUPTCY LAW" means Title 11 of the United States Code or any similar Federal or State law for the relief of debtors.

"BASIC LEASE TERM" with respect to a Facility Lease, shall have the meaning specified in Section 3.1 of such Facility Lease.

"BASIC RENT" with respect to a Facility Lease, shall have the meaning specified in Section 3.2(a) of such Facility Lease.

"BENEFICIARY" OR "BENEFICIARIES" with respect to a Calpine Guaranty, shall have the meaning set forth in Section 4 of such Calpine Guaranty.

"BILL(S) OF SALE" shall mean, individually or collectively as the context may require, the Tiverton Bill of Sale or Rumford Bill of Sale.

"BOARD OF DIRECTORS" means the Board of Directors or General Partner, as applicable, of the Guarantor or the Facility Lessees, as the context requires, or any authorized committee of either thereof.

"BOARD RESOLUTION" means a copy of a resolution certified by the Secretary or an Assistant Secretary of the Guarantor 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 Indenture Trustee.

"BURDENSOME TERMINATION NOTICE" with respect to a Facility Lease, shall mean a notice required in accordance with Section 13.1 or Section 13.2, as the case may be, of such Facility Lease upon the exercise of a termination option by the applicable Facility Lessee.

"BUSINESS DAY" shall mean any day other than a Saturday, a Sunday, or a day on which commercial banking institutions are authorized or required by law, regulation or executive order to be closed in New York, New York, the city and the state in which the Corporate Trust Office of the Indenture Trustee is located or the city and state in which the Pass Through Trustee is located.

"CALPINE" shall mean Calpine Corporation, a Delaware corporation.

"CALPINE DOCUMENTS" shall mean have the meaning set forth in Section 3.1 of the Calpine Guaranty (Tiverton) or the Calpine Guaranty (Rumford), as the context may require.

"CALPINE GUARANTY" OR "CALPINE GUARANTIES" shall mean, individually or collectively as the context may require, the Calpine Guaranty (Tiverton) and the Calpine Guaranty (Rumford).

"CALPINE GUARANTY EVENT OF DEFAULT" shall mean any of the "Events of Default" as specified in Section 7.1 of the Calpine Guaranty (Tiverton) and/or the Calpine Guaranty (Rumford), as the case may be.

"CALPINE GUARANTY (RUMFORD)" shall mean the Calpine Guaranty and Payment Agreement (Rumford) dated as of the Closing Date in favor of the Beneficiaries, substantially in the form of Exhibit H-2 to the Participation Agreement.

"CALPINE GUARANTY (TIVERTON)" shall mean the Calpine Guaranty and Payment Agreement (Tiverton) dated as of the Closing Date in favor of the Beneficiaries, substantially in the form of Exhibit H-1 to the Participation Agreement.

"CALPINE PARTIES" shall mean Calpine, the Facility Lessees, Calpine Eastern Corporation, and each other Affiliate of Calpine that is party to any Operative Document.

"CAPITAL STOCK" means any and all shares, interests, participations or other equivalents (however designated) of capital stock of a corporation or any and all equivalent ownership interests in a Person (other than a corporation).

"CAPITALIZED LEASE OBLIGATIONS" of any Person means the rental obligations under any lease of any property (whether real, personal or mixed) of which the discounted present value of the rental obligations of such Person as lessee, in conformity with GAAP, is required to be capitalized on the balance sheet of such Person; the Stated Maturity of any such lease shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"CERTIFICATE PURCHASE AGREEMENT" shall mean the Certificate Purchase Agreement, dated the Closing Date, among the Facility Lessees, Calpine, and the Initial Purchasers.

"CERTIFICATEHOLDER INDEMNITEE" shall have the meaning set forth in Section 9.2(a) of the Participation Agreement.

"CERTIFICATEHOLDERS" shall mean each of the holders of Certificates, and each of such holder's successors and permitted assigns.

"CERTIFICATES" shall mean the 9.00% Pass Through Certificates issued on the Closing Date and any certificates issued in replacement therefor pursuant to Section 3.3, 3.4 or 3.5 of the Pass Through Trust Agreement.

"CLAIM(s)" individually or collectively as the context may require, shall mean any liability (including in respect of negligence (whether passive or active or other torts), strict or absolute liability in tort or otherwise, warranty, latent or other defects (regardless of whether or not discoverable), statutory liability, property damage, bodily injury or death), obligation, loss, settlement, damage, penalty, claim, action, suit, proceeding (whether civil or criminal), judgment, penalty, fine and other legal or administrative sanction, judicial or administrative proceeding, cost, expense or disbursement, including reasonable legal, investigation and expert fees, expenses and reasonable related charges, of whatsoever kind and nature.

"CLOSING" shall have the meaning specified in Section 2.2(a) of the Participation Agreement.

"CLOSING APPRAISAL" shall mean the appraisal, dated as of the Closing Date, prepared by the Appraiser with respect to the Owner Lessor's Interest in each Facility and the related Facility Site.

"CLOSING DATE" shall mean the Scheduled Closing Date or such later date on which the Closing shall occur.

"CODE" shall mean the Internal Revenue Code of 1986, as amended from time to time, and any successor statute.

"COLLATERAL DOCUMENTS" shall mean the Collateral Trust Indenture and the financing statements.

"COLLATERAL TRUST INDENTURE" shall mean the Indenture of Trust, Mortgage and Security Agreement, dated as of the Closing Date, between the Owner Lessor and the Indenture Trustee, in substantially the form of Exhibit I to the Participation Agreement.

"COMMENCEMENT DATE" with respect to a Facility Site Lease, shall have the meaning specified in Section 2.1(a) of such Facility Site Lease.

"COMPETITOR" shall have the meaning specified in Section 7.1(b) of the Participation Agreement.

"COMPONENT" shall mean any appliance, part, instrument, appurtenance, accessory, furnishing, equipment or other property of whatever nature that may from time to time be incorporated in the Facility, except to the extent constituting Improvements or spare parts while being held for future use.

"CONSOLIDATED CURRENT LIABILITIES," as of the date of determination, means the aggregate amount of consolidated liabilities of the Guarantor and its consolidated Restricted Subsidiaries which may properly be classified as current liabilities (including taxes accrued as estimated), after eliminating (i) all inter-company items between the Guarantor and its Subsidiaries and (ii) all current maturities of long-term Indebtedness, all as determined in accordance with GAAP.

"CONSOLIDATED NET TANGIBLE ASSETS" means, as of any date of determination, as applied to the Guarantor, the total amount of Consolidated assets (less accumulated depreciation or amortization, allowances for doubtful receivables, other applicable reserves and other properly deductible items) under GAAP which would appear on a Consolidated balance sheet of the Guarantor and its Subsidiaries, determined in accordance with GAAP, and after giving effect to purchase accounting and after deducting therefrom, to the extent otherwise included, the amounts of: (i) Consolidated Current Liabilities; (ii) minority interests in consolidated Restricted Subsidiaries held by Persons other than the Guarantor or a Restricted Subsidiary; (iii) excess of cost over fair value of assets of businesses acquired, as determined in good faith by the Board of Directors; (iv) any revaluation or other write-up in value of assets subsequent to December 31, 1993 as a result of a change in the method of valuation in accordance with GAAP; (v) unamortized debt discount and expenses and other unamortized deferred charges, goodwill, patents, trademarks, service marks, trade names, copyrights, licenses, organization or developmental expenses and other intangible items; (vi) treasury stock; and (vii) any cash set apart and held in a sinking or other analogous fund established for the purpose of redemption or other retirement of Capital Stock to the extent such obligation is not reflected in Consolidated Current Liabilities.

"CONSOLIDATED SUBSIDIARY" shall mean with respect to any Person at any date any Subsidiary or other entity the accounts of which would be consolidated in accordance with GAAP with those of such Person in its consolidated financial statements as of such date.

"CONSOLIDATION" means, with respect to any Person, the consolidation of accounts of such Person and each of its subsidiaries if and to the extent the accounts of such

Person and such subsidiaries are consolidated in accordance with GAAP. The term "Consolidated" shall have a correlative meaning.

"CORPORATE TRUST OFFICE" shall mean, with respect to the Indenture Trustee, the office of such Person in the city in which at any particular time its corporate trust business shall be principally administered.

"CSFB" shall mean Credit Suisse First Boston.

"CSFB-OP LETTER AGREEMENT" shall mean the letter agreement dated as the Closing Date among the Owner Participant, the OP Guarantor and CSFB, as in effect on the Closing Date.

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

"DEBT PORTION OF PERIODIC RENT" means for any Rent Payment Date with respect to a Facility Lease, the difference between (i) the Periodic Rent scheduled to be paid under such Facility Lease on such Rent Payment Date and (ii) the Equity Portion of Periodic Rent for such Rent Payment Date.

"DEBT PORTION OF TERMINATION VALUE" in respect of any determination of Termination Value or amount determined by reference to the Termination Value payable pursuant to the Tiverton Operative Documents and/or the Rumford Operative Documents, as the case may be, shall mean an amount equal to the excess of (i) the Termination Value set forth opposite the Termination Date corresponding to such date of determination on Schedule 2 of the applicable Facility Lease, and, if such date of determination is a Rent Payment Date, Periodic Rent due on that date (to the extent payable in arrears) minus (ii) the sum of (A) the Equity Portion of Termination Value set forth opposite the Termination Date corresponding to such date of determination on Exhibit A to the applicable Calpine Guaranty, and, (B) if such date of determination is a Rent Payment Date, the Equity Portion of Periodic Rent due on that date. The Debt Portion of Termination Value is set forth on Exhibit B to the applicable Calpine Guaranty.

"DEFAULT" means any event which is, or after notice or passage of time or both would be, a Calpine Guaranty Event of Default.

"DELAYED PERMIT", with respect to a Facility Lease, means a material environmental permit required under Applicable Law in connection with the sale on the Closing Date of such Facility to the Owner Lessor, which permit has not been obtained by the applicable Facility Lessee when required by applicable law if such failure would reasonably be expected to (i) have a material adverse effect on the applicable Facility or (ii) result in a criminal or material civil liability to the Owner Lessor or the Owner Participant.

"DEPRECIATION DEDUCTION" shall have the meaning specified in Section 1(a) of the Tax Indemnity Agreement.

"DISCOUNT RATE" shall mean each Facility Lessee's incremental borrowing rate as determined by such Facility Lessee in accordance with FASB 13.

"DOLLARS" or the sign "\$" shall mean United States dollars or other lawful currency of the United States.

"DRAWING EVENT" means any of the following events:

(A) Calpine has failed to replace the Letter of Credit with a Qualifying Letter of Credit within the respective time periods specified in Section 5.46(b), (c) or (d) of the Participation Agreement or comply with its obligations under Section 5.46(i) of the Participation Agreement;

(B) a Lease Event of Default has occurred and is continuing under the Tiverton Facility Lease or the Rumford Facility Lease and (i) pursuant to Sections 5.6(b) or 5.6(c) of the Collateral Trust Indenture, the Owner Lessor, as between itself and the Indenture Trustee, is permitted to exercise remedies against Calpine under any of the Calpine Guaranties or (ii) the Owner Lessor shall be entitled to exercise its rights under Section 2.1(d) of any of the Calpine Guaranties;

(C) the Indenture Trustee (as assignee of the Owner Lessor) has either (1) exercised remedies under Sections 17.1(b), (c), (d) or (e) of either of the Tiverton Facility Lease or the Rumford Facility Lease, (2) demanded payment of all or a portion of Termination Value, the Equity Portion of Termination Value or the Debt Portion of Termination Value under any of the Calpine Guaranties or any of the Facility Leases or (3) foreclosed upon the Indenture Estate;

(D) the Collateral Trust Indenture has terminated in accordance with Section 9.1 thereof and a Lease Event of Default pursuant to the Tiverton Facility Lease or the Rumford Facility Lease has occurred and is continuing; or

(E) a Lease Event of Default pursuant to Section 16(g) or 16(h) of the Tiverton Facility Lease or the Rumford Facility Lease, or "Event of Default" under Section 17(f) or Section 17(g) of the Calpine Guaranty (Tiverton) or the Calpine Guaranty (Rumford) shall have occurred or be continuing.

"EASEMENTS" shall mean the Tiverton Easements and the Rumford Easements.

"ECA SHORTFALL EVENT" means a failure of the Guarantor to maintain the coverage of the Qualifying Letter of Credit or the Equity Collateral Account at the levels required by Section 5.46 of the Participation Agreement, after notice by the Owner Participant of such failure and the lapse of the cure period referred to in Section 5.46(k) of the Participation Agreement.

"EFFECTIVE DATE" shall mean December 19, 2000.

"ENFORCEMENT NOTICE" shall have the meaning specified in Section 5.1 of the Collateral Trust Indenture.

"ENGINEERING CONSULTANT" shall mean S&W Consultants, Inc.

"ENGINEERING REPORT" shall mean, with respect to the Facilities, the report of the Engineering Consultant, dated December, 2000.

"ENVIRONMENTAL CONDITION" shall mean any action, omission, event, condition or circumstance, including, without limitation, the presence of any Hazardous Substance, which does or reasonably could (i) require assessment, investigation, abatement, correction, removal or remediation, (ii) give rise to any obligation or liability of any nature (whether civil or criminal, arising under a theory of negligence or strict liability, or otherwise) under any Environmental Law, (iii) create or constitute a public or private nuisance or trespass, or (iv) constitute a violation of or non-compliance with any Environmental Law.

"ENVIRONMENTAL CONSULTANT" shall mean Earth Tech, Inc.

"ENVIRONMENTAL LAWS" shall mean any international, national, Native American, provincial, regional, federal, state, municipal or local laws, ordinances, rules, orders, statutes, decrees, judgments, injunctions, directives, permits, licenses, approvals, codes, regulations, common or decisional law (including principles of tort, negligence, trespass, nuisance, strict liability, contribution and indemnification) or other requirement of any Governmental Entity relating to the environment, the safety or health of human beings or other living organisms, natural resources or toxic, explosive, corrosive, flammable, infectious, radioactive or other Hazardous Substances, as each may from time to time be amended, supplemented or supplanted.

"ENVIRONMENTAL REPORTS" shall mean (a) that certain Phase I Environmental Site Assessment (Maine Power Associates, 43 Rumford Industrial Parkway, Rumford, Maine) prepared for Calpine by the Environmental Consultant dated December 2000 and (b) that certain Phase I Environmental Site Assessment (Tiverton Power Facility, 304 Progress Way, Tiverton, Rhode Island) prepared for Calpine by the Environmental Consultant dated December 2000.

"EQUITY COLLATERAL ACCOUNT" shall mean the Equity Collateral Account referred to in Section 5.46 of the Participation Agreement.

"EQUITY INVESTMENT" shall mean the amount specified with respect thereto on Schedule 1-A to the Participation Agreement.

"EQUITY PORTION OF PERIODIC RENT" shall mean for any Rent Payment Date (A) with respect to the Rumford Facility, the difference between

(i) Periodic Rent scheduled to be paid under the Rumford Facility Lease on such Rent Payment Date and (ii) the principal and interest scheduled to be paid on the Rumford Lessor Notes on such Rent Payment Date, and (B) with respect to the Tiverton Facility, the difference between (i) Periodic Rent scheduled to be paid under the Tiverton Facility Lease on such Rent Payment Date and (ii) the principal and interest scheduled to be paid on the Tiverton Lessor Notes on such Rent Payment Date.

"EQUITY PORTION OF TERMINATION VALUE" in respect of any determination of Termination Value or amount determined by reference to Termination Value payable pursuant to the Tiverton Operative Documents and/or the Rumford Operative Documents, as the case may be, shall mean an amount equal to the excess, if any, of (i) the Termination Value set forth opposite the Termination Date corresponding to such date of determination on Schedule 2 of the

applicable Facility Lease, and, if such date of determination is a Rent Payment Date, Periodic Rent due on that date (to the extent payable in arrears) over

(ii) the balance, including scheduled (in accordance with the payment terms of the related Lessor Notes) accrued interest, on the related Lessor Notes scheduled (in accordance with the payment terms of such Lessor Notes) to be outstanding on such date of determination corresponding to such Facility Lease. The Equity Portion of Termination Value is set forth on Exhibit A to the applicable Calpine Guaranty.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974.

"ERISA AFFILIATE" shall mean each person (as defined in Section 3(9) of ERISA) which together with either of the Facility Lessees or a Subsidiary of either of the Facility Lessees would be deemed to be a "single employer" (i) within the meaning of Section 414(b), (c), (m) and/or (o) of the Code or (ii) as a result of either of the Facility Lessees or a Subsidiary of either of the Facility Lessees being or having been a general partner of such person.

"EVENT OF LOSS" shall mean, with respect to either Facility, any of the following events:

(i) the loss of such Facility or use thereof due to destruction or damage that renders repair uneconomic or that renders such Facility permanently unfit for normal use or which does not satisfy the preconditions for repair of such Facility set forth below; or

(ii) any damage that results in an insurance settlement with respect to such Facility on the basis of a total loss or an agreed constructive or a compromised total loss of such Facility; or

(iii) (a) seizure, condemnation, confiscation or taking of, or requisition (a "Requisition") of title to such Facility by any Governmental Entity that shall have resulted in loss by the Owner Lessor of title to such Facility, following exhaustion of all permitted appeals or an election by the applicable Facility Lessee in its discretion not to pursue such appeals or rights; provided that no such contest (or exercise) shall extend beyond the earlier of the date which is (x) six months after the loss of such title, or (y) 48 months prior to the end of the Basic Lease Term or any Renewal Lease Term then in effect or elected by such Facility Lessee or (b) Requisition of use of such Facility or title to or the use of the related Facility Site by any Governmental Entity that shall have resulted in the loss of possession of such Facility or all or any part of the related Facility Site that is required for the use or operation of such Facility; provided that in any case involving Requisition of use of such Facility, or all or any part of the related Facility Site that is required for the use or operation, of such Facility, such event shall be an Event of Loss only if loss of possession continues beyond the Basic Lease Term or any Renewal Lease Term then in effect or elected by the such Facility Lessee; or

(iv) (A) if elected in writing by the Owner Participant, such election to be made only in circumstances where the termination of the Facility Lease with respect to such Facility shall remove the basis of the regulation described below, subjection of the Owner Participant or the Owner Lessor to any public utility regulation of any Governmental Entity or law which in the reasonable opinion of the Owner Participant is burdensome, or the subjection of

the Owner Participant's or the Owner Lessor's interest in the Facility Leases to any rate of return regulation by any Governmental Entity, in either case by reason of the participation of the Owner Lessor or the Owner Participant in the transactions contemplated by the Operative Documents and not, in any event, as a result of (a) investments, loans or other business activities of the Owner Participant or any of its Affiliates in respect of equipment or facilities similar in nature to the Facilities or any part thereof or in any other electrical, cogeneration or other energy or utility related equipment or facilities or the general business or other activities of the Owner Participant or any of its Affiliates or the nature of any of the properties or assets from time to time owned, leased, operated, managed or otherwise used or made available for use by the Owner Participant or any of its Affiliates or (b) a failure of the Owner Participant to perform routine, administrative or ministerial actions the performance of which would not subject the Owner Participant to any adverse consequence (in the reasonable opinion of such Owner Participant acting in good faith), provided that the Facility Lessees and the Owner Lessor and Owner Participant agree to cooperate and to take reasonable measures to alleviate the source or consequence of any regulation constituting an Event of Loss under this paragraph (iv), so long as there shall be no adverse consequences to the Owner Lessor or Owner Participant as a result of such cooperation or the taking of reasonable measures ,or (B) if elected in writing by the Owner Participant, any failure to obtain any Delayed Permit by June 30, 2001, provided that such period shall be extended to December 31, 2001 if the relevant Facility Lessee certifies (in an Officer's Certificate) on or before June 30, 2001 to the Owner Participant that it is reasonable to expect that the Facility Lessee will obtain such permit by on or before December 31, 2001, and sets forth in such Officer's Certificate relevant facts in support of such certification, or (C) if elected in writing by the Owner Participant, any failure by the Facility Lessees to obtain, within 180 days following the Closing Date, an order of FERC in which FERC disclaims jurisdiction over the Owner Participant and the Owner Lessor (the events and circumstances described in any of clause (A), (B) or (C) herein, a "Regulatory Event of Loss").

(v) if elected by the Owner Participant, the FERC Owner Lessor EWG Orders shall not have been obtained and become final within ninety (90) days of the Closing Date, such election to be conditioned upon receipt of a reasoned legal opinion of nationally recognized independent counsel (Owner Participant's outside counsel at Closing to be deemed to meet such qualifications) that any pending proceeding, if adversely determined, would reasonably be expected to have a material adverse effect on the Owner Participant or subject the Owner Participant or the Owner Lessor to regulation as a public utility company or a holding company under the Holding Company Act.

The date of occurrence of an Event of Loss described in clauses

(i) or (ii) above shall be the date of the applicable Facility Lessee's notice to the Owner Lessor, the Owner Participant, the Indenture Trustee and the Pass Through Trustee pursuant to Section 10.1 of the applicable Facility Lease that it does not elect to rebuild the applicable Facility pursuant to Section 10.3 of the applicable Facility Lease but to pay Termination Value and terminate such Facility Lease with respect to such Facility pursuant to Section 10.2 thereof, or the date an Event of Loss is deemed to occur pursuant to the last sentence of Section 10.1 of such Facility Lease. The date of occurrence of an Event of Loss described in clause (iii)(a) above shall be the earlier of (A) the date which is six months following the loss of title, (B) the date upon which the applicable Facility Lessee shall have concluded all efforts to contest such loss of title or exercise its rights of eminent domain, and (C) the date which is 48 months prior to the end of the Basic

Lease Term or any Renewal Lease Term then in effect or elected by the Facility Lessee (if an event described in clause (iii)(a) shall be continuing at such time). The date of occurrence of an Event of Loss described in clause (iii)(b) above shall be the date of requisition of title to the relevant Facility Site or, in the case of a requisition of use of such Facility Site, the date which is the scheduled expiration date of the Basic Lease Term or any Renewal Lease Term then in effect or elected by the applicable Facility Lessee, as the case may be (if an event described in clause (iii)(b) shall be continuing at such time). The date of occurrence of an Event of Loss described in clause (iv) above shall be the date on which the Facility Lessees receive the Owner Participant's election made in accordance with such clause (iv) during any period when an event is continuing which upon election by Owner Participant in accordance with such clause (iv) would constitute a Regulatory Event of Loss. The date of occurrence of an Event of Loss described in clause (v) above shall be the date on which the Facility Lessees receive the Owner Participant's election made in accordance with such clause (v).

"EXCEPTED PAYMENTS" shall mean and include (i)(A) any right, title or interest to any indemnity (whether or not constituting Supplemental Rent and whether or not a Lease Event of Default exists) payable to either the Owner Lessor, the Administrator, the Lease Indenture Company, or the Owner Participant or to their respective Indemnitees and successors and permitted assigns (other than the Indenture Trustee) pursuant to Section 2.3, 9.1, 9.2, 11.1 or 11.2 of the Participation Agreement, and any payments under any Tax Indemnity Agreement or (B) any amount payable by a Facility Lessee to the Owner Lessor or the Owner Participant to reimburse any such Person for its costs and expenses in exercising its rights under the Operative Documents, (ii)(A) insurance proceeds, if any, payable to the Owner Lessor or the Owner Participant under insurance separately maintained by the Owner Lessor or the Owner Participant with respect to the Facilities as permitted by Section 3(b) of Schedule 5.45 to the Participation Agreement or (B) proceeds of personal injury or property damage liability insurance maintained under any Operative Document for the benefit of the Owner Lessor or the Owner Participant, (iii) any amount payable to the Owner Participant as the purchase price of the Owner Participant's right and interest in the Member Interest, (iv) all other fees expressly payable to the Owner Participant under the Operative Documents, (v) all right, title and interest in any Qualifying Letter of Credit, the Equity Collateral Account and proceeds of drawings by the Owner Lessor under any Qualifying Letter of Credit and all funds on deposit in the Equity Collateral Account, (vi) all right, title and interest in (x) amounts constituting the Equity Portion of Termination Value, the Equity Portion of Periodic Rent or any interest thereon payable to the Owner Lessor by the Guarantor as the result of a proceeding brought by the Owner Lessor as permitted by Section 5.6(b) of the Collateral Trust Indenture and which, pursuant to such section, the Owner Lessor is entitled to retain for its own account and (y) amounts payable following foreclosure, sale or transfer to the extent provided in Section 2.1(d) of each of the Calpine Guaranties; (vii) any payments in respect of interest, or any payments made on an After-Tax Basis, to the extent attributable to payments referred to in clause (i) through (vi) above; (viii) any amounts paid to the Owner Lessor as reimbursement for amounts expended pursuant to Section 21 of each of the Tiverton Facility Lease and the Rumford Facility Lease; (ix) all right, title and interest in the credit support arrangements referred to in clause (iv) of Section 3.6(a) of each of the Guaranties; (x) proceeds of the items referred to in clause (i) through (ix) above; and (xi) any rights to demand, collect, sue for, or otherwise receive and enforce payment of the foregoing amounts, including under the Calpine Guaranties, but without limiting clause (vi) of this definition above.

"EXCESS AMOUNT" shall have the meaning specified in Section 14.3 of the Participation Agreement, and, with respect to the Collateral Trust Indenture, the meaning specified in Section 9.13 thereof.

"EXCHANGE ACT" shall mean the Securities Exchange Act of 1934, as amended.

"EXCLUDED TAXES" shall have the meaning specified in Section 9.2(b) of the Participation Agreement.

"EXEMPT WHOLESALE GENERATOR" or "EWG" shall mean an entity which is an "exempt wholesale generator" as defined in Section 32 of PUHCA.

"FACILITY" shall mean either the Tiverton Facility or the Rumford Facility, as the case may be.

"FACILITIES" shall mean a collective reference to the Tiverton Facility and the Rumford Facility.

"FACILITY LEASE(S)" shall mean, individually or collectively as the context may require, Tiverton Facility Lease and Rumford Facility Lease.

"FACILITY LEASE TERM" with respect to a Facility Lease, shall mean the term of such Facility Lease, including the Basic Lease Term and all Renewal Lease Terms.

"FACILITY LESSEE(S)" shall mean individually or collectively as the context may require, (i) Tiverton Lessee as lessee under the Tiverton Facility Lease or (ii) Rumford Lessee as lessee under the Rumford Facility Lease.

"FACILITY SITE(S)" shall mean, individually or collectively as the context may require, (i) the Tiverton Site or (ii) the Rumford Site.

"FACILITY SITE LEASE(S)" shall mean, individually or collectively as the context may require, the Tiverton Site Lease and the Rumford Site Lease.

"FACILITY SITE SUBLEASE(S)" shall mean, individually or collectively as the context may require, the Facility Site Sublease (Tiverton) and the Facility Site Sublease (Rumford).

"FACILITY SITE SUBLEASE (RUMFORD)" shall mean the Facility Site Sublease (Rumford) dated as of December 19, 2000 among the Rumford Site Sublessor and the Rumford Site Sublessee.

"FACILITY SITE SUBLEASE (TIVERTON)" shall mean the Facility Site Sublease (Tiverton) dated as of December 19, 2000 among the Tiverton Site Sublessor and the Tiverton Site Sublessee.

"FAIR MARKET RENTAL VALUE" or "FAIR MARKET SALES VALUE" shall mean with respect to any property or service as of any date, the cash rent or cash price obtainable in an arm's-length lease, sale or supply, respectively, between an informed and willing lessee or

purchaser under no compulsion to lease or purchase and an informed and willing lessor or seller or supplier under no compulsion to lease or sell or supply of the property or service in question, and shall, in the case of any Facility or the Owner Lessor's Interest, be determined (except pursuant to Section 17 of the Facility Leases or as otherwise provided below or in the Operative Documents) on the basis and assumption that (i) the conditions contained in Sections 7 and 8 of the Facility Leases shall have been complied with in all respects, (ii) the lessee or buyer shall have rights in, or an assignment of, the Operative Documents to which the Owner Lessor is a party and the obligations relating thereto, (iii) the Facility or the Owner Lessor's Interest, as the case may be, is free and clear of all Liens (other than Owner Lessor's Liens, Owner Participant's Liens and Indenture Trustee Liens), (iv) taking into account the remaining term of the Facility Site Leases, and (v) in the case the Fair Market Rental Value, taking into account the terms of the Facility Lease and the other Operative Documents. If the Fair Market Sales Value of the Owner Lessor's Interest is to be determined during the continuance of a Lease Event of Default or in connection with the exercise of remedies by the Owner Lessor pursuant to

Section 17 of the Facility Lease, such value shall be determined by an Independent Appraiser appointed solely by the Owner Lessor on an "as-is", "where-is" and "with all faults" basis and shall take into account all Liens (other than Owner Lessor's Liens, Owner Participant's Liens and Indenture Trustee Liens); provided, however, in any such case where the Owner Lessor shall be unable to obtain constructive possession sufficient to realize the economic benefit of the Owner Lessor's Interest, Fair Market Sales Value of the Owner Lessor's Interest shall be deemed equal to \$0 (zero). If in any case other than in the preceding sentence the parties are unable to agree upon a Fair Market Sales Value of the Owner Lessor's Interest within 30 days after a request therefor has been made, the Fair Market Sales Value of the Owner Lessor's Interest shall be determined by appraisal pursuant to the Appraisal Procedures. Any fair market value determination of a Severable Improvement shall take into consideration any liens or encumbrances to which the Severable Improvement being appraised is subject and which are being assumed by the transferee.

"FASB 13" shall mean the Statement of the Financial Accounting Standards Board No. 13, as amended and interpreted from time to time.

"FASB 98" shall mean the Statement of the Financial Accounting Standards Board No. 98, as amended and interpreted from time to time.

"FEDERAL POWER ACT" or "FPA" shall mean the Federal Power Act, as amended.

"FERC" shall mean the Federal Energy Regulatory Commission of the United States or any successor or predecessor agency thereto.

"FERC ORDERS" shall mean any or all of the following of the FERC Orders required pursuant to Section 4.37 of the Participation Agreement:

- (i) a determination by FERC of EWG status of each Facility Lessee and Owner Lessor and the Owner Participant;
- (ii) an approval from FERC for each Facility Lessee to sell power at market-based rates effective on or before the Closing Date;

(iii) either an approval by FERC of the issuance of securities and the assumption of obligations necessary to effect the sale/leaseback pursuant to Section 204 of the Federal Power Act or blanket authorization to issue securities and assume obligations under such Section; and

(iv) an approval of the transfer of certain general and limited partnership interests from affiliates of Energy Management, Inc. to Calpine Corporation and its affiliates under Section 203 of the Federal Power Act.

"FERC OWNER LESSOR EWG ORDERS" shall mean the orders issued by the FERC determining that the Owner Lessor and the Owner Participant are EWGs.

"FINAL DETERMINATION" shall have the meaning specified in Section 9 of the Tax Indemnity Agreement.

"FIRST RENEWAL LEASE TERM" with respect to a Facility Lease, shall have the meaning specified in Section 15.1(a) of such Facility Lease.

"FIRST WINTERGREEN RENEWAL LEASE OPTION" with respect to a Facility Site Lease, shall have the meaning specified in Section 2.2(a)(i) of such Facility Site Lease.

"FMV RENEWAL LEASE OPTION" with respect to a Facility Lease Term, shall have the meaning set forth in Section 2.2(a)(iii) of such Facility Site Lease.

"FMV RENEWAL LEASE TERM" with respect to a Facility Lease, shall have the meaning specified in Section 15.2 of such Facility Lease.

"FORECLOSURE TRANSFER" with respect to a Facility Site Lease, shall have the meaning set forth in Section 19.3 of such Facility Site Lease.

"GAAP" shall mean generally accepted accounting principles.

"GOVERNMENTAL ACTIONS" shall mean all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any Governmental Entity and shall include those citing, environmental and operating permits and licenses (including the Applicable Permits) that are required for the use and operation of the Facilities and the Facility Sites.

"GOVERNMENTAL ENTITY" shall mean and include any international, national, Native American, provincial, regional, state, municipal or local government, any political subdivision of any thereof or any board, commission, department, division, organ, instrumentality, court or agency of any thereof.

"GUARANTOR" shall mean Calpine Corporation.

"GUARANTOR ASSIGNMENT AND ASSUMPTION AGREEMENT" shall mean the Guarantor Assignment and Assumption Agreement (Tiverton) or the Guarantor Assignment and Assumption Agreement (Rumford), as the context may require.

"GUARANTOR ASSIGNMENT AND ASSUMPTION AGREEMENT (RUMFORD)" shall mean an assignment and assumption agreement in form and substance substantially in the form of Exhibit N-2 to the Participation Agreement.

"GUARANTOR ASSIGNMENT AND ASSUMPTION AGREEMENT (TIVERTON)" shall mean an assignment and assumption agreement in form and substance substantially in the form of Exhibit N-1 to the Participation Agreement.

"HAZARDOUS SUBSTANCE" shall mean any pollutant, contaminant, hazardous substance, hazardous waste, toxic substance, petroleum or petroleum-derived substance, waste, or additive, asbestos, PCBs, radioactive material, or other compound, element, material or substance in any form whatsoever (including products) regulated, restricted or controlled by or under any Environmental Law.

"HOLDING COMPANY ACT" shall mean the Public Utility Holding Company Act of 1935, as amended.

"IMPROVEMENT" shall mean an addition, betterment or enlargement of the Facilities. Improvements shall include any Required Improvements or Optional Improvements, but do not include Components.

"INCOME TAXES" shall have the meaning set forth in Section 9.2(b)(i) of the Participation Agreement.

"INCUR" means, as applied to any obligation, to create, incur, issue, assume, guarantee or in any other manner become liable with respect to, contingently or otherwise, such obligation, and "Incurred," "Incurrence" and "Incurring" shall each have a correlative meaning; provided, however, that any amendment, modification or waiver of any provision of any document pursuant to which Indebtedness was previously Incurred shall not be deemed to be an Incurrence of Indebtedness as long as (i) such amendment, modification or waiver does not (A) increase the principal or premium thereof or interest rate thereon, (B) change to an earlier date the Stated Maturity thereof or the date of any scheduled or required principal payment thereon or the time or circumstances under which such Indebtedness may or shall be redeemed, (C) if such Indebtedness is contractually subordinated in right of payment to the Obligations (Tiverton) or the Obligations (Rumford), as the context may require, modify or affect, in any manner adverse to the Beneficiaries, such subordination or (D) if the Guarantor is the obligor thereon, provide that a Restricted Subsidiary shall be an obligor and (ii) such Indebtedness would, after giving effect to such amendment, modification or waiver as if it were an Incurrence, comply with clause (i) of the first proviso to the definition of "Refinancing Indebtedness."

"INDEBTEDNESS" of any Person shall mean (i) all indebtedness of such Person for borrowed money, (ii) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations of such Person to pay the deferred purchase price of property or services, (iv) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (v) all Lease Obligations of such Person

(including payments of Termination Value and any other amounts owed pursuant to the Operative Documents), (vi) all obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (vii) all unconditional obligations of such Person to purchase, redeem, retire, defease or otherwise acquire for value any capital stock or other equity interests of such Person or any warrants, rights or options to acquire such capital stock or other equity interests, (viii) all obligations under "swaps", "caps", "floors", "collars", or other interest rate hedging contracts or similar arrangements, (ix) all Indebtedness of any other Person of the type referred to in clauses (i) through (ix), guaranteed by such Person or for which such Person shall otherwise (including pursuant to any keepwell, makewell or similar arrangement) become directly or indirectly liable, and (x) all Indebtedness of the type referred to in clauses (i) through (xi) above secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including accounts and contracts rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, the amount of such obligation being deemed to be the lesser of the value of such property or the amount of the obligation so secured.

"INDEMNITEE" shall have the meaning specified in Section 9.1(a) of the Participation Agreement.

"INDEMNITOR" with respect to a Facility Site Lease, shall have the meaning set forth in Section 13.3 of such Facility Site Lease.

"INDENTURE BANKRUPTCY DEFAULT" shall mean any event or occurrence, which, with the passage of time or the giving of notice or both, would become an Lease Indenture Event of Default under Section 4.2(e) or (f) of the Collateral Trust Indenture.

"INDENTURE DEFAULT" shall mean any event or occurrence, which, with the passage of time or the giving of notice or both, would become an Lease Indenture Event of Default.

"INDENTURE ESTATE" shall have the meaning specified in the Granting Clause of the Collateral Trust Indenture.

"INDENTURE TRUSTEE OFFICE" shall mean the office to be used for notices to the Indenture Trustee from time to time pursuant to Section 9.5 of the Collateral Trust Indenture.

"INDENTURE TRUSTEE'S ACCOUNT" shall mean the account specified with respect thereto on Schedule 1-B to the Participation Agreement or such other account of the Indenture Trustee, as the Indenture Trustee may from time to time specify in a notice to the other parties to the Participation Agreement.

"INDENTURE TRUSTEE'S LIENS" shall mean any Lien on the Lessor Estate, any of the Facilities, the Facility Sites or any part thereof or any interest therein arising as a result of (i) Taxes against or affecting the Lease Indenture Company or the Indenture Trustee, or any Affiliate thereof that are not related to, or that are in violation of, any Operative Document or the transactions contemplated thereby, (ii) Claims against or any act or omission of the Lease Indenture Company or the Indenture Trustee, or Affiliate thereof that is not related to, or that is

in violation of, any of such Person's representations, warranties, covenants or agreements in an Operative Document or the transactions contemplated thereby or that is in breach of any covenant or agreement of the Lease Indenture Company or the Indenture Trustee specified therein, (iii) Taxes imposed upon the Lease Indenture Company or the Indenture Trustee, or any Affiliate thereof that are not indemnified against by the Facility Lessees pursuant to any Operative Document or (iv) Claims against or affecting the Lease Indenture Company or the Indenture Trustee, or any Affiliate thereof arising out of the voluntary or involuntary transfer by the Lease Indenture Company or the Indenture Trustee of any portion of the interest of the Lease Indenture Company or the Indenture Trustee in the Lessor Estate, other than pursuant to the Operative Documents.

"INDEPENDENT APPRAISER" shall mean a disinterested, licensed industrial property appraiser who is a member of the Appraisal Institute having experience in the business of evaluating facilities similar to the Facilities.

"INITIAL LETTER OF CREDIT" shall mean the letter of credit dated as of the Closing Date issued by CSFB in favor of the Owner Participant, as Beneficiary.

"INITIAL PURCHASERS" shall mean CSFB, TD Securities (USA) Inc., and ING Barings LLC.

"INITIAL SUBLEASE TERM" with respect to a Facility Site Sublease, shall have the meaning set forth in Section 2.1(a) of such Facility Site Sublease.

"INITIAL TERM" with respect to a Facility Site Lease, shall have the meaning specified in Section 2.1(a) of such Facility Site Lease.

"INSURANCE CONSULTANT" shall mean Marsh USA, Inc.

"INVESTMENT BANKER" shall have the meaning set forth in Section 2.10(d) of the Collateral Trust Indenture.

"INVESTMENT COMPANY ACT" shall mean the Investment Company Act of 1940.

"INVESTMENT GRADE" with respect to a Rating Agency, shall mean, with respect to S&P, BBB- or higher, and with respect to Moody's, Baa3 or higher, or, if after the Closing Date a different system of ratings is established, the term shall mean a rating in one of such Rating Agency's generic rating categories that is comparable to such ratings.

"IRS" shall mean the Internal Revenue Service of the United States Department of Treasury or any successor agency.

"L/C BANK" shall mean the Acceptable Bank providing a letter of credit pursuant to Section 5.3 of the Facility Lease.

"L/C TERMINATION VALUE" means in respect to any date specified in Part II of Exhibit L of the Participation Agreement, the amount set forth opposite such date in Part II of

Exhibit L to the Participation Agreement, as adjusted in accordance with Section 5.46(i) of the Participation Agreement.

"LEASE DEBT" shall mean the debt evidenced by the Lessor Notes.

"LEASE DEBT RATE" shall mean the applicable interest rate accruing on Lessor Notes.

"LEASE DEFAULT" shall mean any event or occurrence, which, with the passage of time or the giving of notice or both, would become a Lease Event of Default.

"LEASE EVENT OF DEFAULT" with respect to a Facility Lease, shall have the meaning specified in Section 16 of such Facility Lease.

"LEASE INDENTURE COMPANY" shall mean State Street Bank & Trust Company of Connecticut, N.A., in its individual capacity under the Operative Documents.

"LEASE INDENTURE EVENT OF DEFAULT" shall have the meaning set forth in Section 4.2 in the Collateral Trust Indenture.

"LEASE OBLIGATIONS" shall mean, without duplication, (i) indebtedness represented by obligations under a lease that is required to be capitalized for financial reporting purposes, (ii) with respect to operating leases of electric generating facilities, the termination value or similar amount payable by the lessee under such lease and (iii) the principal amount of financial obligations under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing product where such transaction is considered borrowed money indebtedness of the lessee for tax purposes but is classified as an operating lease under GAAP.

"LEASE TERM" shall mean the Basic Lease Term together with the First Renewal Lease Term and Second Renewal Lease Term.

"LEASEHOLD LIEN" with respect to a Facility Site Lease or a Facility Site Sublease, shall have the meaning set forth in Section 16.4 of such Facility Site Lease or Section 15.3 of such Facility Site Sublease.

"LEASEHOLD MORTGAGEE" with respect to a Facility Site Lease or a Facility Site Sublease, shall have the meaning set forth in Section 16.4 of such Facility Site Lease or Section 15.3 of such Facility Site Sublease.

"LESSEE 467 LOAN INTEREST" with respect to a Facility Lease, shall have the meaning specified in Section 3.2(d) of such Facility Lease.

"LESSEE 467 LOAN PRINCIPAL BALANCE" with respect to a Facility Lease, shall have the meaning set forth in Section 3.2(d) of such Facility Lease.

"LESSOR 467 LOAN INTEREST" with respect to a Facility Lease, shall have the meaning specified in Section 3.2(d) of such Facility Lease.

"LESSOR 467 LOAN PRINCIPAL BALANCE" with respect to a Facility Lease, shall have the meaning set forth in Section 3.2(d) of such Facility Lease.

"LESSOR ESTATE" shall mean all the estate, right, title and interest of the Owner Lessor in, to and under the Facilities, the Facility Sites and the Operative Documents, including all funds advanced to the Owner Lessor by the Owner Participant, all installments and other payments of Periodic Rent, Supplemental Rent or Termination Value under the Facility Leases, condemnation awards, purchase price, sale proceeds, insurance proceeds and all other proceeds, rights and interests of any kind for or with respect to the estate, right, title and interest of the Owner Lessor in, to and under the Facilities, the Facility Sites and the Operative Documents and any of the foregoing, but shall not include Excepted Payments.

"LESSOR NOTES" shall mean, collectively, the Tiverton Lessor Notes and the Rumford Lessor Notes.

"LESSOR PUT RENEWAL LEASE TERM" with respect to a Facility Lease, shall have the meaning specified in Section 15.3 of such Facility Lease.

"LIEN" shall mean any mortgage, security deed, security title, pledge, lien, charge, encumbrance, lease, and security interest or title retention arrangement.

"LLC ADMINISTRATION AGREEMENTS" shall mean (i) the agreement dated as of December 18, 2000 between the Owner Lessor and the Administrator as in effect on the Closing Date and (ii) the agreement dated as of December 18, 2000 between the Owner Participant and the Administrator as in effect on the Closing Date.

"LLC AGREEMENT" shall mean the Limited Liability Company Agreement, dated as of December 18, 2000, between the Owner Participant and the Administrator, pursuant to which the Owner Lessor shall be governed.

"MAJORITY IN INTEREST OF NOTEHOLDERS" as of any date of determination, shall mean Noteholders holding in aggregate more than 50% of the total outstanding principal amount of the Notes; provided, however, that any Note held by a Facility Lessee, the Guarantor or any Affiliate of either such party shall not be considered outstanding for purposes of this definition.

"MAKE-WHOLE AMOUNT" shall mean, with respect to any Lessor Note subject to redemption pursuant to the Lease Indenture, an amount equal to the Discounted Present Value of such Lessor Note less the unpaid principal amount of such Lessor Note; provided that the Make Whole Premium shall not be less than zero. For purposes of this definition, the "Discounted Present Value" of any Lessor Note subject to redemption pursuant to the Lease Indenture shall be equal to the discounted present value of all principal and interest payments scheduled to become due after the date of such redemption in respect of such Lessor Note, calculated using a discount rate equal to the sum of (i) the yield to maturity on the U.S. Treasury security having an average life equal to the remaining average life of such Lessor Note and trading in the secondary market at the price closest to par and (ii) 50 basis points; provided, however, that if there is no U.S. Treasury security having an average life equal to the remaining average life of such Lessor Note, such discount rate shall be calculated using a yield to maturity interpolated or extrapolated on a

straight-line basis (rounding to the nearest calendar month, if necessary) from the yields to maturity for two U.S. Treasury securities having average lives most closely corresponding to the remaining life of such Lessor Note and trading in the secondary market at the price closest to par.

"MANAGER" shall mean Credit Suisse First Boston.

"MATERIAL ADVERSE CHANGE" and "MATERIAL ADVERSE EFFECT" shall mean a material adverse effect on (a) the economic prospects, operations, assets, financial position, results of operation or business of the Guarantor, including a material adverse effect on (i) the Facilities which adversely affects the ability of the Guarantor to perform its obligations under the Operative Documents or (ii) the validity or enforceability of the Operative Documents, (b) the Indenture Estate or the Lessor Estate, the security interests in the Lessor Estate, or (c) with respect to the Owner Participant's (but not the Certificateholders') interest in the Facilities, the residual value or remaining useful life of the Facilities.

"MEMBER INTEREST" shall mean the interest of the Owner Participant in the Owner Lessor.

"MEMORANDUM OF FACILITY SITE LEASE" or "MEMORANDA OF FACILITY SITE LEASE" shall mean, individually or collectively as the context may require, the Memorandum of Facility Site Lease (Rumford) or the Memorandum of Facility Site Lease (Tiverton).

"MEMORANDUM OF FACILITY SITE LEASE (RUMFORD)" shall mean the Memorandum of Facility Site Lease, dated as of the Closing Date, between Rumford Lessee, as landlord, and the Owner Lessor, as tenant, and filed with Oxford County, Maine Registry of Deeds .

"MEMORANDUM OF FACILITY SITE LEASE (TIVERTON)" shall mean the Memorandum of Facility Site Lease, dated as of the Closing Date, between Tiverton Lessee, as landlord, and the Owner Lessor, as tenant, and filed with the Land Evidence Records of the Town of Tiverton, State of Rhode Island.

"MEMORANDUM OF FACILITY SITE SUBLEASE" or "MEMORANDA OF FACILITY SITE SUBLEASE" shall mean, individually or collectively as the context may require, the Memorandum of Facility Site Sublease (Rumford) and the Memorandum of Facility Site Sublease (Tiverton).

"MEMORANDUM OF FACILITY SITE SUBLEASE (RUMFORD)" shall mean the Memorandum of Facility Site Sublease, dated as of the Closing Date, between the Owner Lessor, as sublandlord, and Rumford Lessee, as subtenant, and filed with Oxford County, Maine Registry of Deeds .

"MEMORANDUM OF FACILITY SITE SUBLEASE (TIVERTON)" shall mean the Memorandum of Facility Site Sublease, dated as of the Closing Date, between the Owner Lessor, as sublandlord, and Tiverton Lessee, as subtenant, and filed with the Land Evidence Records of the Town of Tiverton, State of Rhode Island.

"MEMORANDUM OF LEASE" or "MEMORANDA OF LEASE" shall mean, individually or collectively as the context may require, the Memorandum of Lease (Rumford) and the Memorandum of Lease (Tiverton).

"MEMORANDUM OF LEASE (RUMFORD)" shall mean the Memorandum of Facility Lease, dated as of the Closing Date, between the Owner Lessor and the Rumford Lessee and filed with Oxford County, Maine Registry of Deeds .

"MEMORANDUM OF LEASE (TIVERTON)" shall mean the Memorandum of Facility Lease, dated as of the Closing Date, between the Owner Lessor and the Tiverton Lessee and filed with the Land Evidence Records of the Town of Tiverton, State of Rhode Island.

"MOODY'S" shall mean Moody's Investors Service, Inc. and any successor thereto.

"MULTIEMPLOYER PLAN" shall mean any Plan that is a multiemployer plan (as defined in Section 4001(a)(3) of ERISA).

"NOTE REGISTER" shall have the meaning specified in Section 2.8 of the Collateral Trust Indenture.

"NOTEHOLDER(s)" shall mean any holder of record (as reflected on the Note Register) from time to time of a Lessor Note outstanding.

"NOTES" shall mean, individually or collectively as the context may require, (i) the Tiverton Lessor Notes and Tiverton Additional Lessor Notes or (ii) the Rumford Lessor Notes and Rumford Additional Lessor Notes, each issued pursuant to the Collateral Trust Indenture.

"NOTICE PERIOD" shall have the meaning set forth in Section 7.8 of the Participation Agreement.

"OBLIGATIONS" shall mean, collectively, the Obligations (Rumford) and the Obligations (Tiverton).

"OBLIGATIONS (RUMFORD)" shall have the meaning set forth in Section 2.2 of the Calpine Guaranty and Payment Agreement (Rumford).

"OBLIGATIONS (TIVERTON)" shall have the meaning set forth in Section 2.2 of the Calpine Guaranty and Payment Agreement (Tiverton).

"OBSCOLESCENCE TERMINATION DATE" with respect to a Facility Lease, shall have the meaning specified in Section 14.1 of such Facility Lease.

"OFFERING CIRCULAR" shall mean the Offering Circular, dated December 15, 2000, with respect to the Certificates.

"OFFICER" shall mean, solely with respect to the Guarantor, the Chairman, the President, any Vice President, the Chief Operating Officer, the Chief Financial Officer, the Treasurer, the Secretary, any Assistant Treasurer, any Assistant Secretary or the Controller or Principal Accounting Officer of the Guarantor.

"OFFICER'S CERTIFICATE" shall mean with respect to any Person, a certificate signed (i) in the case of a corporation, by the Chairman of the Board, the President, or a Vice President of such Person or any Person authorized by or pursuant to the organizational documents, the by-laws or any resolution of the Board of Directors or Executive Committee of such Person (whether general or specific) to execute, deliver and take actions on behalf of such Person in respect of any of the Operative Documents, (ii) in the case of a partnership, by the Chairman of the Board of Directors, the President or any Vice President, the Treasurer or an Assistant Treasurer of a corporate general partner and (iii) in the case of an Indenture Trustee, a certificate signed by a Responsible Officer of such Indenture Trustee.

"OFFICIAL RECORDS" with respect to a Facility Site Lease, shall have the meaning specified in the recitals to such Facility Site Lease.

"OP ASSIGNMENT AND ASSUMPTION AGREEMENT" shall mean an assignment and assumption agreement in form and substance substantially in the form of Exhibit J to the Participation Agreement.

"OP GUARANTOR" shall mean Philip Morris Capital Corporation or any Person that shall guaranty the obligations of a Transferor under the Operative Documents in accordance with Section 7.1 of the Participation Agreement.

"OP PARENT GUARANTY" shall mean, as applicable, (i) that certain guaranty of Philip Morris Capital Corporation dated as of the Closing Date in favor of the Facility Lessees, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee and the Certificateholders, or (ii) any other guaranty agreement provided by an OP Guarantor in form and substance substantially in the form of Exhibit G to the Participation Agreement.

"OPERATIVE DOCUMENTS" shall mean the Participation Agreement, the Bills of Sale, the Facility Leases, the Certificates, the Facility Site Leases, the Facility Site Subleases, the Collateral Trust Indenture, the Lessor Notes, the Pass Through Trust Agreement, the LLC Agreement, the Tax Indemnity Agreement, the Calpine Guaranties, the OP Parent Guaranty (if any) and any Qualifying Letter of Credit.

"OPERATOR" shall mean Calpine Eastern Corporation or any replacement Operator appointed pursuant to the Operative Documents.

"OPINION OF COUNSEL" shall mean, with respect to any Calpine Party, a written opinion (i) from Ronald W. Fischer or any other internal counsel of Calpine, as to matters contained in such opinions delivered at Closing, and as to all other matters, Thelen Reid & Priest and/or Steptoe & Johnson, or any other outside legal counsel reasonably acceptable to the Owner Participant, (ii) in form and substance (with respect to qualifications, exception, assumption and the like) substantially equivalent to the legal opinions delivered at Closing, with any material

modification or supplements thereto to be reasonably acceptable to the Owner Participant, or in any such other form as may be reasonably acceptable to the Owner Participant, and (iii) the scope of which shall cover due authorization, execution, delivery and enforceability of the applicable agreement(s), and exemption from regulation, in each case, substantially in the form set forth in the opinions delivered at Closing with any material modifications thereto to be reasonably acceptable to the Owner Participant.

"OPTIONAL IMPROVEMENT" with respect to a Facility Lease, shall have the meaning specified in Section 8.2 of such Facility Lease.

"OPTION CLOSING DATE" with respect to a Facility Site Lease, shall have the meaning set forth in Section 5.2 of such Facility Site Lease.

"OVERALL TRANSACTION" shall mean all of the transactions contemplated by the Operative Documents.

"OVERDUE RATE" shall mean a rate per annum equal to the prime commercial lending rate of the Chase Manhattan Bank (as publicly announced to be effect from time to time, such rate to be adjusted automatically, without notice, on the effective date of any change in such rate) plus 1%.

"OWNER LESSOR" shall mean PMCC Calpine New England Investment LLC, a Delaware limited liability company created for the benefit of the Owner Participant.

"OWNER LESSOR'S ACCOUNT" shall mean Citibank, N.A., New York, NY, ABA # 021000089, Account: Philip Morris Capital Corporation, Account # 3024-1278.

"OWNER LESSOR'S INTEREST" shall mean the Owner Lessor's right, title and interest in and to the ownership of the Facilities and the Facility Sites, as applicable.

"OWNER LESSOR'S LIEN(s)" individually or collectively as the context may require, shall mean any Lien on the Lessor Estate, the Facility Sites or the Easements, or any part of any thereof or interest therein arising as a result of (i) Taxes against or affecting the Owner Lessor or any Affiliate thereof that are not related to, or that are in violation of, any Operative Document or the transactions contemplated thereby, (ii) Claims against or any act or omission of the Owner Lessor or Affiliate thereof that is not related to, or that is in violation of, any Operative Document or the transactions contemplated thereby or that is in breach of any covenant or agreement of the Owner Lessor specified therein, (iii) Taxes imposed upon the Owner Lessor or any Affiliate thereof that are not indemnified against by the Facility Lessees pursuant to any Operative Document or (iv) Claims against or affecting the Owner Lessor or any Affiliate thereof arising out of the voluntary or involuntary transfer by the Owner Lessor of any portion of the interest of the Owner Lessor in the Owner Lessor's Interest, other than pursuant to the Operative Documents.

"OWNER PARTICIPANT" shall mean PMCC Calpine NEIM LLC, a Delaware limited liability company.

"OWNER PARTICIPANT'S ACCOUNT" shall mean the account maintained by the Owner Participant at the bank specified with respect thereto on Schedule 1-C to the Participation Agreement, or such other account of the Owner Participant, as the Owner Participant may from time to time specify in a notice to the Indenture Trustee pursuant to Section 9.5 of the Collateral Trust Indenture.

"OWNER PARTICIPANT'S COMMITMENT" shall mean the Owner Participant's investment in the Owner Lessor contemplated by Section 2.1(a) of the Participation Agreement.

"OWNER PARTICIPANT'S LIEN(s)" individually or collectively as the context may require, shall mean any Lien on the Lessor Estate, the Facility Sites or the Easements, or any part of any thereof or interest therein arising as a result of (i) Claims against or any act or omission of the Owner Participant that is not related to, or that is in violation of, any Operative Document or the transactions contemplated thereby or that is in breach of any covenant or agreement of the Owner Participant set forth therein, (ii) Taxes against the Owner Participant that are not indemnified against by the applicable Facility Lessee pursuant to the Operative Documents or (iii) Claims against or affecting the Owner Participant arising out of the voluntary or involuntary transfer by the Owner Participant of any portion of the interest of the Owner Participant in the Member Interest, other than any transfer (x) pursuant to the exercise of any of the applicable Facility Lessee's (or any Affiliate thereof) rights under the Operative Documents or (y) during the continuance of a Lease Event of Default.

"OWNER PARTICIPANT'S NET ECONOMIC RETURN" shall mean the Owner Participant's anticipated (i) after-tax yield, calculated according to the multiple investment sinking fund method of analysis, and (ii) periodic GAAP income and aggregate after-tax cash flow.

"OWNERSHIP INTEREST" shall mean, with respect to a Facility Lessee (or any assigns of such Facility Lessee), any and all equity interest in such Facility Lessee (or such assignee of such Facility Lessee) howsoever designated (whether capital stock, partnership interest, member interest or any equivalent interest).

"PARTICIPATION AGREEMENT" shall mean the Participation Agreement, dated as of December 19, 2000, among the Facility Lessees, the Guarantor, the Owner Lessor, the Owner Participant, State Street Bank & Trust Company of Connecticut, as Indenture Trustee, and State Street Bank & Trust Company of Connecticut, as Pass Through Trustee.

"PARTNERSHIP AGREEMENT" shall mean the Tiverton Partnership Agreement or the Rumford Partnership Agreement, as the context may require.

"PASS THROUGH COMPANY" shall mean State Street Bank and Trust Company of Connecticut, N.A., in its individual capacity, together with its successors and permitted assigns.

"PASS THROUGH TRUST AGREEMENT" shall mean the Pass Through Trust Agreement, dated as of December 19, 2000, between the Facility Lessees and the Pass Through Trustee.

"PASS THROUGH TRUSTEE" shall mean State Street Bank and Trust Company of Connecticut, N.A., not in its individual capacity, but solely as Pass Through Trustee under the Pass Through Trust Agreement, and each other Person that may from time to time be acting as a Pass Through Trustee in accordance with the provisions of the Pass Through Trust Agreement.

"PASS THROUGH TRUST" shall mean the pass through trusts created pursuant to the Pass Through Trust Agreement.

"PAYING AGENT" shall have the meaning set forth in Section 2.6 of the Collateral Trust Indenture.

"PERIODIC RENT" with respect to a Facility Lease, shall mean the sum of Basic Rent and Renewal Rent, if any, as specified in Schedule 1 to such Facility Lease.

"PERMIT" shall mean any action, approval, certificate, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from, and any filing with a Governmental Entity.

"PERMITTED CLOSING DATE LIENS" shall mean Permitted Liens described in clause (a), (b), (f), (g) and (i) of the definition thereof.

"PERMITTED ENCUMBRANCES" shall mean with respect to the Facility Sites, all matters shown as exceptions on Schedule B to each of the Title Policies as in effect on the Closing Date.

"PERMITTED INVESTMENTS" shall mean investments in securities that are: (i) direct obligations of the United States or any agency thereof;

(ii) obligations fully guaranteed by the United States or any agency thereof;

(iii) certificates of deposit or bankers acceptances issued by commercial banks (or any of their affiliates) organized under the laws of the United States or of any political subdivision thereof or under the laws of Canada, Japan, Switzerland or any country that is a member of the European Economic Community having a combined capital and surplus of at least \$250 million and having long-term unsecured debt securities then rated "A" or better by S&P or "A2" or better by Moody's (but at the time of investment not more than \$25,000,000 may be invested in such certificates of deposit from any one bank); (iv) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (i) and (ii) above, entered into with any financial institution meeting the qualifications specified in clause (iii) above;

(v) open market commercial paper of any corporation incorporated or doing business under the laws of the United States or of any political subdivision thereof having a rating of at least "A-1" from S&P and "P-1" from Moody's (but at the time of investment not more than \$25,000,000 may be invested in such commercial paper from any one company); (vi) auction rate securities or money market preferred stock having one of the two highest ratings obtainable from either S&P or Moody's (or, if at any time neither S&P nor Moody's is rating such obligations, then from another nationally recognized rating service acceptable to the Depositary); and (vii) investments in money market funds or money market mutual funds sponsored by any securities broker dealer of recognized national standing (or an affiliate thereof), having an investment policy that requires substantially all the invested assets of

such fund to be invested in investments described in any one or more of the foregoing clauses having a rating of "A" or better by S&P or "A2" or better by Moody's.

"PERMITTED LIENS" shall mean (a) the rights and interests of the parties as provided in the Operative Documents, as well as the rights of sublessees and/or assignees to the extent set forth in or expressly permitted pursuant to the Facility Leases or any other Operative Document, (b) as to Facility Lessees, Owner Lessor's Liens, Owner Participant's Liens and Indenture Trustee's Liens, (c) Liens for any tax, assessment or other governmental charge, either secured by a bond reasonably acceptable to the Indenture Trustee and the Pass Through Trustee and, so long as no Lease Indenture Event of Default which is not a Lease Event of Default exists, the Owner Lessor, or not yet due or being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not reasonably be expected to give rise to criminal liability or material civil liability on the part of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any Certificateholders, and would not otherwise reasonably be expected to have a Material Adverse Effect, or (ii) adequate reserves consistent with GAAP requirements have been established and are maintained, so as to assure such Persons that any taxes, assessments or other charges determined to be due will be promptly paid in full when such contest is determined, (d) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens arising in the ordinary course of business or in connection with the maintenance or repair of the Facilities, for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not reasonably be expected to give rise to criminal liability or material civil liability on the part of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any Certificateholders, and would not otherwise reasonably be expected to have a Material Adverse Effect, and (ii) adequate reserves consistent with GAAP requirements have been established and are maintained, so as to ensure that any amounts determined to be due will be promptly paid in full when such contest is determined, (e) Liens arising out of judgments or awards, but only so long as an appeal or proceeding for review is being prosecuted in good faith and so long as (i) such proceedings shall not reasonably be expected to give rise to criminal liability or material civil liability on the part of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any Certificateholders, and would not otherwise reasonably be expected to have a Material Adverse Effect, and (ii) adequate reserves consistent with GAAP requirements have been established and are maintained, so as to ensure that any amounts determined to be due will be promptly paid in full when such contest is determined, or are fully covered by insurance, (f) mineral rights the use and enjoyment of which do not materially interfere with the use and enjoyment of the Facilities, (g) Permitted Encumbrances, (h) Liens, deposits or pledges to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, (i) existing Liens that have been disclosed to the Transaction Parties prior to the Closing Date and which are reasonably acceptable to the Transaction Parties, and (j) Liens incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance or credit in respect of borrowed money permitted to be incurred pursuant to the Operative Documents so long as such Liens (x) do not in the aggregate materially impair the use of the property or assets of the Facility Lessees or the value of such property or assets for the purposes of such business and (y) shall not reasonably be expected to give rise to criminal liability or unindemnified, material civil liability on the part of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any

Certificateholders, and would not otherwise reasonably be expected to have a Material Adverse Effect.

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

"PLAN" shall mean any pension plan as defined in Section 3(2) of ERISA, which is maintained or contributed to by (or to which there is an obligation to contribute of) either of the Facility Lessees or a Subsidiary of either of the Facility Lessees or an ERISA Affiliate, and each such plan for the five year period immediately following the latest date on which such Facility Lessee, or a Subsidiary of such Facility Lessee or an ERISA Affiliate maintained, contributed to or had an obligation to contribute to such plan.

"POWER MARKET CONSULTANT" shall mean CC Pace.

"PREFERRED STOCK", as applied to the Capital Stock of any corporation, means Capital Stock of any class or classes (however designated) which is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"PRICING ASSUMPTIONS" shall mean the "Pricing Assumptions" (attached as Schedule 2 to the Participation Agreement) for each Facility Lease,.

"PRIME RATE" shall mean the rate of interest publicly announced by Citibank, N.A. from time to time as its prime rate.

"PROCEEDS" shall mean the proceeds from the sale of the Certificates by the Pass Through Trust to the Certificateholders on the Closing Date.

"PROPORTIONAL RENTAL AMOUNT" shall have the meaning given the term "proportional rental amount" in Treasury Regulations section 1.467-2(c) and unless and until such time s there is an adjustment pursuant to Section 3.4 of the applicable Facility Lease it shall be the amounts set forth in Section 1-C to the Facility Leases.

"PRUDENT INDUSTRY PRACTICE" shall mean, at a particular time, (a) any of the practices, methods and acts engaged in or approved by a significant portion of the competitive electric generating industry at such time, or (b) with respect to any matter to which clause (a) does not apply, any of the practices, methods and acts which, in the exercise of reasonable judgment at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. "Prudent Industry Practice" is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to be a spectrum of possible practices, methods or acts having due regard for, among other things, manufacturers' warranties and the requirements of any Governmental Entity of competent jurisdiction.

"PUHCA" shall mean the Public Utility Holding Company Act of 1935, as amended.

"PURCHASE PRICE" with respect to the Tiverton Facility, shall mean \$237,500,000.00, and with respect to the Rumford Facility, shall mean \$220,000,000.00.

"QUALIFYING CASH BIDS" with respect to a Facility Lease, shall have the meaning specified in Section 13.2 of such Facility Lease.

"QUALIFYING LETTER OF CREDIT" shall mean (I) the Initial Letter of Credit, and (II) any other irrevocable standby letter of credit (i) in favor of the Owner Participant issued by a Qualifying Letter of Credit Bank (ii) which shall be drawable or presentable in New York (or such other location as the Owner Participant shall agree in its sole and absolute discretion) in Dollars and in whole upon presentation of a drawing certificate pursuant to which a beneficiary of such letter of credit certifies that a Drawing Event has occurred and is continuing; (iii) to the extent such letter of credit is a new or replacement Qualifying Letter of Credit, such new or replacement Qualifying Letter of Credit must be issued at least 30 days (or 45 days in the circumstances described in Section 5.46(b) of the Participation Agreement) prior to the stated expiration of the existing letter of credit; (iv) the maturity of such letter of credit may be shorter than the last day of the Lease Term of the Tiverton Facility Lease or the Lease Term of the Rumford Facility Lease, whichever is later, provided, however, that (a) such letter of credit shall have a maturity of at least 364 days from the date of issuance and be automatically renewed for at least one year unless notice of non-renewal is received by the Owner Lessor at least 60 days prior to the expiration of the Qualifying Letter of Credit, and (b) the relevant Owner Lessor shall receive such new or replacement Qualifying Letter of Credit not later than 30 days prior to the expiration of the then outstanding letter of credit; and (v) shall otherwise contain terms that are substantially the same as those set forth in the Initial Letter of Credit and the CSFB LOC Indemnity Letter (as in effect on the Closing), with such substantive changes (proposed because Calpine has been unable to obtain such terms) as are reasonably acceptable to the Owner Participant. The Owner Participant agrees, that in considering any changes referred to in clause (v) of the preceding sentence, it will base its acceptance or non-acceptance of such changes on an evaluation of whether the terms in question are available pursuant to then current practices of banks meeting the definition of "Qualifying Letter of Credit Bank" with respect to comparable letters of credit being issued in comparable transactions, and if the Owner Participant fails to so accept such changes it will set forth its basis therefor. Subject to the same conditions set forth in the preceding sentence (including with respect to the acceptance or non-acceptance of the legal opinions referred to below by the Owner Participant), each Qualifying Letter of Credit shall be supported by legal opinions substantially in the forms of legal opinions delivered with the Initial Letter of Credit.

"QUALIFYING LETTER OF CREDIT BANK" shall mean a banking institution organized in the United States or in another country the Dollar-denominated long-term indebtedness of which is rated on the date on which the relevant Qualifying Letter of Credit is issued, AAA by S&P and Aaa by Moody's (or if rated by only one Rating Agency, rated as aforesaid by such Rating Agency), (i) the unsecured long-term senior Dollar-denominated debt obligations of which are rated A or better by S&P and A2 or better by Moody's, (ii) having a branch in New York City at which the Qualifying Letter of Credit can be drawn upon, (iii) having, on the date

on which the relevant Qualifying Letter of Credit is issued, a consolidated stockholders equity determined in accordance with GAAP of at least US\$ 3.5 billion and (iv) which banking institution is reasonably acceptable to the Owner Participant. Notwithstanding the foregoing, CSFB shall be deemed a "Qualifying Letter of Credit Bank" so long as it meets the requirement of clause (i) above.

"RATING AGENCIES" shall mean S&P and Moody's.

"REASONABLE BASIS" for a position shall exist if tax counsel may properly advise reporting such position on a tax return in accordance with Formal Opinion 85-352 issued by the Standing Committee on Ethics and Professional Responsibility of the American Bar Association (or any successor to such opinion).

"REBUILDING CLOSING DATE" with respect to a Facility Lease, shall have the meaning specified in Section 10.3(e) of such Facility Lease.

"RECEIVING PARTY" shall have the meaning set forth in Section 14.21 of the Participation Agreement.

"REDEMPTION DATE" shall mean, when used with respect to any Note to be redeemed, the date fixed for such redemption by or pursuant to the Collateral Trust Indenture or the respective Note, which date shall be a Termination Date.

"REFINANCING INDEBTEDNESS" means Indebtedness that refunds, refinances, replaces, renews, repays or extends (including pursuant to any defeasance or discharge mechanism) (collectively, "refinances," and "refinanced" shall have a correlative meaning) any Indebtedness of the Guarantor or a Restricted Subsidiary existing on the date of the Guaranty or Incurred in compliance with the Indenture, dated as of August 10, 2000, between the Guarantor and Wilmington Trust Company, as Trustee (including Indebtedness of the Guarantor that refinances Indebtedness of any Restricted Subsidiary and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; provided, however, that (i) if the Indebtedness being refinanced is contractually subordinated in right of payment to the Obligations (Tiverton) or the Obligations (Rumford), as the context may require, the Refinancing Indebtedness shall be contractually subordinated in right of payment to such Obligations to at least the same extent as the Indebtedness being refinanced, (ii) the Refinancing Indebtedness is scheduled to mature either (a) no earlier than the Indebtedness being refinanced or (b) after the Stated Maturity of the Obligations (Tiverton) or the Obligations (Rumford), as the context may require, (iii) the Refinancing Indebtedness has an Average Life at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the Average Life of the Indebtedness being refinanced and (iv) such Refinancing Indebtedness is in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding (plus fees and expenses, including any premium, swap breakage and defeasance costs) under the Indebtedness being refinanced; and provided, further, that Refinancing Indebtedness shall not include (x) Indebtedness of a Subsidiary of the Guarantor that refinances

Indebtedness of the Guarantor or (y) Indebtedness of the Guarantor or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary.

"REGISTRAR" shall have the meaning set forth in Section 2.8 of the Collateral Trust Indenture.

"REGULATORY EVENT OF LOSS" shall have meaning specified in clause (iv) of the definition of "Event of Loss".

"REIMBURSEMENT AGREEMENT" shall mean the Letter of Credit and Reimbursement Agreement, dated as of December 19, 2000, between Calpine and CSFB.

"RELATED PARTY" shall mean, with respect to any Person or its successors and assigns, an Affiliate of such Person or its successors and assigns and any director, officer, servant, employee or agent of that Person or any such Affiliate or their respective successors and assigns; provided that the Owner Lessor shall not be treated as a Related Party to any Owner Participant except that, for purposes of Section 9 of the Participation Agreement, the Owner Lessor will be treated as a Related Party to an Owner Participant to the extent that the Owner Lessor acts on the express direction or with the express consent of an Owner Participant.

"RELEASE" shall mean any release, pumping, pouring, emptying, injecting, escaping, leaching, migrating, dumping, seepage, spill, flow, leak, discharge, disposal or emission.

"RENEWAL RENT" with respect to a Facility Lease, shall mean the rent payable during any Renewal Lease Term, in each case as determined in accordance with Section 15.4 of such Facility Lease.

"RENEWAL LEASE TERM" with respect to a Facility Lease, shall mean the First Renewal Lease Term, the Second Renewal Term, any FMV Renewal Lease Term or the Lessor Put Renewal Term.

"RENEWAL SITE LEASE TERM(s)" individually or collectively as the context shall require, with respect to a Facility Site Lease, shall have the meaning set forth in Section 2.2(b) of such Facility Site Lease.

"RENEWAL TERM" with respect to a Facility Site Sublease, shall have the meaning set forth in Section 2.1(b) of such Facility Site Sublease.

"RENT" shall mean Basic Rent, Renewal Rent and Supplemental Rent.

"RENT PAYMENT DATE" with respect to a Facility Lease, shall mean, with respect to each Facility Lease March 19, 2001, each January 15 and July 15 occurring thereafter (through and including July 15, 2036) and December 19, 2036.

"RENT PAYMENT PERIOD" with respect to a Facility Lease, shall mean (i) in the case of the first Rent Payment Period the period commencing on the Closing Date and ending on March 19, 2001, (ii) in the case of the second Rent Payment Period, the period commencing on

March 19, 2001 and ending on July 15, 2001 and (iii) in all cases thereafter (except for the last Rent Payment Period which period shall commence on July 19, 2036 and end on, and include, December 19, 2036), each six-month period commencing on each Rent Payment Date through and including the following January 15 or July 15 as the case may be.

"REPLACEMENT COMPONENT" with respect to a Facility Lease, shall have the meaning specified in Section 7.2 of such Facility Lease.

"REQUIRED IMPROVEMENT" with respect to a Facility Lease, shall have the meaning specified in Section 8.1 of such Facility Lease.

"REQUISITION" shall have the meaning specified in clause (iii) of the definition of "Event of Loss".

"RESPONSIBLE OFFICER" shall mean, with respect to any Person,

(i) its Chairman of the Board, its President, any Senior Vice President, the Chief Financial Officer, any Vice President, the Treasurer or any other management employee (a) that has the power to take the action in question and has been authorized, directly or indirectly, by the Board of Directors or equivalent body of such Person, (b) working under the direct supervision of such Chairman of the Board, President, Senior Vice President, Chief Financial Officer, Vice President or Treasurer and (c) whose responsibilities include the administration of the Overall Transaction and (ii) with respect to the Pass Through Trustee and the Indenture Trustee an officer in their respective corporate trust departments.

"RESTRICTED SUBSIDIARY" means any Subsidiary of the Guarantor that is not designated an Unrestricted Subsidiary by the Board of Directors.

"REVENUES" shall have the meaning specified in clause (3) of the Granting Clause of the Collateral Trust Indenture.

"RUMFORD ADDITIONAL LESSOR NOTES" shall have the meaning specified in Section 2.12 of the Collateral Trust Indenture.

"RUMFORD BILL OF SALE" shall mean the Rumford Bill of Sale, dated as of the Closing Date, between Rumford Lessee and the Owner Lessor, substantially in the form of Exhibit B-2 to the Participation Agreement duly completed, executed and delivered on the Closing Date pursuant to which the Owner Lessor will acquire the Rumford Facility from the Tiverton Lessee.

"RUMFORD EASEMENTS" shall mean the easements defined in the recitals to the Rumford Facility Site Lease and the Rumford Facility Site Sublease.

"RUMFORD FACILITY" shall mean a 265 MW nameplate capacity gas-fired combined cycle merchant power plant located in Rumford, Maine and more fully described in Exhibit A-2 to the Participation Agreement. The Rumford Facility does not include the Rumford Facility Site.

"RUMFORD FACILITY LEASE" shall mean, the Facility Lease Agreement (Rumford), dated as of December 19, 2000, between the Owner Lessor and Rumford Lessee, substantially in the form of Exhibit C-2 to the Participation Agreement.

"RUMFORD FACILITY SITE RENT" shall have the meaning set forth in Section 4.1 of the Rumford Facility Site Lease.

"RUMFORD LEASE" shall have the meaning set forth in the recitals to the Rumford Sublease.

"RUMFORD LESSEE" shall mean Rumford Power Associates Limited Partnership.

"RUMFORD LESSOR NOTE(s)" shall have the meaning specified in Section 2.2 of the Collateral Trust Indenture.

"RUMFORD NOTES" shall mean any Rumford Lessor Notes or Rumford Additional Lessor Notes issued pursuant to the Collateral Trust Indenture.

"RUMFORD OPERATIVE DOCUMENTS" shall mean the Participation Agreement, the Rumford Bill of Sale, the Rumford Facility Lease, the Certificates, the Rumford Facility Site Lease, the Rumford Facility Site Sublease, the Collateral Trust Indenture, the Rumford Lessor Notes, the Pass Through Trust Agreement, the LLC Agreement, the Tax Indemnity Agreement, the Calpine Guaranty (Rumford), the OP Parent Guaranty (if any), the Certificate Purchase Agreement and the Qualifying Letter of Credit.

"RUMFORD PARCEL" shall have the meaning specified in Section 2.1(a) of the Rumford Site Lease and Section 2.1(a) of the Rumford Site Sublease.

"RUMFORD POWER ASSOCIATES" shall mean Rumford Power Associates Limited Partnership.

"RUMFORD SITE" shall have the meaning set forth in the recitals to the Facility Site Lease and the Facility Site Sublease.

"RUMFORD SITE LEASE" shall mean the Facility Site Lease (Rumford), dated as of December 19, 2000, between the Rumford Lessee and the Owner Lessor, substantially in the form of Exhibit D-2 to the Participation Agreement.

"RUMFORD SITE LESSEE" shall mean PMCC Calpine New England Investment LLC.

"RUMFORD SITE LESSOR" shall mean Rumford Power Associates Limited Partnership.

"RUMFORD SUBLEASE" shall have the meaning set forth in the recitals to the Rumford Site Lease.

"RUMFORD SITE SUBLESSEE" shall mean Rumford Power Associates Limited Partnership.

"RUMFORD SITE SUBLESSEE EVENT OF DEFAULT" shall have the meaning set forth in Section 13.1 of the Facility Site Sublease (Rumford).

"RUMFORD SITE SUBLESSOR" shall mean PMCC Calpine New England Investment LLC.

"R.W. BECK REPORTS" shall mean, collectively, that certain (i) letter dated September 26, 2000 to Mr. Paul J. Colatrella of Bayersische Hypo-und Vereinsbank AG from R.W. Beck, Inc., and (ii) letter dated November 21, 2000 to Mr. Mohammed J. Alam of Fortis Capital Corp. from R. W. Beck, Inc.

"SALE/LEASEBACK TRANSACTION" means an arrangement relating to property now owned or hereafter acquired whereby the Guarantor or a Subsidiary transfers such property to a Person and leases it back from such Person, other than leases for a term of not more than 36 months or between the Guarantor and a Wholly Owned Subsidiary or between Wholly Owned Subsidiaries.

"SCHEDULED CLOSING DATE" shall mean December 19, 2000.

"SEC" shall mean the Securities and Exchange Commission.

"SECOND RENEWAL LEASE TERM" with respect to a Facility Lease, shall have the meaning specified in Section 15.1(b) of such Facility Lease.

"SECOND WINTERGREEN RENEWAL LEASE OPTION" with respect to a Facility Site Lease, shall have the meaning set forth in Section 2.2(a)(ii) of such Facility Site Lease.

"SECTION 467 INTEREST" with respect to a Facility Lease, shall have the meaning set forth in Section 3.2(d) of such Facility Lease.

"SECTION 467 LOAN" with respect to a Facility Lease, shall have the meaning specified in Section 3.2(d) of such Facility Lease.

"SECURED INDEBTEDNESS" shall have the meaning specified in Section 1(b) of the Collateral Trust Indenture.

"SECURITIES ACT" shall mean the Securities Act of 1933, as amended.

"SEVERABLE IMPROVEMENT" shall mean any Improvement that is readily removable without causing material damage to the applicable Facility.

"SIGNIFICANT LEASE DEFAULT" shall mean, with respect to a Facility Lease, (i) an event that is, or solely with the passage of time or the giving of notice (or both) would become, a "Lease Event of Default" under clauses (a), (b), (c), (g), (h) or (m) of Section 16 of such Facility

Lease and (ii) the failure of a Facility Lessee to comply in any material respect with its obligations under Section 6 of the Facility Lease corresponding to such Facility Lessee.

"SIGNIFICANT SUBSIDIARY" means any Subsidiary (other than an Unrestricted Subsidiary) that would be a "Significant Subsidiary" of the Guarantor within the meaning of Rule 1-02 under Regulation S-X promulgated by the SEC.

"SITE LEASE EVENT OF DEFAULT" with respect to a Facility Site Lease, shall have the meaning set forth in Section 14.1 of such Facility Site Lease.

"S&P" shall mean Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc. or any successor thereto.

"STATED MATURITY" means, with respect to any security, the date specified in such security as the fixed date on which the principal of such security is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase of such security at the option of the holder thereof upon the happening of any contingency).

"SUBSIDIARY" shall mean, with respect to any Person (the "parent"), any corporation or other entity of which sufficient securities or other ownership interests having ordinary voting power to elect a majority of the board of directors or other Persons performing similar functions are at the time directly or indirectly owned by such parent.

"SUPPLEMENTAL FINANCING" shall have the meaning specified in Section 11.1 of the Participation Agreement.

"SUPPLEMENTAL RENT" shall mean any and all amounts, liabilities and obligations (other than Basic Rent and Renewal Rent) which the Facility Lessees assume or agree to pay under the Operative Documents (whether or not identified as "Supplemental Rent") to the Owner Lessor or any other Person, including Termination Value.

"SURVEY(s)" shall mean the Survey (Rumford) and/or the Survey (Tiverton), as the context may require.

"SURVEY (RUMFORD)" shall mean the survey of the Rumford Site, to be dated after the Closing Date, which inter alia, will show the location of the Rumford Site.

"SURVEY (TIVERTON)" shall mean the survey of the Tiverton Site, to be dated the Closing Date, which inter alia, will show the location of the Tiverton Site.

"TAX" or "TAXES" shall mean all fees, taxes (including, without limitation, income taxes, sales taxes, use taxes, stamp taxes, value-added taxes, excise taxes, ad valorem taxes and property taxes (personal and real, tangible and intangible)), levies, assessments, withholdings and other charges and impositions of any nature, plus all related interest, penalties, fines and additions to tax, now or hereafter imposed by any federal, state, local or foreign government or other taxing authority.

"TAX ADVANCE" shall have the meaning specified in Section 9.2(g)(iii)(5) of the Participation Agreement.

"TAX ASSUMPTIONS" shall mean the items described in Section 1 of the Tax Indemnity Agreement.

"TAX BENEFIT" shall have the meaning set forth in Section 9.2(e) of the Participation Agreement.

"TAX CLAIM" shall have the meaning set forth in Section 9.2(g)(i) of the Participation Agreement.

"TAX EVENT" shall mean any event or transaction that will be a taxable transaction to the direct or indirect holders of the Lessor Notes.

"TAX INDEMNITEE" shall have the meaning set forth in Section 9.2(a) of the Participation Agreement.

"TAX INDEMNITY AGREEMENT" shall mean the Tax Indemnity Agreement, dated as of the Closing Date, between the Facility Lessees and the Owner Participant.

"TAX LAW CHANGE" shall have the meaning specified in Section 12(a) of the Participation Agreement.

"TAX REPRESENTATION" shall mean each of the items described in Section 4 of the Tax Indemnity Agreements.

"TAXES AND ASSESSMENTS" with respect to a Facility Site Lease, shall have, collectively, the meaning set forth in Section 18.1 of such Facility Site Lease.

"TERM" with respect to a Facility Site Lease or a Facility Site Sublease, shall have the meaning set forth in Section 2.2(b) of such Facility Site Lease or Facility Site Sublease.

"TERMINATION DATE" with respect to a Facility Lease, shall mean each of the monthly dates during the Facility Lease Term identified as a "Termination Date" on Schedule 2 of such Facility Lease.

"TERMINATION PAYMENT DATE" with respect to a Facility Lease, shall have the meaning specified in Section 10.2(a) of such Facility Lease.

"TERMINATION VALUES" with respect to a Facility Lease, shall have the meaning specified in Schedule 2 to such Facility Lease.

"TIA" shall mean the Trust Indenture Act of 1939.

"TITLE POLICIES" shall mean (i) with respect to the Tiverton Lessee, the title insurance policy (#75272) dated as of December 19, 2000 and (ii) with respect to the Rumford Lessee, the title insurance policy (#206-269) dated as of December 19, 2000.

"TIVERTON ADDITIONAL LESSOR NOTES" shall have the meaning specified in Section 2.12 of the Collateral Trust Indenture.

"TIVERTON BILL OF SALE" shall mean the Tiverton Bill of Sale, dated as of the Closing Date, between Tiverton Lessee and the Owner Lessor, substantially in the form of Exhibit B-1 to the Participation Agreement duly completed, executed and delivered on the Closing Date pursuant to which the Owner Lessor will acquire the Tiverton Facility from the Tiverton Lessee.

"TIVERTON EASEMENTS" shall mean the easements appurtenant, easements in gross, license agreements and other rights running in favor of the Tiverton Lessee and/or appurtenant to the Tiverton Site.

"TIVERTON FACILITY" shall mean a 265 MW nameplate capacity gas-fired combined cycle merchant power plant located in Tiverton, Rhode Island and more fully described in Exhibit A-1 to the Participation Agreement. The Tiverton Facility does not include the Tiverton Facility Site.

"TIVERTON FACILITY LEASE" shall mean the Facility Lease Agreement (Tiverton), dated as of December 19, 2000, between the Owner Lessor and Tiverton Lessee, substantially in the form of Exhibit C-1 to the Participation Agreement.

"TIVERTON FACILITY SITE RENT" shall have the meaning set forth in Section 4.1 of the Tiverton Facility Site Lease.

"TIVERTON LEASE" shall have the meaning set forth in the recitals to the Tiverton Sublease.

"TIVERTON LESSEE" shall mean Tiverton Power Associates Limited Partnership.

"TIVERTON LESSOR NOTE(s)" shall have the meaning specified in Section 2.2 of the Collateral Trust Indenture.

"TIVERTON NOTES" shall mean any Tiverton Lessor Notes or Tiverton Additional Lessor Notes issued pursuant to the Collateral Trust Indenture.

"TIVERTON OPERATIVE DOCUMENTS" shall mean the Participation Agreement, the Tiverton Bill of Sale, the Tiverton Facility Lease, the Certificates, the Tiverton Facility Site Lease, the Tiverton Facility Site Sublease, the Collateral Trust Indenture, the Tiverton Lessor Notes, the Pass Through Trust Agreement, the LLC Agreement, the Tax Indemnity Agreement, the Calpine Guaranty (Tiverton), the OP Parent Guaranty (if any), the Certificate Purchase Agreement and the Qualifying Letter of Credit.

"TIVERTON PARCEL" shall have the meaning specified in Section 2.1(a) of the Tiverton Site Lease and of the Tiverton Site Sublease.

"TIVERTON POWER ASSOCIATES" shall mean Tiverton Power Associates Limited Partnership.

"TIVERTON SITE" shall have the meaning set forth in the recitals to the Facility Site Lease and the Facility Site Sublease.

"TIVERTON SITE LEASE" shall mean the Facility Site Lease (Tiverton), dated as of December 19, 2000, between the Tiverton Lessee and the Owner Lessor, substantially in the form of Exhibit D-1 to the Participation Agreement.

"TIVERTON SITE LESSEE" shall mean PMCC Calpine New England Investment LLC.

"TIVERTON SITE LESSOR" shall mean Tiverton Power Associates Limited Partnership.

"TIVERTON SUBLEASE" shall have the meaning set forth in the recitals to the Tiverton Site Lease.

**"TIVERTON SITE SUBLESSEE" or "TIVERTON SUBLESSEE" as the context**

may require, shall mean Tiverton Power Associates, Limited Partnership.

**"TIVERTON SITE SUBLESSEE EVENT OF DEFAULT" shall have the**

meaning set forth in Section 13.1 of the Facility Site Sublease (Tiverton).

"TIVERTON SITE SUBLESSOR" shall mean PMCC Calpine New England Investment LLC.

"TRANSACTION COSTS" shall mean the following costs, to the extent substantiated or otherwise supported in reasonable detail:

(i) the reasonable costs of reproducing and printing the Operative Documents and all costs and fees, including but not limited to filing and recording fees and recording, transfer, mortgage, intangible and similar taxes in connection with the execution, delivery, filing and recording of the Facility Leases, the Facility Site Leases, the Facility Site Subleases and any other Operative Document and any other document required to be filed or recorded pursuant to the provisions hereof or of any other Operative Document and any Uniform Commercial Code filing fees in respect of the perfection of any security interests created by any of the Operative Documents or as otherwise reasonably required by the Owner Lessor or the Indenture Trustee and surveyor fees;

(ii) the reasonable fees and expenses of Dewey Ballantine LLP, counsel to CSFB, for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and the other Operative Documents;

(iii) the reasonable fees and expenses of Hunton and Williams, counsel to the Owner Participant and the Owner Lessor for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and the other Operative Documents;

- (iv) the reasonable fees and expenses of Verill & Dana, Maine counsel to the Initial Purchasers;
- (v) the reasonable fees and expenses of Peabody & Arnold, Rhode Island counsel to the Initial Purchasers;
- (vi) the reasonable fees and expenses of Thelen Reid & Priest LLP, counsel to the Facility Lessees and the Guarantors for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and other Operative Documents;
- (vii) the reasonable fees and expenses of Hinckley, Allen & Snyder, Rhode Island counsel to the Facility Lessees;
- (viii) the reasonable fees and expenses of Drummond Woodsom & MacMahon, Maine counsel to the Facility Lessees;
- (ix) the reasonable fees and expenses of Steptoe & Johnson, special regulatory counsel to the Facility Lessees;
- (x) the reasonable fees and expenses of Latham & Watkins, counsel to the Underwriters, for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and the other Operative Documents;
- (xi) the reasonable fees and expenses for services rendered in connection with the recording of the Memorandum of Lease, the Memorandum of Facility Site Lease, the Memorandum of Facility Site Sublease and the other applicable Operative Documents;
- (xii) the reasonable fees and expenses of Bingham Dana, counsel for the Indenture Trustee and the Lease Indenture Company and the Pass Through Company and the Pass Through Trustee, for their services rendered in connection with the negotiation, execution and delivery of the Participation Agreement and the other Operative Documents;
- (xiii) the initial fees and expenses of the Indenture Trustee in connection with the execution and delivery of the Participation Agreement and the other Operative Documents to which either one is or will be a party;
- (xiv) the fees and expenses of the Engineering Consultant, for its services rendered in connection with delivering the Engineering Report required by Section 4.17 of the Participation Agreement;
- (xv) the fees and expenses of the other consultants listed in Section 4.17 of the Participation Agreement, for their respective services rendered in connection with delivering the reports required by such Section 4.17;
- (xvi) the fees and expenses of the Appraiser, for its services rendered in connection with delivering the Closing Appraisal required by Section 4.15 of the Participation Agreement;

(xvii) the fees and expenses of the Environmental Consultant retained by the Owner Participant;

(xviii) the debt and equity arrangement fees set forth in the letter agreement dated October 16, 2000 between CSFB and Calpine, and its reasonable out-of-pocket costs and expenses payable to Underwriters;

(xix) the debt arrangement fees set forth in the Certificate Purchase Agreement to be dated as of the Closing Date among the Facility Lessees, Calpine and the Initial Purchasers, and its reasonable out-of-pocket costs and expenses;

(xx) all reasonable costs and expenses incurred pursuant to the syndication of the debt and equity;

(xxi) the fees and expenses of the Rating Agencies in connection with the rating of the Certificates;

(xxii) the out-of-pocket expenses of the Owner Participant incurred in connection with the Overall Transaction;

(xxiii) the reasonable fees and expenses of Curtis, Thaxter, Stevens Broder & Micoeau LLC, Maine counsel to the Owner Participant and the Owner Lessor; and

(xxiv) the reasonable fees and expenses of Edwards & Angell, LLP, Rhode Island counsel to the Owner Participant and the Owner Lessor.

Notwithstanding the foregoing, Transaction Costs shall not include internal costs and expenses such as salaries and overhead of whatsoever kind or nature nor costs incurred by the parties to the Participation Agreement pursuant to arrangements with third parties for services (other than those expressly referred to above), such as computer time procurement (other than out-of-pocket expenses of the Owner Participant), financial analysis and consulting, advisory services, and costs of a similar nature.

"TRANSACTION PARTY" shall mean, individually or collectively, as the context shall require, all or any of the parties to the Operative Documents (including the Lease Indenture Company and the Pass Through Company).

"TRANSACTIONS" shall mean, collectively, each of the transactions contemplated under the Participation Agreement and the other Operative Documents.

"TRANSFeree" shall mean a transferee of the Owner Participant permitted by Section 7.1 of the Participation Agreement.

"TRANSFeree GUARANTOR" shall have the meaning set forth in Section 7.1(a)(iii) of the Participation Agreement.

"TREASURY REGULATIONS" shall mean regulations, including temporary regulations, promulgated under the Code.

"TRUST INDENTURE ACT" shall mean

"UNDERWRITERS" shall mean Credit Suisse First Boston, TD Securities and ING Barings LLC.

"UNFUNDED CURRENT LIABILITY" of any Plan shall mean the amount, if any, by which the value of the accumulated plan benefits under the Plan determined on a plan termination basis in accordance with actuarial assumptions at such time consistent with those prescribed by the PBGC for purposes of Section 4044 of ERISA, exceeds the fair market value of all plan assets allocable to such liabilities under Title IV of ERISA (excluding any accrued but unpaid contributions).

"UNIFORM COMMERCIAL CODE" or "UCC" shall mean the Uniform Commercial Code as in effect in the applicable jurisdiction.

"UNITED STATES PERSON" shall have the meaning specified in Section 7701(a)(30) of the Code or any successor provision thereto.

"UNRESTRICTED SUBSIDIARY" means (i) any Subsidiary that at the time of determination shall be designated an Unrestricted Subsidiary by the Board of Directors in the manner provided by the Indenture, dated as of August 10, 2000, between the Guarantor and Wilmington Trust Company, as Trustee and  
(ii) any Subsidiary of an Unrestricted Subsidiary.

"U.S. GOVERNMENT OBLIGATIONS" shall have the meaning set forth in Section 9.1(b) of the Collateral Trust Indenture.

"VERIFIER" with respect to a Facility Lease, shall have the meaning specified in Section 3.4(c) of such Facility Lease.

"WHOLLY OWNED SUBSIDIARY" means a Subsidiary (other than an Unrestricted Subsidiary) all the Capital Stock of which (other than directors' qualifying shares) is owned by the Guarantor or another Wholly Owned Subsidiary.

WHEN RECORDED, RETURN TO:

THOMAS M. SIMPSON, ESQ.  
LATHAM & WATKINS  
885 THIRD AVE.  
NEW YORK, NEW YORK 10022

---

**OPEN-END MORTGAGE TO SECURE PRESENT  
AND FUTURE LOANS UNDER CHAPTER 25  
OF TITLE 34 OF THE GENERAL LAWS OF THE  
STATE OF RHODE ISLAND**

**INDENTURE OF TRUST, MORTGAGE  
AND SECURITY AGREEMENT**

**Dated as of December 19, 2000**

between

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC**

and

**STATE STREET TRUST BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION  
as Indenture Trustee**

---

**TIVERTON AND RUMFORD FACILITIES**

## TABLE OF CONTENTS

	PAGE
SECTION 1. DEFINITIONS.....	4
SECTION 2. THE NOTES.....	5
Section 2.1. Limitation on Notes.....	5
Section 2.2. Lessor Notes.....	6
Section 2.3. Execution and Authentication of Notes.....	6
Section 2.4. Issuance and Terms of the Lessor Notes.....	6
Section 2.5. Payments from Indenture Estate Only; No Personal Liability of the Owner Lessor, the Owner Participant or the Indenture Trustee.....	7
Section 2.6. Method of Payment.....	7
Section 2.7. Application of Payments.....	8
Section 2.8. Registration, Transfer and Exchange of Notes.....	9
Section 2.9. Mutilated, Destroyed, Lost or Stolen Notes.....	9
Section 2.10. Redemptions; Assumption.....	10
Section 2.11. Payment of Expenses on Transfer.....	13
Section 2.12. Additional Lessor Notes.....	13
Section 2.13. Restrictions of Transfer Resulting from Federal Securities Laws; Legend.....	15
Section 2.14. Security for and Parity of Notes.....	15
Section 2.15. Acceptance of the Indenture Trustee.....	15
SECTION 3. RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM INDENTURE ESTATE...	15
Section 3.1. Distribution of Periodic Rent.....	15
Section 3.2. Payments Following Event of Loss or Other Early Termination.....	17
Section 3.3. Payments After Lease Indenture Event of Default.....	18
Section 3.4. Investment of Certain Payments Held by the Indenture Trustee.....	19
Section 3.5. Application of Certain Other Payments.....	19
Section 3.6. Other Payments.....	19
Section 3.7. Excepted Payments.....	20
Section 3.8. Distributions to the Owner Lessor.....	20
Section 3.9. Payments Under Assigned Documents.....	20
Section 3.10. Disbursement of Amounts Received by the Indenture Trustee.....	20

**TABLE OF CONTENTS**  
**(CONTINUED)**

	PAGE
SECTION 4.	COVENANTS OF OWNER LESSOR; DEFAULTS; REMEDIES OF INDENTURE TRUSTEE.....21
Section 4.1.	Covenants of Owner Lessor.....21
Section 4.2.	Occurrence of Lease Indenture Event of Default.....21
Section 4.3.	Remedies of the Indenture Trustee.....23
Section 4.4.	Right to Cure Certain Lease Events of Default.....25
Section 4.5.	Rescission of Acceleration.....27
Section 4.6.	Return of Indenture Estate, Etc.....28
Section 4.7.	Power of Sale and Other Remedies.....29
Section 4.8.	Appointment of Receiver.....30
Section 4.9.	Remedies Cumulative.....30
Section 4.10.	Waiver of Various Rights by the Owner Lessor.....30
Section 4.11.	Discontinuance of Proceedings.....31
Section 4.12.	No Action Contrary to the Facility Lessees' Rights Under the Facility Leases.....31
Section 4.13.	Right of the Indenture Trustee to Perform Covenants, Etc.....31
Section 4.14.	Further Assurances.....31
Section 4.15.	Waiver of Past Defaults.....32
SECTION 5.	DUTIES OF INDENTURE TRUSTEE; CERTAIN RIGHTS AND DUTIES OF OWNER LESSOR..32
Section 5.1.	Notice of Action Upon Lease Indenture Event of Default.....32
Section 5.2.	Actions Upon Instructions Generally.....32
Section 5.3.	Action Upon Payment of Notes or Termination of Facility Leases.....32
Section 5.4.	Compensation of the Indenture Trustee; Indemnification.....33
Section 5.5.	No Duties Except as Specified; No Action Except Under Facility Leases, Indenture or Instructions.....33
Section 5.6.	Certain Rights of the Owner Lessor.....34
Section 5.7.	Restrictions on Dealing with Indenture Estate.....35
Section 5.8.	Filing of Financing Statements and Continuation Statements.....35
SECTION 6.	INDENTURE TRUSTEE AND OWNER LESSOR.....36
Section 6.1.	Acceptance of Trusts and Duties.....36
Section 6.2.	Absence of Certain Duties.....37

**TABLE OF CONTENTS**  
**(CONTINUED)**

	PAGE
Section 6.3.	Representations and Warranties.....38
Section 6.4.	No Segregation of Moneys; No Interest.....38
Section 6.5.	Reliance; Agents; Advice of Experts.....39
SECTION 7.	SUCCESSOR INDENTURE TRUSTEES AND SEPARATE TRUSTEES.....39
Section 7.1.	Resignation or Removal of the Indenture Trustee; Appointment of Successor.....39
Section 7.2.	Appointment of Additional and Separate Trustees.....44
SECTION 8.	SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS.....42
Section 8.1.	Supplemental Indenture and Other Amendment With Consent; Conditions and Limitations.....42
Section 8.2.	Supplemental Indentures and other Amendments Without Consent.....43
Section 8.3.	Conditions to Action by the Indenture Trustee.....44
SECTION 9.	MISCELLANEOUS.....45
Section 9.1.	Surrender, Defeasance and Release.....45
Section 9.2.	Conveyances Pursuant to Section 4.2 of Site Leases and Subleases.....46
Section 9.3.	Appointment of the Indenture Trustee as Attorney; Further Assurances.46
Section 9.4.	Indenture for Benefit of Certain Persons Only.....46
Section 9.5.	Notices; Furnishing Documents, etc.....47
Section 9.6.	Severability.....48
Section 9.7.	Limitation of Liability.....48
Section 9.8.	Written Changes Only.....48
Section 9.9.	Counterparts.....49
Section 9.10.	Successors and Permitted Assigns.....49
Section 9.11.	Headings and Table of Contents.....49
Section 9.12.	Governing Law.....49
Section 9.13.	Reorganization Proceedings with Respect to the Lessor Estate.....49
Section 9.14.	Withholding Taxes: Information Reporting.....50
Section 9.15.	Fixture Financing Statement.....50

**TABLE OF CONTENTS**  
**(CONTINUED)**

	PAGE
APPENDIX	
Appendix A	Definitions
EXHIBITS	
Exhibit A-1	Description of Tiverton Site
Exhibit A-2	Description of Rumford Site
Exhibit B-1	Form of Tiverton Lessor Note
Exhibit B-2	Form of Rumford Lessor Note
Exhibit C	Form of Certificate of Authentication
Exhibit D-1	Description of Tiverton Facility
Exhibit D-2	Description of Rumford Facility

**OPEN-END MORTGAGE TO SECURE PRESENT**

**AND FUTURE LOANS UNDER CHAPTER 25**

**OF TITLE 34 OF THE GENERAL LAWS OF THE**

**STATE OF RHODE ISLAND**

**INDENTURE OF TRUST, MORTGAGE AND SECURITY TRUST**

This OPEN-END MORTGAGE TO SECURE PRESENT AND FUTURE LOANS UNDER CHAPTER 25 OF TITLE 34 OF THE GENERAL LAWS OF THE STATE OF RHODE ISLAND, INDENTURE OF TRUST, MORTGAGE AND SECURITY AGREEMENT (this "Indenture"), dated as of December 19, 2000, between PMCC Calpine New England Investment LLC, a Delaware limited liability company as mortgagor (the "Owner Lessor") and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION as mortgagee on behalf of the Noteholders (the "Indenture Trustee").

**WITNESSETH:**

WHEREAS, pursuant to the Participation Agreement, the Owner Lessor has purchased the Tiverton Facility from Tiverton Power Associates Limited Partnership and the Rumford Facility from Rumford Power Associates Limited Partnership (the "Facility Lessees");

WHEREAS, the Owner Lessor has entered into a Facility Lease, dated as of the date hereof with each of the Facility Lessees pursuant to which the Facility Lessees have leased from the Owner Lessor for a term of years the Facilities, which they sold to the Owner Lessor pursuant to the Bills of Sale;

WHEREAS, the Tiverton Facility is more particularly described on Exhibit D-1 hereto and made a part hereof, and the Rumford Facility is more particularly described on Exhibit D-2 hereto and made a part hereof;

WHEREAS, the Facility Lessees have leased the Tiverton and Rumford Ground Interests (as hereinafter defined) with the right to nonexclusive possession thereof to the Owner Lessor pursuant to the certain Tiverton Site Lease and Rumford Site Lease, respectively, a memorandum of which shall be recorded with this Indenture in the appropriate registry of [deeds/land records] described in Exhibits A-1 and A-2, respectively, attached hereto, and the Owner Lessor simultaneously therewith has leased the Facility Lessees' respective Ground Interest back to the Facility Lessees pursuant to the Tiverton Site Sublease and Rumford Site Sublease, respectively;

WHEREAS, the Tiverton and Rumford Sites are more particularly described in Exhibits A-1 and A-2, respectively, attached hereto;

WHEREAS, in accordance with this Indenture, the Owner Lessor will (i) execute and deliver the Tiverton Lessor Notes and the Rumford Lessor Notes, the proceeds of which will be used by the Owner Lessor to finance a portion of the Purchase Price for the Rumford Facility and the Tiverton Facility purchased from the Facility Lessees, and (ii) grant to the Indenture Trustee the security interests herein provided;

WHEREAS, this Indenture is regarded as a mortgage deed under the laws of the States of Rhode Island and Maine, as a security agreement under the Uniform Commercial Codes of the States of New York, Rhode Island, Maine, Connecticut, Massachusetts and California and as a fixture filing under the laws of the States of Rhode Island and Maine;

WHEREAS, the Owner Lessor and the Indenture Trustee desire to enter into this Indenture, to, among other things, provide for (a) the issuance by the Owner Lessor of the Lessor Notes to be issued on the Closing Date, and Additional Lessor Notes from time to time and (b) the conveyance and assignment to the Indenture Trustee on the Closing Date of the Facilities conveyed to the Owner Lessor and the Owner Lessor's right, title and interest in and under the Operative Documents executed in connection therewith and all payments and other amounts received hereunder or thereunder in accordance herewith (excluding Excepted Payments);

WHEREAS, all things have been done to make the Notes, when executed by the Owner Lessor, authenticated and delivered hereunder and issued, the valid obligations of the Owner Lessor; and

WHEREAS, all things necessary to make this Indenture the valid, binding and legal obligation of the Owner Lessor, for the uses and purposes herein set forth, in accordance with its terms, have been done and performed and have happened.

NOW THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure (i) the prompt payment when and as due of the principal of and the Make-Whole Amount, if any, and interest on the Notes and of all other amounts owing with respect to all Notes from time to time outstanding hereunder, and the prompt payment when and as due of any and all other amounts from time to time owing in respect of the Secured Indebtedness and (ii) the performance and observance by the Owner Lessor for the benefit of the holders of the Notes and the Indenture Trustee of all other obligations, agreements, and covenants of the Owner Lessor set forth hereinafter and in the Notes, the Operative Documents and the other documents, certificates and agreements delivered in connection therewith:

**GRANTING CLAUSE:**

The Owner Lessor hereby irrevocably grants, conveys, assigns, transfers, pledges, bargains, sells and confirms unto the Indenture Trustee and its successors and permitted assigns, for the benefit of the holders of the Notes from time to time, a first priority security interest in and mortgage lien on all estate, right, title and interest of the Owner Lessor, WITH MORTGAGE COVENANTS and grants a security interest in, to and under the following described property, rights, interests and privileges, whether now held or hereafter acquired

(which collectively, including all property hereafter specifically subjected to the security interest created by this Indenture by any supplement hereto, exclusive of Excepted Payments) are included within, and are hereafter referred to as, the "Indenture Estate"):

(1) the Facilities (described in Exhibits D-1 and D-2 attached hereto) conveyed to the Owner Lessor pursuant to the Bills of Sale located on the Tiverton Site and the Rumford Site (said Sites being more particularly described in Exhibits A-1 and A-2 attached hereto), and the leasehold estates in the Ground Interest (as hereinafter defined) granted to the Owner Lessor by the Tiverton Site Lease, the Tiverton Sublease, the Rumford Site Lease and the Rumford Sublease, together with all titles, estates, interests, rights, powers and privileges of the Owner Lessor in respect thereof;

(2) all the estate, right, title and interest of the Owner Lessor in, to and under the Bills of Sale, the Facility Leases, the Facility Site Leases and Facility Site Subleases, the Calpine Guaranties and the Participation Agreement (collectively, the "Assigned Documents"), including (a) all amounts of Periodic Rent and Supplemental Rent and payments of any kind payable under the Facility Leases, including Termination Value, insurance proceeds and condemnation, requisition and other awards and payments of any kind for or with respect to any part of the Indenture Estate as contemplated in the Assigned Documents and (b) all rights of the Owner Lessor to exercise any election or option or to make any decision or determination or to give or receive any notice, consent, waiver or approval or to take any other action under or in respect of any Assigned Document, as well as all the rights, powers and remedies on the part of the Owner Lessor, whether arising under any Assigned Document or by statute or at law or equity or otherwise, and whether or not arising out of any Significant Lease Default, Lease Indenture Event of Default or Event of Default (except to the extent provided under Section 5.6 hereof);

(3) all rents (including Periodic Rent and Supplemental Rent payable under the Facility Leases), issues, profits, royalties, products, revenues, and other income of all property from time to time subjected or required to be subjected to the Lien of this Indenture, including all payments or proceeds payable to the Owner Lessor after termination of the Facility Leases with respect to the Facilities or any portion thereof as the result of the sale, lease or other disposition of the Facilities or any portion thereof and the Ground Interests or any portion thereof, and all the estate, right, title, and interest, of every nature whatsoever of the Owner Lessor in and to the same and every part thereof (the "Revenues");

(4) all moneys, securities and other investment property now or hereafter deposited or paid or required to be deposited or paid with the Indenture Trustee pursuant to any term of this Indenture or any other Assigned Document and held or required to be held by or for the benefit of the Indenture Trustee hereunder;

(5) all the estate, right, title and interest of the Owner Lessor in and to any right to restitution from the Facility Lessees in respect of any determination of invalidity of any Assigned Document;

(6) all rights of the Owner Lessor to amounts paid or payable by the Facility Lessees to the Owner Lessor under the Participation Agreement and all rights of the Owner Lessor to enforce payment of any such amounts;

(7) all other property, rights and privileges of every kind and description, real, personal and mixed, tangible and intangible and all interests therein, now held or hereafter acquired by the Owner Lessor pursuant to any term of any Assigned Document, whether located on the Tiverton or Rumford Site or elsewhere and whether or not subjected to the Lien of this Indenture by a supplement hereto; and

(8) all proceeds of the foregoing;

BUT EXCLUDING from such property, rights and privileges all Excepted Payments and SUBJECT TO the rights of the Owner Lessor and the Owner Participant hereunder, including under Sections 4.3(d), 4.4 and 5.6 hereof;

TO HAVE AND TO HOLD the Indenture Estate and all parts, rights, members and appurtenances thereof, unto the Indenture Trustee and the successors and permitted assigns of the Indenture Trustee, for the benefit and security of the Noteholders from time to time, forever, and in fee simple as to all parts thereof constituting real property;

PROVIDED, HOWEVER, that if the principal of and the Make-Whole Amount, if any, and interest on the Notes, and all other Secured Indebtedness hereunder shall have been paid and the Owner Lessor shall have performed and complied with all the covenants, agreements, terms and provisions hereof, then this Indenture and the rights hereby granted shall terminate and cease.

Concurrently with the delivery of this Indenture, the Owner Lessor is delivering to the Indenture Trustee the chattel paper originally-executed counterpart of each of the Facility Leases. All property referred to in this Granting Clause, whenever acquired by the Owner Lessor, shall secure all obligations under and with respect to the Notes at any time outstanding. Any and all properties referred to in this Granting Clause which are hereafter acquired by the Owner Lessor, shall, without further conveyance, assignment or act by the Owner Lessor or the Indenture Trustee thereby become and be subject to the security interest hereby granted as fully and completely as though specifically described herein.

This Indenture is intended to constitute a security agreement as required under the Uniform Commercial Codes of the States of New York, Rhode Island, Maine, Connecticut, Massachusetts and California.

The Indenture Trustee, for itself and its successors and permitted assigns, hereby agrees that it shall hold the Indenture Estate, in trust for the benefit and security of (i) the holders from time to time of the Notes from time to time outstanding, without any priority of any one Note over any other except as herein otherwise expressly provided and (ii) the Indenture Trustee, and for the uses and purposes and subject to the terms and provisions set forth in this Indenture. It is expressly agreed that anything herein contained to the contrary notwithstanding, the Owner Lessor shall remain liable under the Assigned Documents to perform all of the obligations assumed by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and the Indenture Trustee and the Noteholders shall have no obligation or liability under any Assigned Document by reason of or arising out of the assignment hereunder, nor shall the Indenture Trustee or the Noteholders be required or obligated in any manner, except as herein

expressly provided, to perform or fulfill any obligation of the Owner Lessor under or pursuant to any such Assigned Document or, except as herein expressly provided, to make any payment, or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim, or to take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times).

Accordingly, the Owner Lessor, for itself and its successors and permitted assigns, agrees that all Notes are to be issued and delivered and that all property subject or to become subject hereto is to be held subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Owner Lessor, for itself and its successors and permitted assigns, hereby covenants and agrees with the Indenture Trustee, for the benefit and security of the holders from time to time of the Notes from time to time outstanding and to protect the security of this Indenture, and the Indenture Trustee agrees to accept the trusts and duties hereinafter set forth, as follows:

## SECTION 1. DEFINITIONS

(b) (a) Unless the context hereof shall otherwise require, capitalized terms used, including those in the recitals, and not otherwise defined herein shall have the respective meanings set forth in Appendix A attached hereto. The general provisions of such Appendix A shall apply to the terms used in this Indenture and specifically defined herein.

(c) (b) In addition, the following terms shall have the following meanings.

"Ground Interests" means the interest in the Rumford Site as described in Exhibit A-2 or the Tiverton Site as described in Exhibit A-1 leased to the Owner Lessor and subleased to the applicable Lessee pursuant to the Rumford Site Lease and Rumford Site Sublease and the Tiverton Site Lease and Tiverton Site Sublease, respectively.

"Secured Indebtedness" means principal of and the Make-Whole Amount, if any, and interest on and other amounts due under all Notes and all other sums payable to the Indenture Trustee or the Noteholders from time to time hereunder and under the Participation Agreement and the other Operative Documents by the Facility Lessees, the Owner Participant and the Owner Lessor, including:

(i) (i) The indebtedness evidenced by the Lessor Notes, together with interest thereon at the rate provided in each Lessor Note and the Make-Whole Amount thereon and together with any and all renewals, modifications, consolidations and extensions of the indebtedness evidenced by such Lessor Notes, and principal of such Lessor Notes being due and payable as provided in such Lessor Notes;

(ii) (ii) Any and all other indebtedness now owing or which may hereafter be owing by the Owner Lessor to or for the benefit of the Indenture Trustee under the Operative Documents including indemnities and other Supplemental Rent payable by the Facility Lessees under the Operative Documents, whether evidenced by Additional Lessor Notes issued pursuant to Section 2.12 hereof or otherwise, however and whenever incurred or evidenced, whether direct or indirect, absolute or contingent, due or to become due, together with interest thereon at the rate provided in each Additional Lessor Note and the Make-Whole Amount thereon (if any) and together with any and all

renewals, modifications, consolidations and extensions of the indebtedness evidenced by such Additional Lessor Notes, and principal of such Additional Lessor Notes being due and payable as provided in each such Additional Lessor Note.

(iii) (iii) Any and all additional advances made by the Indenture Trustee to protect or preserve the Indenture Estate or the security interest and other interests created hereby on the Indenture Estate or for taxes, assessments or insurance premiums as hereinafter provided or for performance of any of the Owner Lessor's obligations hereunder or for any other purpose provided herein, including advances made pursuant to Section 4.13 hereof (whether or not the Owner Lessor remains the owner of the Indenture Estate at the time of such advances); and

(iv) (iv) Any and all expenses incident to the collection of the Secured Indebtedness and the foreclosure hereof by action in any court or by exercise of the power of sale herein contained.

## SECTION 2. THE NOTES

Section 2.1. Limitation on Notes. No Notes may be issued under the provisions of, or become secured by, this Indenture except in accordance with the provisions of this Section 2. The aggregate principal amount of the Notes which may be authenticated and delivered and outstanding at any one time under this Indenture shall be limited to the principal amount of the Lessor Notes issued on the Closing Date to the Pass Through Trustee, plus the aggregate principal amount of Additional Lessor Notes issued pursuant to Section 2.12.

Section 2.2. Lessor Notes. There is hereby created and established hereunder a note in the aggregate principal amount of \$190,000,000 with a final maturity date of July 15, 2018, substantially in the form set forth in Exhibit B-1 to this Indenture (the "Tiverton Lessor Notes"). There is hereby created and established hereunder a note in the aggregate principal amount of \$176,000,000 with a final maturity date of July 15, 2018, substantially in the form set forth in Exhibit B-2 to this Indenture (the "Rumford Lessor Notes" and, together with the Tiverton Lessor Note, the "Lessor Notes").

Section 2.3. Execution and Authentication of Notes. Each Note issued hereunder shall be executed and delivered on behalf of the Owner Lessor by one of its authorized signatories, be in fully registered form, be dated the date of original issuance of such Note and be in denominations of not less than \$1,000. Any Note may be signed by a Person who, at the actual date of the execution of such Note, is an authorized signatory of the Owner Lessor although at the nominal date of such Note such Person may not have been an authorized signatory of the Owner Lessor. No Note shall be secured by or be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears thereon a certificate of authentication in the form contained in Exhibit C (or in the appropriate form provided for in any supplement hereto executed pursuant to Section 2.12 hereof), executed by the Indenture Trustee by the manual signature of one of its authorized officers, and such certificate upon any Note shall be conclusive evidence that such Note has been duly authenticated and delivered hereunder. The Indenture Trustee shall authenticate and deliver the Lessor Note for original issue on the Closing Date in the principal amount specified in Section 2.2, upon a written order of the Owner Lessor.

The Indenture Trustee shall authenticate and deliver Additional Lessor Notes, upon a written order of the Owner Lessor and satisfaction of the conditions specified in Section 2.12. Such order shall specify the principal amount of the Additional Lessor Notes to be authenticated and the date on which the original issue of Additional Lessor Notes is to be authenticated.

#### Section 2.4. Issuance and Terms of the Lessor Notes.

(a) Issuance of the Lessor Notes at the Closing. On the Closing Date, the Lessor Notes shall be issued to the Pass Through Trust in the amounts set forth in Section 2.2 hereof, and shall be dated the Closing Date.

(b) Principal and Interest. The principal amount of each Lessor Note shall be due and payable in a series of installments having a final payment date of July 15, 2018. The principal of each Lessor Note shall be due and payable in installments on the dates and in the amounts set forth in the Schedule(s) attached to such Lessor Note on the date of issuance and authentication thereof. The Schedule(s) to each Lessor Note to the contrary notwithstanding, the last payment made under such Lessor Note shall be equal to the then unpaid balance of the principal of such Lessor Note plus all accrued and unpaid interest on, and any other amounts due under, such Lessor Note. Each Lessor Note shall bear interest on the principal from time to time outstanding from and including the date of issuance thereof (computed on the basis of a 360-day year of twelve 30-day months) until paid in full at the rate set forth in such Lessor Note. Interest on each Lessor Note shall be due and payable in arrears semi-annually commencing on July 15, 2001, and on each July 15 and January 15 thereafter until paid in full. If any day on which principal, Make-Whole Amount, if any, or interest on the Lessor Notes are payable is not a Business Day, payment thereof shall be made on the next succeeding Business Day with the same effect as if made on the date on which such payment was due.

(c) Overdue Payments. Interest (computed on the basis of a 360-day year of twelve 30-day months) on any overdue principal, Make-Whole Amount (if any) and, to the extent permitted by Applicable Law, interest and any other amounts payable shall be paid on demand at the Overdue Rate.

(d) Indemnity Amounts. The Owner Lessor agrees to pay to the Indenture Trustee for distribution in accordance with Section 3.5 hereof any and all indemnity amounts received by the Owner Lessor which are payable by the Facility Lessees to (i) the Indenture Trustee, (ii) the Pass Through Trust, or (iii) the Pass Through Trustee.

Section 2.5. Payments from Indenture Estate Only; No Personal Liability of the Owner Lessor, the Owner Participant or the Indenture Trustee. Except as otherwise specifically provided in this Indenture or the Participation Agreement, all payments in respect of the Notes or under this Indenture shall be made only from the Indenture Estate, and the Owner Lessor shall have no obligation for the payment thereof except to the extent that there shall be sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 hereof; and the Owner Participant shall not have any obligation for payments in respect of the Notes or under this Indenture. The Indenture Trustee and each Noteholder, by its acceptance thereof, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the Indenture Trustee or such

Noteholder, as the case may be, as herein provided and that, except as expressly provided in this Indenture, the Participation Agreement or any other Operative Document, none of the Owner Participant, the Owner Lessor, the Lease Indenture Company, nor the Indenture Trustee shall be personally liable to such Noteholder or the Indenture Trustee for any amounts payable hereunder, under such Note or for any performance to be rendered under any Assigned Document or for any liability under any Assigned Document. Without prejudice to the foregoing, the Owner Lessor will duly and punctually pay or cause to be paid the principal of, Make-Whole Amount, if any, and interest on all Notes according to their terms and the terms of this Indenture. Nothing contained in this Section 2.5 limiting the liability of the Owner Lessor shall derogate from the right of the Indenture Trustee and the Noteholders to proceed against the Indenture Estate and the Calpine Guaranties to secure and enforce all payments and obligations due hereunder and under the Assigned Documents and the Notes.

(a) In furtherance of the foregoing, to the fullest extent permitted by law, each Noteholder (and each assignee of such Person), by its acceptance thereof, agrees that neither it nor the Indenture Trustee will exercise any statutory right to negate the agreements set forth in this Section 2.5.

(b) Nothing herein contained shall be interpreted as affecting the representations, warranties or agreements of the Owner Lessor set forth in the Participation Agreement or the LLC Agreement.

Section 2.6. Method of Payment. The Owner Lessor shall maintain an office or agency where Notes may be presented for payment (the "Paying Agent"). The Owner Lessor may have one or more additional paying agents. The term "Paying Agent" includes any additional paying agent. The Owner Lessor initially appoints the Indenture Trustee as Paying Agent in connection with the Notes.

(a) The Owner Lessor shall deposit with the Paying Agent a sum sufficient to pay such principal and interest when so becoming due. The Owner Lessor shall require each Paying Agent (other than the Indenture Trustee) to agree in writing that the Paying Agent shall hold in trust for the benefit of the Noteholders or the Indenture Trustee all money held by the Paying Agent for the payment of principal of or interest on the Notes and shall notify the Indenture Trustee of any default by the Owner Lessor in making any such payment.

(b) The principal of and the Make-Whole Amount, if any, and interest on each Note shall be paid by the Paying Agent from amounts available in the Indenture Estate on the dates provided in the Notes by mailing a check for such amount, payable in New York Clearing House funds, to each Noteholder at the last address of each such Noteholder appearing on the Note Register, or by whichever of the following methods shall be specified by notice from a Noteholder to the Indenture Trustee: (i) by crediting the amount to be distributed to such Noteholder to an account maintained by such Noteholder with the Indenture Trustee, (ii) by making such payment to such Noteholder in immediately available funds at the Indenture Trustee Office, or (iii) in the case of the Lessor Notes and in the case of other Notes, if such Noteholder is the Pass Through Trustee, or a bank or other institutional investor, by transferring such amount in immediately available funds for the account of such Noteholder to the banking institution having bank wire transfer facilities as shall be specified by such Noteholder, such

transfer to be subject to telephonic confirmation of payment. Any payment made under any of the foregoing methods shall be made free and clear of and without reduction for or on account of all wire and like charges and without any presentment or surrender of such Note, unless otherwise specified by the terms of the Note, except that, in the case of the final payment in respect of any Note, such Note shall be surrendered to the Indenture Trustee for cancellation after such payment. All payments in respect of the Notes shall be made (1) as soon as practicable prior to the close of business on the date the amounts to be distributed by the Indenture Trustee are actually received by the Indenture Trustee if such amounts are received by 12:00 noon New York City time, on a Business Day, or (2) on the next succeeding Business Day if received after such time or on any day other than a Business Day. One or more of the foregoing methods of payment may be specified in a Note. Prior to due presentment for registration of transfer of any Note, the Owner Lessor and the Indenture Trustee may deem and treat the Person in whose name any Note is registered on the Note Register as the absolute owner and holder of such Note for the purpose of receiving payment of all amounts payable with respect to such Note and for all other purposes, and neither the Owner Lessor nor the Indenture Trustee shall be affected by any notice to the contrary. All payments made on any Note in accordance with the provisions of this Section 2.6 shall be valid and effective to satisfy and discharge the liability on such Note to the extent of the sums so paid and (except as provided herein) neither the Indenture Trustee nor the Owner Lessor shall have any liability in respect of such payment.

Section 2.7. Application of Payments. Each payment on any outstanding Note shall be applied, first, to the payment of accrued interest (including interest on overdue principal and the Make-Whole Amount, if any, and, to the extent permitted by Applicable Law, overdue interest) on such Note to the date of such payment, second, to the payment of the principal amount of, and the Make-Whole Amount, if any, on such Note then due (including any overdue installments of principal) thereunder and third, to the extent permitted by Section 2.10 of this Indenture, the balance, if any, remaining thereafter, to the payment of the principal amount of, and the Make-Whole Amount, if any, on such Note. The order of application of payments prescribed by this Section 2.7 shall not be deemed to supersede any provision of Section 3 hereof regarding application of funds.

Section 2.8. Registration, Transfer and Exchange of Notes. The Owner Lessor shall maintain an office or agency where Notes may be presented for registration of transfer or for exchange (the "Registrar"). The Registrar shall keep a register of the Notes and of their transfer and exchange. The Owner Lessor may have one or more co-registrars. The Owner Lessor initially appoints the Indenture Trustee as Registrar in connection with the Notes. The Indenture Trustee shall maintain at the Indenture Trustee Office a register in which it will provide for the registration, registration of transfer and exchange of Notes (such register being referred to herein as the "Note Register"). If any Note is surrendered at said office for registration of transfer or exchange (accompanied by a written instrument of transfer duly executed by or on behalf of the holder thereof, together with the amount of any applicable transfer taxes), the Owner Lessor will execute and the Indenture Trustee will authenticate and deliver, in the name of the designated transferee or transferees, if any, one or more new Notes (subject to the limitations specified in Sections 2.3 and 2.13 hereof) in any denomination or denominations not prohibited by this Indenture, as requested by the Person surrendering the Note, dated the same date as the Note so surrendered and of like tenor and aggregate unpaid principal amount. Any Note or Notes issued

in a registration of transfer or exchange shall be valid obligations of the Owner Lessor entitled to the same security and benefits to which the Note or Notes so transferred or exchanged were entitled, including rights as to interest accrued but unpaid and to accrue so that there will not be any loss or gain of interest on the Note or Notes surrendered. Every Note presented or surrendered for registration of transfer or exchange shall be duly endorsed, or be accompanied by a written instrument of transfer in form reasonably satisfactory to the Indenture Trustee duly executed by the holder thereof or his attorney duly authorized in writing, and the Indenture Trustee may require an opinion of counsel as to compliance of any such transfer with the Securities Act. The Indenture Trustee shall make a notation on each new Note of the amount of all payments of principal previously made on the old Note or Notes with respect to which such new Note is issued and the date on which such new Note is issued and the date to which interest on such old Note or Notes shall have been paid. The Indenture Trustee shall not be required to register the transfer or exchange of any Note during the 10 days preceding the due date of any payment on such Note.

Each Noteholder, by its acceptance of a Note, shall be deemed to have consented to, and agreed to be bound by, the terms and conditions hereof, of such Note (and any instrument of assignment or transfer) and of the other Operative Documents.

Section 2.9. Mutilated, Destroyed, Lost or Stolen Notes. Upon receipt by the Owner Lessor and the Indenture Trustee of evidence satisfactory to each of them of the loss, theft, destruction or mutilation of any Note and, in case of loss, theft or destruction, of indemnity satisfactory to each of them, and upon reimbursement to the Owner Lessor and the Indenture Trustee of all reasonable expenses incidental thereto and payment or reimbursement for any transfer taxes, and upon surrender and cancellation of such Note, if mutilated, the Owner Lessor will execute and the Indenture Trustee will authenticate and deliver in lieu of such Note, a new Note, dated the same date as such Note and of like tenor and principal amount. Any indemnity provided by the holder of a Note pursuant to this Section 2.9 must be sufficient in the reasonable judgment of the Owner Lessor and the Indenture Trustee to protect the Owner Lessor, the Indenture Trustee, the Paying Agent, the Registrar and any co-registrar or co-paying agent from any loss which any of them may suffer if a Note is replaced.

Section 2.10. Redemptions; Assumption.

(a) Except as provided in paragraphs (c) and (d) of this Section 2.10 or as provided in any indenture supplemental hereto, the applicable Notes shall be redeemed at a price equal to the principal amount of the Notes redeemed, together with accrued interest on such principal amount so redeemed to the Redemption Date, in whole or, to the extent set forth in clause (i), (ii), (iii) or (iv), in part, in the event of:

(i) a termination of either of the Facility Leases pursuant to Section 10 thereof as a result of the occurrence of an Event of Loss (other than a Regulatory Event of Loss or an Event of Loss described in clause (v) of the definition of "Event of Loss");

(ii) a termination of either of the Facility Leases pursuant to Section 10 thereof as a result of a Regulatory Event of Loss (other than a termination as a result of a Regulatory Event of Loss set forth in subsection (B) of clause (iv) of the definition of

"Event of Loss"), unless the applicable Facility Lessee effects an assumption of the applicable Notes in accordance with paragraph (b) of this Section 2.10;

(iii) a termination pursuant to Section 13.1 of either of the Facility Leases, unless the applicable Facility Lessee purchases the applicable Facility and effectuates an assumption of the applicable Notes in accordance with paragraph (b) of this Section 2.10; and

(iv) a termination pursuant to clause (a) of Section 14.1 of either of the Facility Leases.

Any such redemption shall be made in accordance with the applicable provisions of Section 3 hereof.

(b) Unless a Significant Lease Default or a Lease Event of Default shall have occurred and be continuing after giving effect to such assumption, the obligations and liabilities of the Owner Lessor hereunder and under all of the Tiverton Notes or the Rumford Notes may be assumed in whole (but not in part) by the Tiverton Lessee or the Rumford Lessee, respectively, in the event of the occurrence of (i) a Regulatory Event of Loss affecting the applicable Facility, or (ii) a termination by the Tiverton Lessee or the Rumford Lessee, respectively, pursuant to Section 13.1 or 13.2 of the Facility Lease to which such Facility Lessee is a party, where in connection with such termination the respective Facility Lessee acquires the applicable Facility, in each case, pursuant to an assumption agreement (which assumption agreement may be combined with the indenture supplemental to this Indenture hereinafter referred to in this Section 2.10(b), and shall provide for the assumption by the applicable Facility Lessee of the obligations and liabilities of the Owner Lessor and the Owner Participant under the Operative Documents pertaining to the Facility leased by such Facility Lessee) which shall make such obligations and liabilities fully recourse to the applicable Facility Lessee and shall otherwise be in form and substance acceptable to the Indenture Trustee and the Owner Lessor. Such assumption agreement shall be accompanied by an Opinion of Counsel. The applicable Facility Lessee will execute and deliver, and the Indenture Trustee will authenticate, to each Noteholder in exchange for such old Note a new Note, in a principal amount equal to the outstanding principal amount of such old Note and otherwise in substantially similar form and tenor to such old Note but indicating that the applicable Facility Lessee are the issuers thereof. When such assumption agreement becomes effective, the Owner Lessor shall be released and discharged without further act from all obligations and liabilities assumed by the applicable Facility Lessee. All documentation in connection with any such assumption (including an indenture supplemental to this Indenture which shall, among other things, contain provisions appropriately amending references to the Facility Leases in this Indenture and contain covenants by the applicable Facility Lessee similar to those contained in the Facility Leases (other than any covenants which were solely for the benefit of the Owner Participant), changed as appropriate, and amendments or supplements to the other Operative Documents, officers' certificates, opinions of counsel and regulatory approvals) shall be prepared by and at the expense of the applicable Facility Lessee acceptable in form and substance to the Indenture Trustee. As a condition to the effectiveness of the assumption by the applicable Facility Lessee and the release of the Owner Lessor and the Indenture Estate thereby effected, (A) the Indenture Trustee shall have received an Opinion of Counsel of the applicable Facility Lessee, including, in the case of clause (2) below, a nationally

recognized counsel selected by the applicable Facility Lessee and reasonably acceptable to the Noteholders (it being acknowledged and agreed that the applicable Facility Lessee's counsel on the Closing Date shall be deemed acceptable), addressed to the Indenture Trustee and the Noteholders, to the effect (1) set forth in the definition of "Opinion of Counsel", and (2) that such assumption agreement and the assumption of the applicable Notes thereunder would not cause a Tax Event to occur, (3) the Lien of this Indenture shall continue to be a first priority perfected mortgage and security interest on the Indenture Estate, and (4) addressing such other issues as the Indenture Trustee shall reasonably request, and (B) Moody's and S&P shall have confirmed that such assumption will not result in a downgrading of the rating on the Certificates.

(c) The Owner Lessor may, at its option, redeem any Additional Lessor Notes in whole, or in part, on any date to the extent permitted by, and at the prices set forth in, the supplemental indenture establishing the terms, conditions and designations of such Additional Lessor Notes, together with the accrued interest on such principal amount plus the Make Whole Amount, if any, so redeemed.

(d) The Lessor Notes shall be redeemed, in whole or, solely to the extent provided in clause (iii) below, in part, as provided below, at the redemption price equal to the principal amount thereof, together with accrued interest on such principal amount, plus the Make-Whole Amount, as follows:

(i) The Lessor Notes shall be redeemed at such redemption price upon receipt of moneys by the Indenture Trustee as a result of an optional refinancing pursuant to Section 11.2 of the Participation Agreement. The Owner Lessor's failure to consummate such redemption as a result of an event described in this clause (i) following delivery of such notice shall not constitute a Lease Indenture Event of Default or any other default under the Operative Documents.

(ii) The Lessor Notes shall be redeemed at such redemption price upon an optional prepayment, if the Owner Lessor elects to so redeem the Lessor Notes, as described in the next two succeeding sentences. In the case of a redemption pursuant to this clause (ii), the Owner Lessor shall indemnify the Indenture Trustee and the Facility Lessees for any and all costs and expenses incurred in connection with such redemption or, in the event no redemption occurs following delivery of notice of redemption, the failure to consummate any such redemption. The Owner Lessor's failure to consummate such redemption as a result of an event described in this clause (ii) following delivery of such notice shall not constitute a Lease Indenture Event of Default or any other default under the Operative Documents.

(iii) The Lessor Notes shall be redeemed, in whole or in part, at such redemption price upon the exercise by either of the Facility Lessees of their rights to terminate their respective Facility Lease as a result of an event described in Section 13.2 or clause (b) of Section 14.1 of the Facility Leases. The Owner Lessor's failure to consummate such redemption as a result of an event described in Section 13.2 of the Facility Leases following delivery of such notice shall not constitute a Lease Indenture Event of Default or any other default under the Operative Documents;

(iv) The Lessor Notes shall be redeemed at such redemption price upon termination of either of the Facility Leases pursuant to Section 10 thereof as a result of the occurrence of an Event of Loss described in clause (v) of the definition of "Event of Loss"; and

(v) The Lessor Notes shall be redeemed at such redemption price upon termination of either of the Facility Leases pursuant to Section 10 thereof as a result of the occurrence of and Event of Loss described in subclause (B) or (C) of clause (iv) of the definition of "Event of Loss".

The Make-Whole Amount, if any, payable with respect to the Notes will be determined by an investment banking institution of national standing in the United States (the "Investment Banker") selected by the applicable Facility Lessee or, if the Owner Lessor or the Indenture Trustee does not receive notice of such selection at least ten days prior to a scheduled prepayment date or if a Lease Event of Default under the applicable Facility Lease shall have occurred and be continuing, selected by the Owner Lessor.

(e) In connection with a termination of a Facility Lease and redemption of the Notes pertaining to the Facility leased under such Facility Lease in part as contemplated by clauses (a)(i), (a)(ii), (a)(iii), (a)(iv) or (d)(iii), the applicable Lessor Note shall be redeemed in part as follows: (1) any amounts payable by the Tiverton Facility Lessee shall be applied first to the Tiverton Notes in accordance with Section 2.7 hereof and otherwise in accordance with

Section 3 hereof; and (2) any amounts payable by the Rumford Facility Lessee shall be applied first to the Rumford Notes in accordance with Section 2.7 hereof and otherwise in accordance with Section 3 hereof.

(f) If the Owner Lessor elects to redeem Notes, or Notes are otherwise required to be redeemed pursuant to this Section 2.10, the Owner Lessor shall notify the Indenture Trustee in writing of the Redemption Date, the Section of this Indenture pursuant to which the redemption will occur. The Owner Lessor shall give each notice to the Indenture Trustee provided for in this Section 2.10 at least 30 days before the Redemption Date unless the Indenture Trustee consents in writing to a shorter period. Such notice shall be accompanied by an Officers' Certificate and an opinion of counsel from the Facility Lessees to the effect that such redemption will comply with the conditions herein.

(g) At least 20 days but not more than 60 days before a Redemption Date, the Indenture Trustee shall deliver notification of such redemption by first-class mail to each Holder of Notes to be redeemed at such Holder's registered address; provided, that no notice shall be required so long as the Pass Through Trustee and the Indenture Trustee are the same entity. Each such notice shall state:

(i) the Redemption Date;

(ii) the redemption price;

(iii) (the name and address of the Paying Agent;

(iv) that Notes called for redemption must be surrendered to the Paying Agent to collect the redemption price;

(v) that, unless the Owner Lessor defaults in making such redemption payment, interest on Notes called for redemption ceases to accrue on and after the redemption date; and

(vi) the paragraph of this Indenture pursuant to which the Notes called for redemption are being redeemed.

(h) [Intentionally omitted.]

(i) Upon surrender to the Paying Agent, such Notes shall be paid at the redemption price stated in the notice, plus accrued interest to the Redemption Date. Failure to give notice or any defect in the notice to any Holder shall not affect the validity of the notice to any other Holder.

Section 2.11. Payment of Expenses on Transfer. Upon the issuance of a new Note or Notes pursuant to Section 2.8 or 2.9 hereof, the Owner Lessor or the Indenture Trustee may require from the party requesting such new Note or Notes payment of a sum to reimburse the Owner Lessor and the Indenture Trustee for, or to provide funds for, the payment of any tax or other governmental charge in connection therewith or any charges and expenses connected with such tax or governmental charge paid or payable by the Owner Lessor or the Indenture Trustee.

Section 2.12. Additional Lessor Notes.

(a) Additional Notes (each, an "Additional Lessor Note") of the Owner Lessor may be issued under and secured by this Indenture, at any time or from time to time, in addition to the Lessor Note and subject to the conditions hereinafter provided in this Section 2.12, for cash in the amount equal to the original principal amount of such Additional Lessor Notes, for the purpose of

(i) providing funds in connection with Supplemental Financing pursuant to Section 11.1 of the Participation Agreement for the payment of all or any portion of Modifications to the Facilities pursuant to Section 8 of the Facility Leases, or (ii) redeeming any previously issued Notes pursuant to an optional refinancing pursuant to Section 11.2 of the Participation Agreement and providing funds for the payment of all reasonable costs and expenses in connection therewith.

(b) Before any Additional Lessor Notes shall be issued under the provisions of this Section 2.12, the Owner Lessor shall have delivered to the Indenture Trustee, not less than fifteen (15) (unless a shorter period shall be satisfactory to the Indenture Trustee) days nor more than thirty (30) days prior to the proposed date of issuance of any Additional Lessor Notes, a request and authorization to issue such Additional Lessor Notes, which request and authorization shall include the amount of such Additional Lessor Notes, the proposed date of issuance thereof and (except in connection with a refinancing of all of the Notes pursuant to Section 11.2 of the Participation Agreement) a certification that the terms thereof are not inconsistent with this Indenture. Additional Lessor Notes shall have a designation so as to distinguish such Additional Lessor Notes from the Notes theretofore issued, but otherwise shall rank pari passu with any Notes outstanding upon issuance of the Additional Notes, be entitled to the same benefits and

security of this Indenture as any other such Notes then outstanding, be dated the date of original issuance of such Additional Lessor Notes, bear interest at such rates as shall be agreed between the Facility Lessees and the Owner Lessor and indicated in the aforementioned request and authorization, and shall be stated to be payable by their terms not later than the final maturity date of the Lessor Notes issued on the Closing Date.

(c) The terms, conditions and designations of such Additional Lessor Notes (which shall be consistent with this Indenture, except in the case of a refinancing of all of the Notes pursuant to Section 11.2 of the Participation Agreement) shall be set forth in an indenture supplemental to this Indenture executed by the Owner Lessor and the Indenture Trustee. Such Additional Lessor Notes shall be executed as provided in Section 2.3 hereof and deposited with the Indenture Trustee for authentication, but before such Additional Lessor Notes shall be authenticated and delivered by the Indenture Trustee there shall be filed with the Indenture Trustee the following, all of which shall be dated as of the date of the supplemental indenture:

(i) a copy of such supplemental indenture (which shall include the form of such Additional Lessor Notes and the certificate of authentication in respect thereof);

(ii) an Officer's Certificate from the applicable Facility Lessee

(1) stating that no Significant Lease Default or Lease Event of Default has occurred and is continuing under its respective Facility Lease, (2) stating that the conditions in respect of the issuance of such Additional Lessor Notes contained in this Section 2.12 have been satisfied, (3) specifying the amount of the costs and expenses relating to the issuance and sale of such Additional Lessor Notes, and (4) stating that payments pursuant to the applicable Facility Lease and all supplements thereto of Periodic Rent and Termination Value, together with all other amounts payable pursuant to the terms of the Facility Leases, are calculated to be sufficient to pay when due all of the principal of and interest on the outstanding Notes, after taking into account the issuance of such Additional Lessor Notes and any related redemption of Notes theretofore outstanding;

(iii) with respect to any Supplemental Financing, an Officer's Certificate from the Owner Lessor stating that no Indenture Default under clauses (b) through (f) of Section 4.2 hereof or Lease Indenture Event of Default as to the Owner Lessor has occurred and is continuing;

(iv) such additional documents, certificates and opinions as shall be reasonably required by the Indenture Trustee, and as shall be reasonably acceptable to the Indenture Trustee;

(v) a request and authorization to the Indenture Trustee by the Owner Lessor to authenticate and deliver such Additional Lessor Notes to or upon the order of the Person or Persons noted in such request at the address set forth therein, and in such principal amounts as are stated therein, upon payment to the Indenture Trustee, but for the account of the Owner Lessor, of the sum or sums specified in such request and authorization;

(vi) the consent of the applicable Facility Lessee to such request and authorization; and

(vii) an Opinion of Counsel as to the authorization, validity and enforceability of the Additional Lessor Notes and that all conditions hereunder to the authentication and delivery of such Additional Lessor Notes have been complied with.

(d) When the documents referred to in the foregoing clauses (i) through (vii) above shall have been filed with the Indenture Trustee and when the Additional Lessor Notes described in the above mentioned request and authorization shall have been executed and authenticated as required by this Indenture and the related supplemental indenture, the Indenture Trustee shall deliver such Additional Lessor Notes in the manner described in clause (v) above, but only upon payment to the Indenture Trustee of the sum or sums specified in such request and authorization.

(e) This Indenture is an open-end mortgage which secures existing indebtedness, "future advances", "protective advances" and "contingent obligations" as such terms are defined in 33 M.R.S.A. Section 505. The maximum principal indebtedness secured by this Indenture, including future advances and contingent obligations but excluding protective advances, shall not at any time exceed the total amount of Seven Hundred Fifty Million Dollars (\$750,000,000); provided, however, that nothing herein contained shall limit the amount secured by this Indenture if the Secured Indebtedness is increased by protective advances; and provided, further, such limitation as to such future advances and contingent obligations shall only pertain to the record priority of the amount thereof secured hereby pursuant to 33 M.R.S.A. Section 505 and does not otherwise limit the amount of total indebtedness of Owner Lessor secured hereby or limit the liability of Owner Lessor to Indenture Trustee for such total indebtedness, including future advances and contingent obligations. The future advances secured hereby shall be made to or for the account of Owner Lessor and may be made under the Additional Lessor Notes, or pursuant to promissory notes or other instruments evidencing such future advances which may be hereafter executed and delivered by Owner Lessor to Indenture Trustee. In the event that any notice described in subsections 5(A) or 5(B) of 33 M.R.S.A. Section 505 is recorded or is received by Indenture Trustee, any commitment, agreement, or obligation to make future advances to or for the benefit of Owner Lessor shall immediately terminate.

(f) This Indenture permits and secures any and all current and future advances made to or for the account of the Owner Lessor and may be made under the Notes or the Additional Lessor Notes or other documents evidencing the Secured Indebtedness, as may be signed by the Owner Lessor and such other agreement(s) as may be entered into by and with the Indenture Trustee and signed by the Owner Lessor. The unpaid principal balance of the indebtedness outstanding under this Indenture shall at no time exceed Seven Hundred Fifty Million Dollars (\$750,000,000). The Indenture Trustee will accept notices pursuant to Section 34-25-10(b) and 34-25-11 of the General Laws of the State of Rhode Island at the address specified in Section 9.5 of this Indenture.

Section 2.13. Restrictions of Transfer Resulting from Federal Securities Laws; Legend. Each Note shall be delivered to the initial Noteholder thereof without registration of such Note under the Securities Act and without qualification of this Indenture under the Trust Indenture Act of 1939, as amended. Prior to any transfer of any such Note, in whole or in part, to any Person, the Noteholder thereof shall furnish to the applicable Facility Lessee, the Indenture Trustee and the Owner Lessor an opinion of counsel, which opinion and which counsel shall be reasonably satisfactory to the Indenture Trustee, the Owner Lessor and the applicable Facility Lessee, to the

effect that such transfer will not violate the registration provisions of the Securities Act or require qualification of this Indenture under the Trust Indenture Act of 1939, as amended, and all Notes issued hereunder shall be endorsed with a legend which shall read substantially as follows:

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED, SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT.**

Section 2.14. Security for and Parity of Notes. All Notes issued and outstanding hereunder shall rank on a parity with each other and shall as to each other be secured equally and ratably by this Indenture, without preference, priority or distinction of any thereof over any other by reason of difference in time of issuance or otherwise.

Section 2.15. Acceptance of the Indenture Trustee. Each Noteholder, by its acceptance of a Note, shall be deemed to have consented to the appointment of the Indenture Trustee.

### SECTION 3. RECEIPT, DISTRIBUTION AND APPLICATION OF INCOME FROM INDENTURE ESTATE

#### Section 3.1. Distribution of Periodic Rent.

(a) Periodic Rent Distribution. Except as otherwise provided in Section 3.2, 3.3 or 3.7 of this Indenture, each installment of Periodic Rent and any payment of Supplemental Rent constituting interest on overdue installments of Periodic Rent received by the Indenture Trustee shall be distributed by the Indenture Trustee in the following order of priority:

First, so much of such amounts as shall be required to pay in full the aggregate principal and accrued interest (as well as any interest on overdue principal and, to the extent permitted by Applicable Law, on overdue interest) then due and payable under the Notes shall be distributed to the Noteholders ratably, without priority of any Noteholder over any other Noteholder, in the proportion that the amount of such payment then due and payable under each such Note bears to the aggregate amount of the payments then due and payable under all such Notes; and

Second, the balance, if any, of such amounts remaining shall be distributed to the Owner Lessor for distribution by it in accordance with the terms of the LLC Agreement.

(b) Application of Other Amounts Held by the Indenture Trustee upon Rent Default. If, as a result of any failure by either of the Facility Lessees to pay Periodic Rent in full on any date when an installment of Periodic Rent is due, there shall not have been distributed on any date (or within any applicable period of grace) pursuant to Section 3.1(a) hereof the full amount then distributable pursuant to clause "First" of Section 3.1(a) of this Indenture, the Indenture Trustee shall distribute other payments of the character referred to in Sections 3.5 and 3.6 hereof then held by it, or thereafter received by it, to all Noteholders to the extent necessary to enable it to make all the distributions then due pursuant to such clause "First." To the extent the Indenture Trustee thereafter receives the deficiency in Periodic Rent, the amount so received shall, unless a Significant Lease Default or Lease Indenture Event of Default shall have occurred and be continuing, be applied to restore the amounts held by the Indenture Trustee under Section 3.5 or

3.6 hereof and distributed pursuant to this Section 3.1(b), as the case may be. The portion of each such payment made to the Indenture Trustee which is to be distributed by the Indenture Trustee in payment of Notes shall be applied in accordance with Section 2.7 hereof. Any payment received by the Indenture Trustee pursuant to Section 4.3 hereof as a result of payment by the Owner Lessor of principal or interest or both (as well as any interest on overdue principal and, to the extent permitted by Applicable Law, on overdue interest) then due on all Notes shall be distributed to the Noteholders, ratably, without priority of one over the other, in the proportion that the amount of such payment or payments then due and unpaid on all Notes held by each such Noteholder bears to the aggregate amount of the payments then due and unpaid on all Notes outstanding; and the Owner Lessor shall (to the extent of such payment made by it) be subrogated to the rights of the Noteholders under this Section 3.1 to receive the payment of Periodic Rent or Supplemental Rent with respect to which its payment under Sections 4.3(a) and (b) hereof relates, and the payment of interest on account of such Periodic Rent or Supplemental Rent being overdue, to the extent provided in and subject to the provisions of Section 4.3(a) and (b) hereof.

(c) Retention of Amounts by the Indenture Trustee. If at the time of receipt by the Indenture Trustee of an installment of Periodic Rent (whether or not then overdue) or of payment of interest on any overdue installment of Periodic Rent, there shall have occurred and be continuing a Lease Indenture Event of Default, the Indenture Trustee shall retain such installment of Periodic Rent or payment of interest (to the extent not then required to be distributed pursuant to clause "First" of Section 3.1(a)) as part of the Indenture Estate and shall not distribute any such payment of Periodic Rent or interest pursuant to clause "Second" of Section 3.1(a) until such time as the Indenture Trustee shall have received notice that there shall not be continuing any such Lease Indenture Event of Default or until such time as the Indenture Trustee shall have received written instructions from a Majority in Interest of Noteholders to make such a distribution; provided that such amounts must be returned to the Owner Lessor within six (6) months from the receipt thereof by the Indenture Trustee unless (i) the Indenture Trustee has declared the unpaid principal of all Notes due and payable (or such amounts shall have automatically become due and payable), pursuant to Section 4.2(a) and the Indenture Trustee is diligently pursuing any dispossessory remedies available under Section 4.3 hereof (unless such remedies are stayed or prevented by operation of law) or (ii) any other Lease Indenture Event of Default shall have occurred during the intervening period and be continuing, in which case, such six-month period will be restarted from the date such other Lease Indenture Event of Default shall have occurred. Upon the cure or waiver of such Lease Indenture Event of Default, withheld Periodic Rent shall, subject to clause (ii) of the immediately preceding sentence, be distributed to the Owner Lessor (to the extent that all payments to be distributed pursuant to clause "First" of Section 3.1(a) have been made), and no further withholding of Periodic Rent on account of such Lease Indenture Event of Default shall be effected.

#### Section 3.2. Payments Following Event of Loss or Other Early Termination.

(a) Any payment received by the Indenture Trustee as a result of (x) an Event of Loss (other than a Regulatory Event of Loss in respect of which the Facility Lessees shall, pursuant to Section 2.10(b) hereof, assume the obligations and liabilities of the Owner Lessor hereunder, in which event only clauses "First" and "Fourth" below shall be applicable), (y) early terminations of either of the Facility Leases pursuant to Section 13 thereof (other than a termination in respect

of which either of the Facility Lessees shall, pursuant to Section 2.10(b) hereof assume the obligations and liabilities of the Owner Lessor hereunder, in which event only clauses "First" and "Fourth" below shall be applicable), or (z) any early terminations of the Facility Leases, in whole or in part, pursuant to

Section 14 thereof, shall be distributed on the applicable Redemption Date to the extent of available funds, in the following order of priority:

First, so much of such payments and amounts as shall be required to reimburse the Indenture Trustee for any unpaid fees for its services under this Indenture and any expense (including any legal fees and disbursements) or loss incurred by it (to the extent incurred in connection with its duties as the Indenture Trustee and to the extent reimbursable and not previously reimbursed) shall be distributed to the Indenture Trustee for application to itself;

Second, so much of such payment remaining as shall be required to pay in full the applicable redemption price (as described in Section 2.10(a) or 2.10(d) hereof or any supplemental indenture hereto) (including, interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) upon all of the Notes which shall be distributed to the holders of such Notes, in each case ratably, without priority of any Noteholder over any other, in the proportion that the aggregate unpaid principal amount of all such Notes held by each such holder, plus the Make-Whole Amount, if any, and accrued but unpaid interest thereon to the scheduled date of distribution to the Noteholders bears to the aggregate unpaid principal amount of all such Notes held by all such holders, together with the Make-Whole Amount, if any, plus accrued but unpaid interest thereon to the date of scheduled distribution;

Third, so much of such payments and amounts as shall be required to pay the then existing or prior Noteholders all other amounts then payable and unpaid to them as holders of the Notes which this Indenture by its terms secures shall be distributed to such existing or prior holders of Notes, ratably to each such holder, without priority of any such holder over any other, in the proportion that the amount of such payments or amounts to which each such holder is so entitled bears to the aggregate amount of such payments and amounts to which all such holders are so entitled; and

Fourth, the balance, if any, of such payment remaining shall be distributed to the Owner Lessor for distribution in accordance with the LLC Agreement.

Section 3.3. Payments After Lease Indenture Event of Default. All payments received and all amounts held or realized by the Indenture Trustee after a Lease Indenture Event of Default shall have occurred and be continuing (including any amounts realized by the Indenture Trustee from the exercise of any remedies pursuant to Section 17 of the Facility Lease or from the application of Section 4.3 hereof) and after either (a) the Indenture Trustee has declared a Facility Lease to be in default pursuant to Section 17 thereof or (b) the Lessor Note shall have been declared or shall automatically have become due and payable, together with all payments or amounts then held or thereafter received by the Indenture Trustee hereunder, shall, so long as such declaration shall not have been rescinded, be distributed forthwith by the Indenture Trustee in the following order of priority:

First, so much of such payments and amounts as shall be required to reimburse the Indenture Trustee for any unpaid fees for its services under this Indenture and any expense (including any legal fees and disbursements) or loss incurred by it (to the extent incurred in connection with its duties as the Indenture Trustee and to the extent reimbursable and not previously reimbursed) shall be distributed to the Indenture Trustee for application to itself;

Second, so much of such payment remaining as shall be required to pay the aggregate unpaid principal amount of all Notes then outstanding and all accrued but unpaid interest on such Notes to the date of such distribution (including interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) shall be distributed to the holders of such Notes, in each case ratably without priority of any Noteholder over any other, in the proportion that the aggregate unpaid principal amount of all such Notes held by each such holder and accrued but unpaid interest thereon to the scheduled date of distribution to the Noteholders bears to the aggregate unpaid principal amount of all such Notes held by all such holders and accrued but unpaid interest thereon to the date of scheduled distribution to the Noteholders;

Third, so much of such payments and amounts as shall be required to pay the then existing or prior Noteholders all other amounts then payable and unpaid to them as holders of the Notes which this Indenture by its terms secures, including the Make-Whole Amount, if any, required to be paid pursuant to Section 2.10(a)(v) hereof, in respect of such Notes required to be paid pursuant to Section 4.3(a) hereof, shall be distributed to such existing or prior holders of Notes, ratably to each such holder, without priority of any such holder over any other, in the proportion that the amount of such payments or amounts to which each such holder is so entitled bears to the aggregate amount of such payments and amounts to which all such holders are so entitled; and

Fourth, the balance, if any, of such payments and amounts remaining shall be distributed to the Owner Lessor for distribution by it in accordance with the terms of the LLC Agreement.

Section 3.4. Investment of Certain Payments Held by the Indenture Trustee. Upon the written direction and at the risk and expense of the Owner Lessor, the Indenture Trustee shall invest and reinvest any moneys held by the Indenture Trustee pursuant to Section 3.1(c), 3.5 or 3.6 hereof in such Permitted Investments as may be specified in such direction. The proceeds received upon the sale or at maturity of any Permitted Investment and any interest received on such Permitted Investment and any payment in respect of a deficiency contemplated by the following sentence shall be held as part of the Indenture Estate and applied by the Indenture Trustee in the same manner as the moneys used to buy such Permitted Investment, and any Permitted Investment may be sold (without regard to maturity date) by the Indenture Trustee whenever necessary to make any payment or distribution required by this Section 3. If the proceeds received upon the sale or at maturity of any Permitted Investment (including interest received on such Permitted Investment) shall be less than the cost thereof (including accrued interest), the Owner Lessor will pay or cause to be paid to the Indenture Trustee an amount equal to such deficiency.

Section 3.5. Application of Certain Other Payments. Except as otherwise provided in Section 3.1(b) or 3.1(c) hereof, any payment received by the Indenture Trustee for which provision as to the application thereof is made in an Operative Document, but not elsewhere in this Indenture (including payments received by the Indenture Trustee under the Calpine Guaranties), shall, unless a Lease Indenture Event of Default shall have occurred and be continuing, be applied forthwith to the purpose for which such payment was made in accordance with the terms of such Operative Document. If at the time of the receipt by the Indenture Trustee of any payment referred to in the preceding sentence there shall have occurred and be continuing a Lease Indenture Event of Default, the Indenture Trustee shall hold such payment as part of the Indenture Estate, but the Indenture Trustee shall, except as otherwise provided in Section 3.1(b) or 3.1(c) hereof, cease to hold such payment and shall apply such payment to the purpose for which it was made in accordance with the terms of such Operative Document if and whenever there is no longer continuing any Lease Indenture Event of Default; provided, however, that any such payment received by the Indenture Trustee which is payable to the Facility Lessees shall not be held by the Indenture Trustee unless a Significant Lease Default or Lease Event of Default shall have occurred and be continuing.

Section 3.6. Other Payments. Except as otherwise provided in Section 3.5 hereof:

(a) any payment received by the Indenture Trustee for which no provision as to the application thereof is made in the Participation Agreement, the Facility Lease or elsewhere in this Section 3; and

(b) all payments received and amounts realized by the Indenture Trustee with respect to the Indenture Estate (including all amounts realized after the termination of the Facility Lease), to the extent received or realized at any time after payment in full of the principal of and, Make-Whole Amount, if any, and interest on all Notes then outstanding and all other amounts due the Indenture Trustee or the Noteholders, as well as any other amounts remaining as part of the Indenture Estate after such payment in full of the principal of, Make-Whole Amount, if any, and interest on all Notes outstanding;

(c) shall be distributed forthwith by the Indenture Trustee in the order of priority set forth in Section 3.3 hereof, omitting clause "Second" thereof.

Section 3.7. Excepted Payments. Notwithstanding any other provision of this Indenture including this Section 3 or any provision of any of the Operative Documents to the contrary, any Excepted Payments received or held by the Indenture Trustee at any time shall promptly be paid or distributed by the Indenture Trustee to the Person or Persons entitled thereto.

Section 3.8. Distributions to the Owner Lessor. Unless otherwise directed in writing by the Owner Lessor, all amounts from time to time distributable by the Indenture Trustee to the Owner Lessor in accordance with the provisions hereof shall be paid by the Indenture Trustee in immediately available funds to the Owner Participant's Account. Any amounts payable to the Trust Company in its individual capacity shall be paid to the Trust Company.

Section 3.9. Payments Under Assigned Documents. Notwithstanding anything to the contrary contained in this Indenture, until the discharge and satisfaction of the Lien of this

Indenture, all payments due or to become due under any Assigned Document to the Owner Lessor (except so much of such payments as constitute Excepted Payments) shall be made directly to the Indenture Trustee's Account and the Owner Lessor shall give all notices as shall be required under the Assigned Documents to direct payment of all such amounts to the Indenture Trustee hereunder. The Owner Lessor agrees that if it should receive any such payments directed to be made to the Indenture Trustee or any proceeds for or with respect to the Indenture Estate or as the result of the sale or other disposition thereof or otherwise constituting a part of the Indenture Estate to which the Owner Lessor is not entitled hereunder, it will promptly forward such payments to the Indenture Trustee or in accordance with the Indenture Trustee's instructions. The Indenture Trustee agrees to apply payments from time to time received by it (from the Facility Lessee, the Owner Lessor or otherwise) with respect to the Facility Leases, any other Assigned Document or the Facilities in the manner provided in Section 2.7 hereof, and this Section 3.

Section 3.10. Disbursement of Amounts Received by the Indenture Trustee. Subject to the last sentence of this Section 3.10 and Section 3.2, amounts to be distributed by the Indenture Trustee pursuant to this Section 3 shall be distributed on the date such amounts are actually received by the Indenture Trustee. Notwithstanding anything to the contrary contained in this Section 3, in the event the Indenture Trustee shall be required or directed to make a payment under this Section 3 on the same date on which such payment is received, any amounts received by the Indenture Trustee after 12:00 noon, New York City time, or on a day other than a Business Day, may be distributed on the next succeeding Business Day.

#### SECTION 4. COVENANTS OF OWNER LESSOR; DEFAULTS; REMEDIES OF INDENTURE TRUSTEE

Section 4.1. Covenants of Owner Lessor. The Owner Lessor hereby covenants and agrees as follows:

(a) the Owner Lessor will duly and punctually pay the principal of, Make-Whole Amount, if any, and interest on and other amounts due under the Notes and hereunder in accordance with the terms of the Notes and this Indenture and all amounts payable by it to the Noteholders under the Participation Agreement; and

(b) the Owner Lessor will not, except as provided in this Indenture (including Sections 4.4, 5.6, 8.1 and 8.2) and except as to Excepted Payments

(i) enter into any agreement amending, modifying or supplementing any of the Assigned Documents, or exercise any election or option, or make any decision or determination, or give any notice, consent, waiver or approval, or take any other action, under or in respect of any Assigned Document, (ii) accept and retain any payment from, or settle or compromise any claim arising under, any of the Assigned Documents, except that it may forward any payment to the Indenture Trustee in accordance with Section 3.9, (iii) give any notice or exercise any right or take any action under any of the Assigned Documents, or (iv) submit or consent to the submission of any dispute, difference or other matter arising under or in respect of any of the Assigned Documents to arbitration thereunder.

Section 4.2. Occurrence of Lease Indenture Event of Default. Subject to Section 4.4 hereof, the term "Lease Indenture Event of Default," wherever used herein, shall mean any of the following events (whatever the reason for such Lease Indenture Event of Default and whether it shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) any Lease Event of Default (other than the failure of a Facility Lessee to pay any amount which shall constitute an Excepted Payment and other than a Lease Event of Default in consequence of a Facility Lessee's failure to maintain the insurance required by Section 11 of the Facility Leases if, and so long as, (i) such Lease Event of Default is waived by the Owner Lessor and the Owner Participant and (ii) the insurance maintained by each of the Facility Lessees still constitutes Prudent Industry Practice); or

(b) the Owner Lessor shall fail (other than as a result of a Lease Event of Default) to make any payment in respect of the principal of, or Make-Whole Amount, if any, or interest on, the Notes within five Business Days after the same shall have become due; or

(c) the Owner Lessor shall fail to perform or observe any material covenant, obligation or agreement to be performed or observed by it under this Indenture (other than any covenant, obligation or agreement contained in clause (b) of this Section 4.2), the Owner Lessor shall fail to perform or observe any material covenant, obligation or agreement to be performed by it under Section 6 of the Participation Agreement, the Owner Participant shall fail to perform or observe any material covenant, obligation or agreement to be performed by it under Section 7 of the Participation Agreement, or the OP Guarantor shall fail to perform or observe any material covenant, obligation or agreement to be performed by it under the OP Guaranty in each case, in any material respect, which failure shall continue unremedied for 30 days after receipt by such party of written notice thereof; provided, however, that if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended up to 180 days, so long as such party diligently pursues such remedy and such condition is reasonably capable of being remedied within such extended period;

(d) any representation or warranty made by the Owner Lessor in Section 3.2 of the Participation Agreement or in the certificate delivered by the Owner Lessor at the Closing pursuant to Section 4.6 of the Participation Agreement or any representation or warranty made by the Owner Participant in

Section 3.4 of the Participation Agreement (other than Section 3.4(i)) or the certificate delivered by the Owner Participant at the Closing pursuant to Section 4.6 of the Participation Agreement, or any representation or warranty made by the OP Guarantor (provided the OP Guaranty shall not have been terminated or released) under the OP Guaranty or in the certificate delivered by such OP Guarantor at the Closing pursuant to Section 4.6 of the Participation Agreement, shall prove to have been incorrect in any material respect when made and continues to be material and unremedied for a period of 30 days after receipt by such party of written notice thereof; provided, however, that if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended up to an additional 120 days, so long as such party

diligently pursues such remedy and such condition is reasonably capable of being remedied within such extended period;

(e) the Owner Participant, the Owner Lessor or the OP Guarantor (provided the OP Guaranty shall not have been terminated or released) shall (i) commence a voluntary case or other proceeding seeking relief under Title 11 of the Bankruptcy Code or liquidation, reorganization or other relief with respect to itself or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect, or apply for or consent to the appointment of a trustee, receiver, liquidator, custodian or other similar official of it or any substantial part of its property, or (ii) consent to, or fail to controvert in a timely manner, any such relief or the appointment of or taking possession by any such official in any voluntary case or other proceeding commenced against it, or (iii) file an answer admitting the material allegations of a petition filed against it in any such proceeding; or

(f) an involuntary case or other proceeding shall be commenced against the Owner Participant, the Owner Lessor or the OP Guarantor (provided the OP Guaranty shall not have been terminated or released) seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the Bankruptcy Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property or (iii) the winding-up or liquidation of the Owner Lessor; and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days.

#### Section 4.3. Remedies of the Indenture Trustee.

(a) In the event that a Lease Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee in its discretion may, or upon receipt of written instructions from a Majority in Interest of Noteholders shall declare, by written notice to the Owner Lessor and the Owner Participant, the unpaid principal amount of all Notes, with accrued interest thereon, to be immediately due and payable, upon which declaration such principal amount and such accrued interest shall immediately become due and payable (except in the case of a Lease Indenture Event of Default under Section 4.2(e) or (f), such principal and interest shall automatically become due and payable immediately without any such declaration or notice) without further act or notice of any kind. If any Make-Whole amount is due and payable pursuant to Section 2.10(d) (iii) or (iv) at the time of any such acceleration, such Make-Whole Amount shall also be due and payable in connection with such acceleration.

(b) If a Lease Indenture Event of Default shall have occurred and be continuing, then and in every such case, the Indenture Trustee, as assignee under the Facility Leases or hereunder or otherwise, may, and where required pursuant to the provisions of Section 5 hereof shall, upon written notice to the Owner Lessor, exercise any or all of the rights and powers and pursue any or all of the remedies pursuant to this Section 4 and, in the event such Lease Indenture Event of Default shall be a Lease Event of Default, any and all of the remedies provided pursuant to this Section 4 and Section 17 of the Facility Leases and, subject to Section 4.4, may take possession of all or any part of the Indenture Estate and may exclude therefrom the Owner Participant, the Owner Lessor and, in the event such Lease Indenture Event of Default shall be a Lease Event of Default, the Facility Lessees and all persons claiming under them, and may exercise all remedies

available to a secured party under the Uniform Commercial Code or any other provision of Applicable Law. The Indenture Trustee may proceed to enforce the rights of the Indenture Trustee and of the Noteholders by directing payment to it of all moneys payable under any agreement or undertaking constituting a part of the Indenture Estate, by proceedings in any court of competent jurisdiction to recover damages for the breach hereof or for the appointment of a receiver or for sale of all or any part of the Facilities or for foreclosure of the Facilities, together with the Owner Lessor's interest in the Assigned Documents, and by any other action, suit, remedy or proceeding authorized or permitted by this Indenture, at law or in equity, or whether for the specific performance of any agreement contained herein, or for an injunction against the violation of any of the terms hereof, or in aid of the exercise of any power granted hereby or by law, and in addition may foreclose upon, sell, assign, transfer and deliver, from time to time to the extent permitted by Applicable Law, all or any part of the Indenture Estate or any interest therein, at any private sale or public auction with or without demand, advertisement or notice (except as herein required or as may be required by law) of the date, time and place of sale and any adjournment thereof, for cash or credit or other property, for immediate or future delivery and for such price or prices and on such terms as the Indenture Trustee, in its unfettered discretion, may determine, or as may be required by law, so long as the Owner Participant and the Owner Lessor are afforded a commercially reasonable opportunity to bid for all or such part of the Indenture Estate in connection therewith unless Section 4.7 shall otherwise be applicable; provided that 20 days shall be deemed to be a commercially reasonable opportunity to bid for purposes of this Section 4.3(b). The Indenture Trustee may file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Indenture Trustee and of the Noteholders asserted or upheld in any bankruptcy, receivership or other judicial proceedings.

(c) To the fullest extent permitted by Applicable Law, all rights of action and rights to assert claims under this Indenture or under any of the Notes may be enforced by the Indenture Trustee without the possession of the Notes at any trial or other proceedings instituted by the Indenture Trustee, and any such trial or other proceedings shall be brought in its own name as mortgagee of an express trust, and any recovery or judgment shall be for the ratable benefit of the Noteholders as herein provided. In any proceedings brought by the Indenture Trustee (and also any proceedings involving the interpretation of any provision of this Indenture), the Indenture Trustee shall be held to represent all the Noteholders, and it shall not be necessary to make any such Persons parties to such proceedings.

(d) Anything herein to the contrary notwithstanding, neither the Indenture Trustee nor any Noteholder shall at any time, including at any time when a Lease Indenture Event of Default shall have occurred and be continuing and there shall have occurred and be continuing a Lease Event of Default, be entitled to exercise any remedy under or in respect of this Indenture which could or would divest the Owner Lessor of title to, or its ownership interest in, any portion of the Indenture Estate unless, in the case of a Lease Indenture Event of Default as a consequence of a Lease Event of Default under Section 16 of the Facility Lease, the Indenture Trustee shall have, to the extent it is then entitled to do so hereunder and is not then stayed or otherwise prevented from doing so by operation of law, commenced the exercise of one or more remedies under both Facility Leases intending to dispossess the Facility Lessees of the Facilities and is using good faith efforts in the exercise of such remedies (and not merely asserting a right or claim to do so); provided that during any period that the Indenture Trustee is stayed or otherwise prevented by

operation of law from exercising such remedies with respect to either Facility, the Indenture Trustee will not divest the Owner Lessor of title to any portion of the Indenture Estate until the earlier of (a) the expiration of the 180-day period following the date of commencement of a stay or other prevention with respect to the first such affected Facility (regardless of whether a prevention or stay subsequently affects the other Facility during such 180-day period) or

(b) the date of repossession of both Facilities under the applicable Facility Leases.

(e) Anything herein to the contrary notwithstanding, in the case of a Lease Indenture Event of Default as a consequence of a Lease Event of Default under Section 16(a) of the Facility Leases with respect to the Equity Portion of Periodic Rent only, the Indenture Trustee shall not, so long as no other Lease Indenture Event of Default shall have occurred and be continuing, be entitled to exercise remedies under this Indenture for a period of 180 days unless the Owner Lessor or the Owner Participant consents to the declaration of a Lease Event of Default by the Indenture Trustee.

(f) Any provisions of the Facility Leases or this Indenture to the contrary notwithstanding, if the Facility Lessees shall fail to pay any Excepted Payment to any Person entitled thereto as and when due, such Person shall have the right at all times, to the exclusion of the Indenture Trustee, to demand, collect, sue for, enforce performance of obligations relating to, or otherwise obtain all amounts due in respect of such Excepted Payment or to declare a Lease Event of Default under Section 16 of the Facility Leases solely to enforce such obligations in respect of any Excepted Payments (provided that any such declaration shall not be deemed to constitute a Lease Indenture Event of Default hereunder without the consent of the Indenture Trustee).

#### Section 4.4. Right to Cure Certain Lease Events of Default.

(a) If either of the Facility Lessees shall fail to make any payment of Periodic Rent due on any Rent Payment Date when the same shall have become due, and if such failure of such Facility Lessee to make such payment of Periodic Rent shall not constitute the fourth consecutive such failure or the eighth cumulative failure of the Facility Lessee, then the Owner Lessor may (but need not) pay to the Indenture Trustee, at any time prior to the expiration of ten

(10) Business Days after the Owner Lessor and the Owner Participant shall have received notice from the Indenture Trustee or have Actual Knowledge of the failure of the Facility Lessee to make such payment of Periodic Rent, an amount equal to the principal of, Make-Whole Amount, if any, and interest on the Notes, then due (otherwise than by declaration of acceleration) on such Rent Payment Date, together with any interest due thereon on account of the delayed payment thereof, and such payment by the Owner Lessor shall be deemed (for purposes of this Indenture) to have cured any Lease Indenture Event of Default which arose or would have arisen from such failure of such Facility Lessee.

(b) If either of the Facility Lessees shall fail to make any payment of Supplemental Rent when the same shall become due or otherwise fail to perform any obligation under the Facility Leases or any other Operative Document, then the Owner Lessor may (but need not) make such payment on the date such Supplemental Rent was payable, together with any interest due thereon on account of the delayed payment thereof, or perform such obligation at any time prior to the expiration of ten (10) Business Days after the Owner Lessor or the Owner Participant

shall have received notice or have Actual Knowledge of the occurrence of such failure, and such payment or performance by the Owner Lessor shall be deemed to have cured any Lease Indenture Event of Default which arose or would have arisen from such failure of the Facility Lessee.

(c) The Owner Lessor, upon exercising its rights under paragraph (a) or (b) of this Section 4.4 to cure either of the Facility Lessee's failure to pay Periodic Rent or Supplemental Rent or to perform any other obligation under the Facility Leases or any other Operative Document, shall not obtain any Lien on any part of the Indenture Estate on account of such payment or performance nor, except as expressly provided in the next sentence, pursue any claims against a Facility Lessee or any other party, for the repayment thereof if such claims would impair the prior right and security interest of the Indenture Trustee in and to the Indenture Estate. Upon such payment or performance by the Owner Lessor, the Owner Lessor shall (to the extent of such payment made by it and the costs and expenses incurred in connection with such payments and performance thereof together with interest thereon and so long as no event which would, with the passing of time or giving of notice or both, become a Lease Indenture Event of Default under Section 4.2(b), (e) or (f), or any Lease Indenture Event of Default hereunder shall have occurred and be continuing) be subrogated to the rights of the Indenture Trustee and the Noteholders to receive the payment of Periodic Rent or Supplemental Rent, as the case may be, with respect to which the Owner Lessor made such payment and interest on account of such Periodic Rent Payment or Supplemental Rent payment being overdue in the manner set forth in the next two sentences. If the Indenture Trustee shall thereafter receive such payment of Periodic Rent, Supplemental Rent or such interest, the Indenture Trustee shall, notwithstanding the requirements of Section 3.1 hereof, forthwith, remit such payment of Periodic Rent or Supplemental Rent, as the case may be (to the extent of the payment made by the Owner Lessor pursuant to this Section 4.4) and such interest to the Owner Lessor in reimbursement for the funds so advanced by it, provided that if (A) any event which, with the passing of time or giving of notice or both, would become a Lease Indenture Event of Default under Section 4.2(b), (e) or (f) hereof, or any Lease Indenture Event of Default hereunder shall have occurred and be continuing or (B) any payment of principal, interest, or Make-Whole Amount, if any, on any Note then shall be overdue, such payment shall not be remitted to the Owner Lessor but shall be held by the Indenture Trustee as security for the obligations secured hereby and distributed in accordance with Section 3.1 hereof. The Owner Lessor shall not attempt to recover any amount paid by it on behalf of a Facility Lessee pursuant to this Section 4.4 except by demanding of a Facility Lessee payment of such amount or by commencing an action against a Facility Lessee for the payment of such amount, and except where a Lease Indenture Event of Default (other than a Lease Event of Default) has occurred and is continuing, the Owner Lessor shall be entitled to receive the amount of such payment and the costs and expenses incurred in connection with such payments and performance thereof together with interest thereon from a Facility Lessee (but neither the Owner Lessor nor the Owner Participant shall have any right to collect such amounts by exercise of any of the remedies under Section 17 of the Facility Leases) or, if paid by a Facility Lessee to the Indenture Trustee, from the Indenture Trustee to the extent of funds actually received by the Indenture Trustee.

(d) Until the expiration of the period during which the Owner Lessor or the Owner Participant shall be entitled to exercise rights under paragraph (a) or (b) of this Section 4.4 with respect to any failure by either of the Facility Lessees referred to therein, neither the Indenture

Trustee nor any Noteholder shall take or commence any action it would otherwise be entitled to take or commence as a result of such failure by a Facility Lessee, whether under this Section 4 or Section 17 of the Facility Leases or otherwise.

(e) Each Noteholder agrees, by acceptance thereof, that if (i) (x) a Lease Indenture Event of Default, which also constitutes a Lease Event of Default, shall have occurred and be continuing for a period of at least 90 days without the Notes having been accelerated or the Indenture Trustee having exercised any remedy under the Facility Leases intended to dispossess the Facility Lessees of the Facilities, (y) the Notes have been accelerated pursuant to Section 4.3(a) and such acceleration has not theretofore been rescinded, or (z) an Enforcement Notice giving notice of the intent of the Indenture Trustee to foreclose on the Facilities or otherwise dispossess of the Facilities has been given pursuant to Section 5.1 within the previous 30 days, (ii) no Lease Indenture Event of Default of the nature described in any of clauses (b) through (f) of Section 4.2 hereof shall have occurred and be continuing and (iii) the Owner Lessor shall give written notice to the Indenture Trustee of the Owner Lessor's intention to purchase all of the Notes in accordance with this paragraph, then, upon receipt within ten (10) Business Days after such notice from the Owner Lessor of an amount equal to the sum of (x) the aggregate unpaid principal amount of any unpaid Notes then held by the Noteholders, together with accrued but unpaid interest thereon to the date of such receipt (as well as any interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest), plus the aggregate amount, if any, of all sums which, if Section 3.3 were then applicable, such Noteholder would be entitled to be paid before any payments were to be made to the Owner Lessor but excluding any Make-Whole Amount, such Noteholder will forthwith (and upon its receipt of the payment referred to in clause (1) below, will be deemed to) sell, assign, transfer and convey to the Owner Lessor (without recourse or warranty of any kind other than of title to the Notes so conveyed) all of the right, title and interest of such Noteholder in and to the Indenture Estate, this Indenture, all Notes held by such Noteholder and the Assigned Documents, and the Owner Lessor shall thereupon assume all such Noteholder's rights and obligations in such documents; provided, that no such holder shall be required to so convey unless (1) the Owner Lessor shall have simultaneously tendered payment on all other Notes issued by the Owner Lessor at the time outstanding pursuant to this paragraph and (2) such conveyance is not in violation of any Applicable Law. All charges and expenses required to be paid in connection with the issuance of any new Note or Notes in connection with this paragraph shall be borne by the Owner Lessor. Notwithstanding the foregoing, the Owner Trust may exercise the right set forth in this clause (e) prior to the end of the 90 day period set forth above but, in such case, the Make-Whole Amount, if any, shall also be payable.

Section 4.5. Rescission of Acceleration. If at any time after the outstanding principal amount of the Notes shall have become due and payable by acceleration pursuant to Section 4.3 hereof, (a) all amounts of principal, Make-Whole Amount, if any, and interest which are then due and payable in respect of all the Notes other than pursuant to Section 4.3 hereof shall have been paid in full, together with interest on all such overdue principal and (to the extent permitted by Applicable Law) overdue interest at the rate or rates specified in the Notes, and an amount sufficient to cover all costs and expenses of collection incurred by or on behalf of the holders of the Notes (including counsel fees and expenses and all expenses and reasonable compensation of the Indenture Trustee) and (b) every other Lease Indenture Event of Default shall have been remedied, then a Majority in Interest of Noteholders may, by written notice or notices to the

Owner Lessor, the Indenture Trustee and the Facility Lessees, rescind and annul such acceleration and any related declaration of default under the Facility Leases and their respective consequences, but no such rescission and annulment shall extend to or affect any subsequent Lease Indenture Event of Default or impair any right consequent thereon, and no such rescission and annulment shall require any Noteholder to repay any principal or interest actually paid as a result of such acceleration.

#### Section 4.6. Return of Indenture Estate, Etc.

(a) If at any time the Indenture Trustee has the right to take possession of the Indenture Estate pursuant to Section 4.3 hereof, at the request of the Indenture Trustee, the Owner Lessor promptly shall (i) execute and deliver to the Indenture Trustee such instruments of title and other documents and (ii) make all such demands and give all such notices as are permitted by the terms of the Facility Leases to be made or given by the Owner Lessor upon the occurrence and continuance of a Lease Event of Default, in each case as the Indenture Trustee may deem necessary or advisable to enable the Indenture Trustee or an agent or representative designated by the Indenture Trustee, at such time or times and place or places as the Indenture Trustee may specify, to obtain possession of all or any part of the Indenture Estate the possession of which the Indenture Trustee shall at the time be entitled to hereunder. If the Owner Lessor shall for any reason fail to execute and deliver such instruments and documents after such request by the Indenture Trustee, the Indenture Trustee may (i) obtain a judgment conferring on the Indenture Trustee the right to immediate possession and requiring the Owner Lessor to execute and deliver such instruments and documents to the Indenture Trustee, to the entry of which judgment the Owner Lessor hereby specifically consents, and (ii) pursue all or any part of the Indenture Estate wherever it may be found and enter any of the premises wherever all or part of the Indenture Estate may be or is supposed to be and search for all or part of the Indenture Estate and take possession of and remove all or part of the Indenture Estate.

(b) Upon every such taking of possession, the Indenture Trustee may, from time to time, as a charge against proceeds of the Indenture Estate, make all such expenditures with respect to the Indenture Estate as it may deem proper. In each such case, the Indenture Trustee shall have the right to deal with the Indenture Estate and to carry on the business and exercise all rights and powers of the Owner Lessor relating to the Indenture Estate, as the Indenture Trustee shall deem best, and, the Indenture Trustee shall be entitled to collect and receive all rents (including Periodic Rent and Supplemental Rent), revenues, issues, income, products and profits of the Indenture Estate and every part thereof (without prejudice to the right of the Indenture Trustee under any provision of this Indenture to collect and receive cash held by, or required to be deposited with, the Indenture Trustee hereunder) and to apply the same to the management of or otherwise dealing with the Indenture Estate and of conducting the business thereof, and of all expenditures with respect to the Indenture Estate and the making of all payments which the Indenture Trustee may be required or may elect to make, if any, for taxes, assessments, insurance or other proper charges upon the Indenture Estate or any part thereof (including the employment of engineers and accountants to examine, inspect and make reports upon the properties and books and records of the Owner Lessor and the Facility Lessees relating to the Indenture Estate and the Operative Documents), or under any provision of, this Indenture, as well as just and reasonable compensation for the services of the Indenture Trustee and of all Persons properly engaged and employed by the Indenture Trustee.

#### Section 4.7. Power of Sale and Other Remedies.

(a) In addition to all other remedies provided for herein if a Lease Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall, subject to Sections 4.3 and 4.4, have the right to sell the Indenture Estate or any part of the Indenture Estate at public sale or sales, in order to pay the Secured Indebtedness, and all impositions, if any, with accrued interest thereon, and all expenses of the sale and of all proceedings in connection therewith, including reasonable attorney's fees, if incurred. At any such public sale, the Indenture Trustee may execute and deliver to the purchaser a conveyance of the Indenture Estate or any part of the Indenture Estate, and to this end, the Owner Lessor hereby constitutes and appoints the Indenture Trustee the agent and attorney in fact of the Owner Lessor to make such sale and conveyance, and thereby to divest the Owner Lessor of all right, title or equity that the Owner Lessor may have in and to the Indenture Estate and to vest the same in the purchaser or purchasers at such sale or sales, and all the acts and doings of said agent and attorney in fact are hereby ratified and confirmed and any recitals in said conveyance or conveyances as to facts essential to a valid sale shall be binding upon the Owner Lessor. The aforesaid power of sale and agency hereby granted are coupled with an interest and are irrevocable by death or otherwise, are granted as cumulative of the other remedies provided hereby or by law for collection of the Secured Indebtedness and shall not be exhausted by one exercise thereof but may be exercised until full payment of the Secured Indebtedness. Further, if a Lease Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee may, in addition to and not in abrogation of other rights and remedies provided in this Section, either with or without entry or taking possession as herein provided or otherwise, proceed by a suit or suits in law or in equity or by any other appropriate proceeding or remedy (i) to enforce payment of the Notes or the performance of any term, covenant, condition or agreement of this Indenture or any other right, and (ii) to pursue any other remedy available to it, all as the Indenture Trustee shall determine most effectual for such purposes. Upon any foreclosure sale, the Indenture Trustee may bid for and purchase the Indenture Estate and shall be entitled to apply all or any part of the Secured Indebtedness as a credit to the purchase price. In the event of a foreclosure sale of the Indenture Estate, the proceeds of said sale shall be applied as provided in Section 3.3 hereof. In the event of any such foreclosure sale by the Indenture Trustee, the Owner Lessor shall be deemed a tenant holding over and shall forthwith deliver possession to the purchaser or purchasers at such sale or be summarily dispossessed according to provisions of law applicable to tenants holding over. The Indenture Trustee, at the Indenture Trustee's option, is authorized to foreclose this Indenture subject to the rights of any tenants of the Indenture Estate, and the failure to make any such tenants parties to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted to be by the Owner Lessor, a defense to any proceedings instituted by the Indenture Trustee to collect the Secured Indebtedness.

(b) In amplification of, and not in limitation of paragraph (a) of this Section 4.7, the Owner Lessor represents and warrants that this Indenture is given primarily for a business, commercial or agricultural purpose. Owner Lessor, therefore, agrees that Indenture Trustee, its successors and permitted assigns, shall have THE STATUTORY POWER OF SALE pursuant to the applicable provisions of Titles 14 and 33 of the Maine Revised Statutes of 1964, as said statutes have been and shall be amended, which POWER is expressly incorporated herein by reference. Such Statutory Power of Sale shall be in addition to all rights and remedies set forth herein or available under Applicable Law. In the exercise of the Statutory Power of Sale,

Indenture Trustee, its successors and assigns or its or their agent or attorney, may sell the Indenture Estate or such portion thereof as may remain subject to the Indenture in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, by a public sale on or near any part of the Indenture Estate then subject to this Indenture or at the Indenture Trustee's principal place of business or at any other office of the Indenture Trustee or any attorney or agent thereof located in the same county in which any part of the Indenture Estate is located, and the Indenture Trustee, its successors and permitted assigns; and such sale shall forever bar the Owner Lessor and all persons claiming under it from all right and interest in the Indenture Estate, whether at law or in equity. In the exercise of THE STATUTORY POWER OF SALE herein given, if the Indenture Trustee elects to sell in parts or parcels, such sales may be held from time to time, and the POWER shall not be fully executed until all of the Indenture Estate not previously sold shall have been sold.

(c) In amplification of, and not in limitation of paragraph (a) of this Section 4.7, the Owner Lessor hereby further grants to Indenture Trustee, with MORTGAGE COVENANTS for breach of which covenants and any other covenants contained herein Indenture Trustee shall have THE STATUTORY POWER OF SALE, as set forth in RI. Gen. Laws Section 34-11-22, as said statute shall have been and shall be amended, which power is expressly incorporated herein by reference. Such Statutory Power of Sale shall be in addition to all rights and remedies set forth herein or available under Applicable Law. In the exercise of the Statutory Power of Sale, Indenture Trustee, its successors and assigns or its or their agent or attorney, may sell the Indenture Estate or such portion thereof as may remain subject to the Indenture in case of any partial release thereof, either as a whole or in parcels, together with all improvements that may be thereon, pursuant to and in accordance with the requirements and provisions of said statute. In the exercise of THE STATUTORY POWER OF SALE herein given, if the Indenture Trustee elects to sell in parts or parcels, such sales may be held from time to time, and the POWER shall not be fully executed until all of the Indenture Estate not previously sold shall have been sold. This Indenture is upon the STATUTORY CONDITION, and upon the further condition that all covenants contained in this Indenture or in the Operative Documents and/or any other documents evidencing the Secured Indebtedness, shall be kept and performed, and for any breach of said STATUTORY CONDITION or further condition, the Indenture Trustee shall have the STATUTORY POWER OF SALE. Said STATUTORY CONDITION and STATUTORY POWER OF SALE, as well as the MORTGAGE COVENANTS contained in the granting clause of this Indenture, are those contained in the General Laws of the State of Rhode Island. Provided further however, to the extent permitted by Applicable Law, publication, pursuant to said STATUTORY POWER OF SALE, of notice of the time and place of sale may, at the sole discretion of the Indenture Trustee, be made by publishing the same at least once each week for three (3) successive weeks in a public newspaper published daily in the City of Providence, Rhode Island, and not as otherwise provided in said STATUTORY POWER OF SALE. It is expressly understood and agreed to by the Owner Lessor and the Indenture Trustee that the power of sale contained in this Indenture shall, in the event that the Indenture Estate is comprised of separate lots or separate parcels of land or leasehold estates, survive the foreclosure of any portion of the Indenture Estate and may be exercised on different occasions to separately foreclose each and every lot or parcel of land or separate leasehold estate, including, without limitation, the Owner Lessor's leasehold estate under the Tiverton Site Lease and the Tiverton Site Sublease comprising the Indenture until all of the Indenture Estate has been foreclosed in accordance with Applicable Law and the terms of this Indenture.

Section 4.8. Appointment of Receiver. If the outstanding principal amount of the Notes shall have been declared due and payable pursuant to Section 4.3 hereof, as a matter of right, the Indenture Trustee shall be entitled to the appointment of a receiver (who may be the Indenture Trustee or any successor or nominee thereof) for all or any part of the Indenture Estate, whether such receivership be incidental to a proposed sale of the Indenture Estate or the taking of possession thereof or otherwise, and the Owner Lessor hereby consents to the appointment of such a receiver and will not oppose any such appointment. Any receiver appointed for all or any part of the Indenture Estate shall be entitled to exercise all the rights and powers with respect to the Indenture Estate to the extent instructed to do so by the Indenture Trustee.

Section 4.9. Remedies Cumulative. Each and every right, power and remedy herein specifically given to the Indenture Trustee or otherwise in this Indenture shall be cumulative and shall be in addition to every other right, power and remedy herein specifically given or now or hereafter existing at law, in equity or by statute, and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time and as often and in such order as may be deemed expedient by the Indenture Trustee, and the exercise or the beginning of the exercise of any right, power or remedy shall not be construed to be a waiver of the right to exercise at the same time or thereafter any other right, power or remedy. No delay or omission by the Indenture Trustee in the exercise of any right, remedy or power or in the pursuance of any remedy shall impair any such right, power or remedy or be construed to be a waiver of any default on the part of the Owner Participant, the Owner Lessor or the Facility Lessees or to be an acquiescence therein.

Section 4.10. Waiver of Various Rights by the Owner Lessor. The Owner Lessor hereby waives and agrees, to the extent permitted by Applicable Law, that it will never seek or derive any benefit or advantage from any of the following, whether now existing or hereafter in effect, in connection with any proceeding under or in respect of this Lease Indenture:

- (a) any stay, extension, moratorium or other similar law;
- (b) any Applicable Law providing for the valuation of or appraisal of any portion of the Indenture Estate in connection with a sale thereof; or
- (c) any right to have any portion of the Indenture Estate or other security for the Notes marshaled.

The Owner Lessor covenants not to hinder, delay or impede the exercise of any right or remedy under or in respect of this Lease Indenture, and agrees, to the extent permitted by Applicable Law, to suffer and permit its exercise as though no laws or rights of the character listed above were in effect; provided that this shall not affect or reduce Owner Lessor's rights under Sections 4.3 and 4.4 hereof. Owner Lessor agrees for itself, its successors and assigns, that the acceptance, before the expiration of the right of redemption and after the commencement of foreclosure proceedings of this Indenture, of insurance proceeds, eminent domain awards, rents or anything else of value to be applied on or to the Secured Indebtedness by Indenture Trustee or any person or party holding under it shall not constitute a waiver of such foreclosure, and this

agreement by Owner Lessor shall be that agreement referred to in Section 6204 of Title 14 of the Maine Revised Statutes of 1964, as may be amended, as necessary to prevent such waiver of foreclosure. This agreement by Owner Lessor is intended to apply to the acceptance and such application of any such proceeds, awards, rents and other sums or anything else of value whether the same shall be accepted from, or for the account of, Owner Lessor or from any other source whatsoever by Indenture Trustee or by any person or party holding under Indenture Trustee at any time or times in the future while any of the obligations secured hereby shall remain outstanding.

Section 4.11. Discontinuance of Proceedings. In case the Indenture Trustee or any Noteholder shall have proceeded to enforce any right, power or remedy under this Indenture by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Indenture Trustee or the Noteholder, then and in every such case the Owner Lessor, the Indenture Trustee and the Facility Lessees shall be restored to their former positions and rights hereunder with respect to the Indenture Estate, and all rights, remedies and powers of the Indenture Trustee or the Noteholder shall continue as if no such proceedings had taken place.

Section 4.12. No Action Contrary to the Facility Lessees' Rights Under the Facility Leases. Notwithstanding any other provision of any of the Operative Documents, so long as no Lease Event of Default under a Facility Lease shall have been declared (or deemed to have been declared), the Indenture Trustee and the Noteholders shall be subject to the Facility Lessees' rights under the Facility Leases, and neither the Indenture Trustee nor any Noteholders shall take or cause to be taken any action contrary to the right of the Facility Lessees, including their respective rights to quiet use and possession of their respective Facilities.

Section 4.13. Right of the Indenture Trustee to Perform Covenants, Etc. If the Owner Lessor shall fail to make any payment or perform any act required to be made or performed by it hereunder or under the Facility Leases, the Site Leases and Subleases or the Participation Agreement, or if the Owner Lessor shall fail to release any Lien affecting the Indenture Estate which it is required to release by the terms of this Indenture or the Participation Agreement or the LLC Agreement, the Indenture Trustee, without notice to or demand upon the Owner Lessor and without waiving or releasing any obligation or defaults may (but shall be under no obligation to, and, except as provided in the last sentence hereof, shall incur no liability in connection therewith) at any time thereafter make such payment or perform such act for the account and at the expense of the Indenture Estate and may take all such action with respect thereto (including entering upon the Tiverton and Rumford Sites or any part thereof, to the extent, of the Facilities for such purpose) as may be necessary or appropriate therefor. No such entry shall be deemed an eviction. All sums so paid by the Indenture Trustee and all costs and expenses (including legal fees and expenses) so incurred, together with interest thereon from the date of payment or incurrence, shall constitute additional indebtedness secured by this Indenture and shall be paid from the Indenture Estate to the Indenture Trustee on demand. The Indenture Trustee shall not be liable for any damages resulting from any such payment or action unless such damages shall be a consequence of willful misconduct or gross negligence on the part of the Indenture Trustee.

Section 4.14. Further Assurances. The Owner Lessor covenants and agrees from time to time to do all such acts and execute all such instruments of further assurance as shall be

reasonably requested by the Indenture Trustee for the purpose of fully carrying out and effectuating this Indenture and the intent hereof.

Section 4.15. Waiver of Past Defaults. Any past Lease Indenture Event of Default and its consequences may be waived by the Indenture Trustee or a Majority in Interest of Noteholders, except a Lease Indenture Event of Default (i) in the payment of the principal of, Make-Whole Amount, if any, and or interest on any Note, subject to the provisions of Sections 5.1 and 8.1 hereof, or (ii) in respect of a covenant or provision hereof which, under Section 8.2 8.1 hereof, cannot be modified or amended without the consent of each Noteholder. Upon any such waiver and subject to the terms of such waiver, such Lease Indenture Event of Default shall cease to exist, and any other Lease Indenture Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Indenture; but no such waiver shall extend to any subsequent or other Lease Indenture Event of Default or impair any right consequent thereon.

## SECTION 5. DUTIES OF INDENTURE TRUSTEE; CERTAIN RIGHTS AND DUTIES OF OWNER LESSOR

Section 5.1. Notice of Action Upon Lease Indenture Event of Default. The Indenture Trustee shall give prompt written notice to the Owner Lessor and the Owner Participant of any Lease Indenture Event of Default with respect to which the Indenture Trustee has Actual Knowledge and will give the Facility Lessees and the Owner Participant not less than 30 days' prior written notice of the date on or after which the Indenture Trustee intends to exercise remedies under Section 4.3 (an "Enforcement Notice"), which notice may be given contemporaneously with any notice contemplated by Section 4.3(a) or 4.3 (b). The Indenture Trustee shall take such action, or refrain from taking such action, as the Majority in Interest of Noteholders shall instruct in writing.

Section 5.2. Actions Upon Instructions Generally. Subject to the terms of Sections 5.4, 5.5 and 5.6 hereof, upon written instructions at any time and from time to time of a Majority in Interest of Noteholders, the Indenture Trustee shall take such action, or refrain from taking such action, including any of the following actions as may be specified in such instructions: (a) give such notice, direction or consent or exercise such right, remedy or power or take such action hereunder or under any Assigned Document, or in respect of any part of or all the Indenture Estate, as it shall be entitled to take and as shall be specified in such instructions; (b) take such action with respect to or to preserve or protect the Indenture Estate (including the discharge of Liens) as it shall be entitled to take and as shall be specified in such instructions; and (c) waive, consent to, approve (as satisfactory to it) or disapprove all matters required by the terms of any Operative Document to be satisfactory to the Indenture Trustee. The Indenture Trustee may, and upon written instructions from a Majority in Interest of Noteholders, the Indenture Trustee shall, execute and file or cause to be executed and filed any financing statement (and any continuation statement with respect to such financing statement) or any similar instrument or document relating to the security interest or the assignment created by this Indenture or granted by the Owner Lessor herein as may be necessary to protect and preserve the security interest or assignment created by or granted pursuant to this Indenture, to the extent otherwise entitled to do so and as shall be specified in such instructions.

Section 5.3. Action Upon Payment of Notes or Termination of Facility Leases. Subject to the terms of Section 5.4 hereof, upon payment in full of the principal of and interest on all Notes then outstanding and all other amounts then due all Noteholders hereunder, and all other sums secured hereby or otherwise required to be paid hereunder, under the Participation Agreement and under the Facility Leases, the Indenture Trustee shall execute and deliver to, or as directed in writing by, the Owner Lessor and the Facility Lessees an appropriate instrument in due form for recording, releasing the Indenture Estate from the Lien of this Indenture. Nothing in this Section 5.3 shall be deemed to expand the instances in which the Owner Lessor is entitled to prepay the Notes.

Section 5.4. Compensation of the Indenture Trustee; Indemnification.

(a) The Owner Lessor will from time to time, on demand, pay to the Indenture Trustee such compensation for its services hereunder as shall be agreed to by the Owner Lessor and the Indenture Trustee, or, in the absence of agreement, reasonable compensation for such services (which compensation shall include reasonable fees and expenses of its outside counsel and shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Indenture Trustee agrees that it shall have no right against the Noteholders or, except as provided in Section 3 and Section 4.3 hereof or this Section 5, the Indenture Estate, for any fee as compensation for its services hereunder.

(b) The Indenture Trustee shall not be required to take any action or refrain from taking any action under Section 4, 5.2 or 9.1 hereof unless it and any of its directors, officers, employees or agents shall have been indemnified in manner and form satisfactory to the Indenture Trustee. The Indenture Trustee shall not be required to take any action under Section 4 or Section 5.2, 5.3 or 9.1 hereof, nor shall any other provision of this Indenture be deemed to impose a duty on the Indenture Trustee to take any action, if it shall have been advised by counsel (who shall not be an employee of the Indenture Trustee) that such action is contrary to the terms hereof or is otherwise contrary to Applicable Law or (unless it shall have been indemnified in manner and form satisfactory to the Indenture Trustee) may result in personal liability to the Indenture Trustee.

Section 5.5. No Duties Except as Specified; No Action Except Under Facility Leases, Indenture or Instructions.

(a) The Indenture Trustee shall not have any duty or obligation to manage, control, use, sell, dispose of or otherwise deal with any part of the Indenture Estate or otherwise take or refrain from taking any action under or in connection with this Indenture or the other Assigned Documents except as expressly provided by the terms of this Indenture or as expressly provided in written instructions from a Majority in Interest of Noteholders in accordance with Section 5.2 hereof; and no implied duties or obligations shall be read into this Indenture against the Indenture Trustee.

(b) The Indenture Trustee shall not manage, control, use, sell, dispose of or otherwise deal with any part of the Indenture Estate except (a) as required by the terms of the Facility Leases, to the extent applicable to the Indenture Trustee as assignee of the Owner Lessor, (b) in accordance with the powers granted to, or the authority conferred upon, the Indenture Trustee

pursuant to this Indenture or in accordance with the express terms hereof or with written instructions from a Majority in Interest of Noteholders in accordance with Section 5.2 hereof.

Section 5.6. Certain Rights of the Owner Lessor. Notwithstanding any other provision of this Indenture or any provision of any Operative Document to the contrary, and in addition to any rights conferred on the Owner Lessor hereby:

(a) The Owner Lessor shall at all times, to the exclusion of the Indenture Trustee, (i) retain all rights to demand and receive payment of, and to commence an action for payment of, Excepted Payments but the Owner Lessor shall have no remedy or right with respect to any such payment against the Indenture Estate nor any right to collect any such payment by the exercise of any of the remedies under Section 17 of the Facility Leases, except as expressly set forth in this Section 5.6; (ii) retain all rights with respect to insurance that Section 11 of the Facility Leases and Schedule 5.45 of the Participation Agreement specifically confers upon the Owner Lessor and to waive any failure by the Facility Lessees to maintain the insurance required by Section 11 of the Facility Leases before or after the fact so long as the insurance maintained by the Facility Lessees still conforms to Prudent Industry Practice; (iii) retain all rights to adjust Periodic Rent and Termination Value as provided in Section 3.4 of the Facility Leases, Section 12 of the Participation Agreement or the Tax Indemnity Agreement; provided, however, that after giving effect to any such adjustment (x) the amount of Periodic Rent payable on each Rent Payment Date shall be at least equal to the aggregate amount of all principal and accrued interest payable on such Rent Payment Date on all Notes then outstanding and (y) Termination Value shall in no event be less (when added to all other amounts required to be paid by the Facility Lessees in respect of any early termination of the Facility Leases) than an amount sufficient, as of the date of payment, to pay in full the principal of, and interest on all Notes outstanding on and as of such date of payment; (iv) retain the right to declare the Facility Lessees to be in default with respect to any Excepted Payments pursuant to Section 17 of the Facility Leases; (v) except in connection with the exercise of remedies pursuant to the Facility Leases, retain all rights to exercise the Owner Lessor's rights relating to the Appraisal Procedure and to confer and agree with the Facility Lessees on Fair Market Rental Value, or any Renewal Lease Term and (vi) retain all rights to compromise and settle claims against the Guarantor under any Calpine Guaranty (but not claims against the Indenture Estate) with respect to the Equity Portion of Termination Value and Equity Portion of Periodic Rent (and all amounts of overdue interest relating to such amount); provided that the Indenture Trustee shall have the right to settle claims against the Guarantor inclusive of the Equity Portion of Termination Value and Equity Portion of Periodic Rent (and all amounts of overdue interest relating to such amount) for an amount which will result in payment in full to the Owner Lessor of all such unpaid amounts as certified to the Indenture Trustee by the Owner Lessor, and satisfaction of all claims of the Noteholders.

(b) If there shall have occurred and be continuing a Lease Event of Default under either Facility Lease, and the Indenture Trustee shall not have, within the 180 day period after the earlier of (i) any declaration thereof or (ii) receipt by the Indenture Trustee of notice of such Lease Event of Default from the Owner Lessor, the Owner Participant, either Facility Lessee or any Noteholder, to the extent it is not then stayed or otherwise prevented from demanding payment of Termination Value under both Calpine Guaranties by operation of law, commenced the exercise of one or more remedies against the applicable Facility Lessee or the Guarantor under the applicable Calpine Guaranty and, in either case, demanded payment in full of the

Termination Value under both Calpine Guaranties, then the Owner Lessor shall thereafter have the right, shared with the Indenture Trustee, upon notice to the Indenture Trustee, to exercise remedies and bring one or more proceedings against the Guarantor under the Calpine Guaranties for the Equity Portion of Termination Value and the Equity Portion of Periodic Rent (and unpaid interest thereon) and to receive and retain directly the proceeds thereof; provided that in any such action or proceeding the Owner Lessor shall compromise, settle and receive only the Equity Portion of Termination Value, together with all unpaid amounts of the Equity Portion of Periodic Rent (and all amounts of overdue interest relating to such amount) and other amounts constituting Excepted Payments and Owner Lessor shall not, and shall have no right to, compromise, settle or receive any other amount comprising Termination Value or Periodic Rent. In addition, the Owner Trustee shall retain the rights set forth in Section 2.1(d) of each Calpine Guaranty.

(c) If at any time (i) the Indenture Trustee shall have either exercised remedies under Sections 17.1(b), (c), (d) or (e) of a Facility Lease, or foreclosed on the Indenture Estate, (ii) a Lease Event of Default shall have occurred under Section 16(g) or (h) of the Facility Leases or (iii) an "Event of Default" as defined in the Calpine Guaranties shall have occurred under Section (e) or (f) thereof, and in any such case the Indenture Trustee has not promptly, to the extent it is not then stayed or otherwise prevented from demanding payment of Termination Value under the Calpine Guaranties by operation of law, demanded payment and proceeded (and continued to proceed) in good faith to pursue the full Termination Value under the Calpine Guaranties, then the Owner Lessor shall thereafter have the right, shared with the Indenture Trustee, upon notice to the Indenture Trustee, to exercise remedies and bring one or more proceedings against Guarantor under the Calpine Guaranties for the payment of Termination Value; provided that in any such action or proceeding the Owner Lessor shall compromise and settle only the Equity Portion of Termination Value, together with all unpaid amounts of the Equity Portion of Periodic Rent (and all amounts of overdue interest relating to such amount) and other amounts constituting Excepted Payments and shall not, and shall have no right to, compromise or settle any amount comprising Termination Value other than the Equity Portion of Termination Value and the Equity Portion of Periodic Rent (and all amounts of overdue interest relating to such amount); provided further that any amounts otherwise payable to or received by the Owner lessor pursuant to any action or proceeding referred to in this Section 5.6(c) shall constitute a portion of the Indenture Estate and shall be deposited with and paid over to the Indenture Trustee for application in accordance with the terms of this Indenture. At all times that the Indenture Trustee is proceeding against Calpine under the Calpine Guarantees, the Indenture Trustee shall pursue the full Termination Value, together with all unpaid amounts of unpaid Periodic Rent (and all amounts of overdue interest relating to such amount); provided that the Indenture Trustee shall be entitled to compromise on behalf of the Noteholders amounts constituting Termination Value under the Calpine Guaranties but not constituting the Equity Portion of Termination Value or the Equity Portion of Periodic Rent and so long as such compromise would not otherwise have a material adverse effect on the Owner Participant.

(d) The Owner Lessor shall have the right, but not to the exclusion of the Indenture Trustee, (i) to receive from the Facility Lessees and the Guarantor all notices, certificates, opinions of counsel and other documents and all information that the Facility Lessees are permitted or required to give or furnish to the Owner Lessor or the Owner Participant, as the case may be, pursuant to the Facility Leases or any other Operative Document; (ii) to inspect the

Facilities and the records relating thereto pursuant to Section 12 of the Facility Leases; (iii) to provide such insurance as may be permitted by Section 11 of the Facility Leases; (iv) to provide notices to the Facility Lessees or the Guarantor to the extent otherwise permitted by the Operative Documents; and  
(v) to perform for the Facility Lessees as provided in Section 20 of the Facility Leases;

(e) So long as the Notes have not been accelerated pursuant to Section 4.3(a) hereof (or, if accelerated, such acceleration has theretofore been rescinded) or the Indenture Trustee shall not have exercised any of its rights pursuant to Section 4 hereof to take possession of, foreclose, sell or otherwise take control of all or any part of the Indenture Estate, the Owner Lessor shall retain the right to the exclusion of the Indenture Trustee to exercise the rights of the Owner Lessor under, and to determine compliance by the Facility Lessees with, the provisions of Sections 10 (other than Section 10.3 thereof), 13, 14 and 15 of the Facility Leases; provided, however, that if a Lease Indenture Event of Default shall have occurred and be continuing, the Owner Lessor shall cease to retain such rights upon notice from the Indenture Trustee stating that such rights shall no longer be retained by the Owner Lessor;

(f) Except as otherwise provided in this Section 5.6, so long as the Notes have not been accelerated pursuant to Section 4.3(a) hereof (or, if accelerated, such acceleration has theretofore been rescinded) or the Indenture Trustee shall not have exercised any of its rights pursuant to Section 4 hereof to take possession of, foreclose, sell or otherwise take control of all or any part of the Indenture Estate, the Owner Lessor shall have the right, to be exercised jointly with the Indenture Trustee, (i) to exercise the rights with respect to the Facility Lessees' use and operation, modification or maintenance of the Facility, (ii) to exercise the Owner Lessor's right under Section 13.1 of the Participation Agreement to withhold or grant its consent to an assignment by the Facility Lessees of their rights under the Facility Leases, and (iii) to exercise the rights of the Owner Lessor under Section 10.3 of the Facility Leases; provided, however, that if a Lease Indenture Event of Default shall have occurred and be continuing, the Owner Lessor shall cease to exercise such rights under this clause (iii) upon notice from the Indenture Trustee stating that such rights shall no longer be retained by the Owner Lessor; provided further, however, that (A) the Owner Lessor shall have no right to receive any Periodic Rent or other payments other than Excepted Payments payable to the Owner Lessor, or the Owner Participant, and (B) no determination by the Owner Lessor or the Indenture Trustee that the Facility Lessees are in compliance with the provisions of any applicable Assigned Document shall be binding upon or otherwise affect the rights hereunder of the Indenture Trustee or any Noteholder on the one hand or the Owner Lessor or the Owner Participant on the other hand; and

(g) Nothing in this Indenture shall give to, or create in, or otherwise provide the benefit of to, the Indenture Trustee, any rights of the Owner Participant under or pursuant to the Tax Indemnity Agreement or any other Operative Document and nothing in this Section 5.6 or elsewhere in this Indenture shall give to the Owner Lessor the right to exercise any rights specifically given to the Indenture Trustee pursuant to any Operative Document; and nothing in this Indenture shall give to, or create in, the Indenture Trustee the right to, and the Indenture Trustee shall not, release the Guarantor of its obligations under either Guaranty in respect of payment of the Equity Portion of Termination Value, unpaid amounts of the Equity Portion of Periodic Rent (and all amounts of overdue interest relating to such amount) and other amounts constituting Excepted Payments, unless such release results in payment in full to the Owner

Lessor of all such unpaid amounts as certified to the Indenture Trustee by the Owner Lessor, and all claims of the Noteholders;

but nothing in clauses (a) through (f) above shall deprive the Indenture Trustee of the exclusive right, so long as this Indenture shall be in effect, to declare the Facility Leases to be in default under Section 16 thereof and thereafter to exercise the remedies pursuant to Section 17 of the Facility Leases (except in each case as expressly set forth in clause (iv) of Section 5.6(a) and Sections 5.6(b) and (c) above).

(h) Following any foreclosure of the Owner Lessor's interests in the Facility Leases in connection with a Lease Indenture Event of Default arising from a Lease Event of Default, the Indenture Trustee shall not directly or indirectly enter into any new lease of either or both Facilities with Calpine, either Facility Lessee or any Affiliate thereof.

Section 5.7. Restrictions on Dealing with Indenture Estate. Except as provided in the Operative Documents, but subject to the terms of this Indenture, the Owner Lessor shall not use, operate, store, lease, control, manage, sell, dispose of or otherwise deal with either of the Facilities, the Tiverton Site, the Rumford Site, any part of the Tiverton Site or the Rumford Site or any other part of the Indenture Estate.

Section 5.8. Filing of Financing Statements and Continuation Statements. Pursuant to Section 5.10 of the Participation Agreement, the Facility Lessees have covenanted to maintain the priority of the Lien of this Indenture on the Indenture Estate. The Indenture Trustee shall, at the written request and expense of the Facility Lessees, as provided in the Participation Agreement, execute and deliver to the Facility Lessees and the Facility Lessees will file, if not already filed, such financing statements or other documents and such continuation statements or other documents with respect to financing statements or other documents previously filed relating to the Lien created by this Indenture in the Indenture Estate as may be supplied to the Indenture Trustee by the Facility Lessees. At any time and from time to time, upon the request of the Facility Lessees or the Indenture Trustee, at the expense of the Facility Lessees (and upon receipt of the form of document so to be executed), the Owner Lessor shall promptly and duly execute and deliver any and all such further instruments and documents as the Facility Lessees or the Indenture Trustee may request in obtaining the full benefits of the security interest and assignment created or intended to be created hereby and of the rights and powers herein granted. Upon the reasonable instructions (which instructions shall be accompanied by the form of document to be filed) at any time and from time to time of the Facility Lessees or the Indenture Trustee, the Owner Lessor shall execute and file any financing statement (and any continuation statement with respect to any such financing statement), and any other document relating to the security interest and assignment created by this Indenture as may be specified in such instructions. In addition, the Indenture Trustee and the Owner Lessor will execute such continuation statements with respect to financing statements and other documents relating to the Lien created by this Indenture in the Indenture Estate as may be specified from time to time in written instructions of any Noteholder (which instructions may, by their terms, be operative only at a future date and which shall be accompanied by the form of such continuation statement or other document to be filed). Neither the Indenture Trustee nor, except as otherwise herein expressly provided, the Owner Lessor shall have responsibility for the protection, perfection or preservation of the Lien created by this Indenture.

## SECTION 6. INDENTURE TRUSTEE AND OWNER LESSOR

Section 6.1. Acceptance of Trusts and Duties. The Indenture Trustee accepts the trusts hereby created and applicable to it and agrees to perform the same but only upon the terms of this Indenture, and agrees to receive and disburse all moneys constituting part of the Indenture Estate in accordance with the provisions hereof. If any Lease Indenture Event of Default shall have occurred and be continuing, the Indenture Trustee shall, subject to the provisions of Sections 4 and 5 hereof, exercise such of the rights and remedies vested in it by this Indenture and shall at all times use the same degree of care in their exercise as a prudent person would exercise or use in the circumstances in the conduct of its own affairs. The Indenture Trustee shall not be liable under any circumstances, except (a) for its own negligence or willful misconduct, (b) in the case of any inaccuracy of any representation or warranty of the Indenture Trustee or the Lease Indenture Company contained in Section 3.5 of the Participation Agreement, in the certificate delivered by the Indenture Trustee at the Closing pursuant to Section 4.6 of the Participation Agreement, or (c) for the performance of its obligations under Section 8 of the Participation Agreement; and the Lease Indenture Company and the Indenture Trustee shall not be liable for any action or inaction of the Owner Trust; provided, however, that:

(i) Prior to the occurrence of a Lease Indenture Event of Default of which a Responsible Officer of the Indenture Trustee shall have Actual Knowledge, and after the curing of all such Indenture Events of Default which may have occurred, the duties and obligations of the Indenture Trustee shall be determined solely by the express provisions of the Operative Documents to which it is a party, the Indenture Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Operative Documents, no implied covenants or obligations shall be read into the Operative Documents against the Indenture Trustee and, in the absence of bad faith on the part of the Indenture Trustee, the Indenture Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any notes or opinions furnished to the Indenture Trustee and conforming to the requirements of this Indenture;

(ii) The Indenture Trustee shall not be liable in its individual capacity for an error of judgment made in good faith by a Responsible Officer or other officers of the Indenture Trustee, unless it shall be proven that the Indenture Trustee was negligent in ascertaining the pertinent facts;

(iii) The Indenture Trustee shall not be liable in its individual capacity with respect to any action taken, suffered or omitted to be taken by it in good faith in accordance with this Indenture or at the direction of the Majority in Interest of Noteholders, relating to the time, method and place of conducting any proceeding or remedy available to the Indenture Trustee, or exercising or omitting to exercise any trust or power conferred upon the Indenture Trustee, under this Indenture;

(iv) The Indenture Trustee shall not be required to take notice or be deemed to have notice or knowledge of any default, Lease Event of Default, Significant Lease Default or Lease Indenture Event of Default (except for a Lease Indenture Event of Default resulting from an event of nonpayment) unless a Responsible Officer of the

Indenture Trustee shall have received written notice thereof. In the absence of receipt of such notice, the Indenture Trustee may conclusively assume that there is no default or Lease Indenture Event of Default;

(v) The Indenture Trustee shall not be required to expend or risk its own funds or otherwise incur financial liability for the performance of any of its duties hereunder or the exercise of any of its rights or powers if there is reasonable ground for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it, and none of the provisions contained in this Indenture shall in any event require the Indenture Trustee to perform, or be responsible for the manner of performance of, any of the obligations of the Owner Lessor, under this Indenture; and

(vi) The right of the Indenture Trustee to perform any discretionary act enumerated in this Indenture shall not be construed as a duty, and the Indenture Trustee shall not be answerable for other than its negligence or willful misconduct in the performance of such act.

Section 6.2. Absence of Certain Duties. Except in accordance with written instructions furnished pursuant to Section 5.2 hereof and except as provided in Section 5.5 and 5.8 hereof, the Indenture Trustee shall have no duty

(a) to see to any registration, recording or filing of any Operative Document (or any financing or continuation statements in respect thereto) or to see to the maintenance of any such registration, recording or filing, (b) to see to any insurance on the Facilities or the Facilities or to effect or maintain any such insurance, (c) except as otherwise provided in Section 5.5 hereof or in Section 10 of the Participation Agreement, to see to the payment or discharge of any Tax or any Lien of any kind owing with respect to, or assessed or levied against, any part of the Indenture Estate, (d) to confirm or verify the contents of any report, notice, request, demand, certificate, financial statement or other instrument of the Facility Lessees, (e) to inspect the Facilities at any time or ascertain or inquire as to the performance or observance of any of the Facility Lessees' covenants with respect to the Facilities or (f) to exercise any of the trusts or powers vested in it by this Indenture or to institute, conduct or defend any litigation hereunder or in relation hereto at the request, order or direction of any of the Noteholders, pursuant to the provisions of this Indenture, unless such Noteholders shall have offered to the Indenture Trustee reasonable security or indemnity against the costs, expenses and liabilities which may be incurred therein or thereby (which in the case of the Majority in Interest of Noteholders will be deemed to be satisfied by a letter agreement with respect to such costs from such Majority in Interest of Noteholders). Notwithstanding the foregoing, the Indenture Trustee shall furnish to each Noteholder and to the Owner Lessor and the Owner Participant promptly upon receipt thereof duplicates or copies of all reports, notices, requests, demands, certificates, financial statements and other instruments furnished to the Indenture Trustee hereunder or under any of the Operative Documents unless the Indenture Trustee shall reasonably believe that each such Noteholder, the Owner Lessor and the Owner Participant shall have received copies thereof.

### Section 6.3. Representations and Warranties.

(a) The Owner Lessor represents and warrants that it has not assigned or pledged any of its estate, right, title or interest subject to this Indenture, to anyone other than the Indenture Trustee.

(b) NEITHER THE OWNER LESSOR NOR THE INDENTURE TRUSTEE MAKES, NOR SHALL BE DEEMED TO HAVE MADE (i) ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO THE TITLE, VALUE, COMPLIANCE WITH PLANS OR SPECIFICATIONS, QUALITY, DURABILITY, SUITABILITY, CONDITION, DESIGN, OPERATION, MERCHANTABILITY OR FITNESS FOR USE OR FOR ANY PARTICULAR PURPOSE OF THE FACILITY, OR ANY PART THEREOF, OR ANY OTHER REPRESENTATION OR WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THE FACILITIES OR ANY OTHER PART OF THE INDENTURE ESTATE, except that the Owner Lessor represents and warrants that on the Closing Date it shall have received whatever title or interest to the Facilities and the Tiverton and Rumford Sites as were conveyed to it by the Facility Lessees and that on the Closing Date the Facilities shall be free of Owner Lessor's Liens and the Owner Participant's Liens; or (ii) any representation or warranty as to the validity, legality or enforceability of this Indenture, the Notes or any of the other Operative Documents, or as to the correctness of any statement contained in any thereof, except that each of the Owner Lessor and the Indenture Trustee represents and warrants that this Indenture and the Participation Agreement have been, and, in the case of the Owner Lessor, the other Operative Documents to which it is or is to become a party have been or will be, executed and delivered by one of its officers who is and will be duly authorized to execute and deliver such document on its behalf.

Section 6.4. No Segregation of Moneys; No Interest. All moneys and securities deposited with and held by the Indenture Trustee under this Indenture for the purpose of paying, or securing the payment of, the principal of or Make-Whole Amount or interest on the Notes shall be held in trust. Except as specifically provided herein or in the Facility Leases, any moneys received by the Indenture Trustee hereunder need not be segregated in any manner except to the extent required by Applicable Law and may be deposited under such general conditions as may be prescribed by Applicable Law, and neither the Owner Lessor nor the Indenture Trustee shall be liable for any interest thereon; provided, however, subject to Section 6.5 hereof, that any payments received or applied hereunder by the Indenture Trustee shall be accounted for by the Indenture Trustee so that any portion thereof paid or applied pursuant hereto shall be identifiable as to the source thereof to the extent known to the Indenture Trustee.

Section 6.5. Reliance; Agents; Advice of Experts. The Indenture Trustee shall be authorized and protected and incur no liability to anyone in acting upon any signature, instrument, notice, resolution, request, consent, order, certificate, report, opinion, bond or other document or paper believed to be genuine and believed to be signed by the proper party or parties. The Indenture Trustee may accept in good faith a certified copy of a resolution of the general partner (or equivalent body) of the Facility Lessees as conclusive evidence that such resolution has been duly adopted by such Board and that the same is in full force and effect. As to the amount of any payment to which any Noteholder is entitled pursuant to Clause "Third" of Section 3.2 or Section 3.3 hereof, and as to the amount of any payment to which any other

Person is entitled pursuant to Section 3.5 or Section 3.7 hereof, the Indenture Trustee for all purposes hereof may rely on and shall be authorized and protected in acting or refraining from acting upon an Officer's Certificate of such Noteholder or other Person, as the case may be. As to any fact or matter the manner of ascertainment of which is not specifically described herein, the Indenture Trustee for all purposes hereof may rely on an Officer's Certificate of the Owner Lessor or the Facility Lessees or a Noteholder as to such fact or matter, and such certificate shall constitute full protection to the Indenture Trustee for any action taken or omitted to be taken by it in good faith in reliance thereon. The Indenture Trustee shall have the right to request instructions from the Owner Lessor or the Majority in Interest of Noteholders with respect to taking or refraining from taking any action in connection with the Lease Indenture or any other Operative Document to which it is a party, and shall be entitled to act or refrain from taking such action unless and until the Indenture Trustee shall have received written instructions from the Owner Lessor or the Majority in Interest of Noteholders, and the Indenture Trustee shall not incur liability by reason of so acting (except as provided in Section 6.1) or refraining from acting. In the administration of the trusts hereunder, the Indenture Trustee may execute any of the trusts or powers hereof and perform its powers and duties hereunder directly or through agents or attorneys and may, at the expense of the Indenture Estate (but subject to the priorities of payment set forth in Section 3 hereof), consult with independent skilled Persons to be selected and retained by it (other than Persons regularly in its employ) as to matters within their particular competence, and the Indenture Trustee shall not be liable for anything done, suffered or omitted in good faith by it in accordance with the advice or opinion, within such Person's area of competence, of any such Person, so long as the Indenture Trustee shall have exercised reasonable care in selecting such Person.

## SECTION 7. SUCCESSOR INDENTURE TRUSTEES AND SEPARATE TRUSTEES

### Section 7.1. Resignation or Removal of the Indenture Trustee; Appointment of Successor.

(a) Resignation or Removal. The Indenture Trustee or any successor thereto may resign at any time with or without cause by giving at least thirty (30) days' prior written notice to the Owner Lessor, the Owner Participant, the Facility Lessees and each Noteholder, such resignation to be effective on the acceptance of appointment by the successor Indenture Trustee pursuant to the provisions of subsection (b) below. In addition, a Majority in Interest of Noteholders may at any time remove the Indenture Trustee with or without cause by an instrument in writing delivered to the Owner Lessor, the Owner Participant and the Indenture Trustee, and the Owner Lessor shall give prompt written notification thereof to each Noteholder and the Facility Lessees. Such removal will be effective on the acceptance of appointment by the successor Indenture Trustee pursuant to the provisions of subsection (b) below. In the case of the resignation or removal of the Indenture Trustee, a Majority in Interest of Noteholders may appoint a successor Indenture Trustee by an instrument signed by such holders. If a successor Indenture Trustee shall not have been appointed within thirty (30) days after such resignation or removal, the Indenture Trustee or any Noteholder may apply to any court of competent jurisdiction to appoint a successor Indenture Trustee to act until such time, if any, as a successor shall have been appointed by a Majority in Interest of Noteholders as above provided. The successor Indenture Trustee so appointed by such court shall immediately and without further act

be superseded by any successor Indenture Trustee appointed by a Majority in Interest of Noteholders as above provided.

(b) Acceptance of Appointment. Any successor Indenture Trustee shall execute and deliver to the predecessor Indenture Trustee, the Owner Participant, the Owner Lessor and all Noteholders an instrument accepting such appointment and thereupon such successor Indenture Trustee, without further act, shall become vested with all the estates, properties, rights, powers and duties of the predecessor Indenture Trustee hereunder in the trusts hereunder applicable to it with like effect as if originally named the Indenture Trustee herein; but nevertheless, upon the written request of such successor Indenture Trustee or a Majority in Interest of Noteholders, such predecessor Indenture Trustee shall execute and deliver an instrument transferring to such successor Indenture Trustee, upon the trusts herein expressed applicable to it, all the estates, properties, rights and powers of such predecessor Indenture Trustee, and such predecessor Indenture Trustee shall duly assign, transfer deliver and pay over to such successor Indenture Trustee all moneys or other property then held by such predecessor Indenture Trustee hereunder. To the extent required by Applicable Law or upon request of the successor Indenture Trustee, the Owner Lessor shall execute any and all documents confirming the vesting of such estates, properties, rights and powers in the successor Indenture Trustee.

(c) Qualifications. Any successor Indenture Trustee, however appointed, shall be a trust company or bank with trust powers (i) which (A) has a combined capital and surplus of at least \$150,000,000, or (B) is a direct or indirect subsidiary of a corporation which has a combined capital and surplus of at least \$150,000,000 provided such corporation guarantees the performance of the obligations of such trust company or bank as Indenture Trustee, or (C) is a member of a bank holding company group having a combined capital and surplus of at least \$150,000,000 provided the parent of such bank holding company group or a member which itself has a combined capital and surplus of at least \$150,000,000 guarantees the performance of the obligations of such trust company or bank, and (ii) is willing, able and legally qualified to perform the duties of Indenture Trustee hereunder upon reasonable or customary terms. No successor Indenture Trustee, however appointed, shall become such if such appointment would result in the violation of any Applicable Law or create a conflict or relationship involving a conflict of interest under the Trust Indenture Act of 1939, as amended.

(d) Merger, etc. Any Person into which the Indenture 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 Indenture Trustee shall be a party, or any Person to which substantially all the corporate trust business of the Indenture Trustee may be transferred, shall, subject to the terms of subsection (c) of this Section 7.1, be the Indenture Trustee under this Indenture without further act.

#### Section 7.2. Appointment of Additional and Separate Trustees.

(a) Appointment. Whenever (i) the Indenture Trustee shall deem it necessary or prudent in order to conform to any law of any applicable jurisdiction or to make any claim or bring any suit with respect to or in connection with the Indenture Estate, this Indenture, the Facility Leases, the Notes or any of the transactions contemplated by the Operative Documents, (ii) the Indenture Trustee shall be advised by counsel, satisfactory to it, that it is so necessary or

prudent in the interest of the Noteholders or (iii) a Majority in Interest of Noteholders deems it so necessary or prudent and shall have requested in writing the Indenture Trustee to do so, then in any such case the Indenture Trustee shall execute and deliver from time to time all instruments and agreements necessary or proper to constitute another bank or trust company or one or more Persons approved by the Indenture Trustee either to act as additional trustee or trustees of all or any part of the Indenture Estate, jointly with the Indenture Trustee, or to act as separate trustee or trustees of all or any part of the Indenture Estate, in any such case with such powers as may be provided in such instruments or agreements, and to vest in such bank, trust company or Person as such additional trustee or separate trustee, as the case may be, any property, title, right or power of the Indenture Trustee deemed necessary or advisable by the Indenture Trustee, subject to the remaining provisions of this Section 7.2. The Owner Lessor hereby consents to all actions taken by the Indenture Trustee under the provisions of this Section 7.2 and agrees, upon the Indenture Trustee's request, to join in and execute, acknowledge and deliver any or all such instruments or agreements; and the Owner Lessor hereby makes, constitutes and appoints the Indenture Trustee its agent and attorney-in-fact for it and in its name, place and stead to execute, acknowledge and deliver any such instrument or agreement in the event that the Owner Lessor shall not itself execute and deliver the same within fifteen (15) days after receipt by it of such request so to do; provided, however, that the Indenture Trustee shall exercise due care in selecting any additional or separate trustee if such additional or separate trustee shall not be a Person possessing trust powers under Applicable Law. If at any time the Indenture Trustee shall deem it no longer necessary or prudent in order to conform to any such law or take any such action or shall be advised by such counsel that it is no longer so necessary or prudent in the interest of the Noteholders or in the event that the Indenture Trustee shall have been requested to do so in writing by a Majority in Interest of Noteholders, the Indenture Trustee shall execute and deliver all instruments and agreements necessary or proper to remove any additional trustee or separate trustee. In such connection, the Indenture Trustee may act on behalf of the Owner Lessor to the same extent as is provided above. Notwithstanding anything contained to the contrary in this Section 7.2(a), to the extent the laws of any jurisdiction preclude the Indenture Trustee from taking any action hereunder either alone, jointly or through a separate trustee under the direction and control of the Indenture Trustee, the Owner Lessor, at the instruction of the Indenture Trustee, shall appoint a separate trustee for such jurisdiction, which separate trustee shall have full power and authority to take all action hereunder as to matters relating to such jurisdiction without the consent of the Indenture Trustee, but not subject to the same limitations in any exercise of his power and authority as those to which the Indenture Trustee is subject.

(b) The Indenture Trustee as Agent. Any additional trustee or separate trustee at any time by an instrument in writing may constitute the Indenture Trustee its agent or attorney-in-fact, with full power and authority, to the extent not prohibited by Applicable Law, to do all acts and things and exercise all discretions which it is authorized or permitted to do or exercise, for and in its behalf and in its name. In case any such additional trustee or separate trustee shall become incapable of acting or cease to be such additional trustee or separate trustee, the property, rights, powers, trusts, duties and obligations of such additional trustee or separate trustee, as the case may be, so far as permitted by Applicable Law, shall vest in and be exercised by the Indenture Trustee, without the appointment of a new successor to such additional trustee or separate trustee, unless and until a successor is appointed in the manner hereinbefore provided.

(c) Requests, etc. Any request, approval or consent in writing by the Indenture Trustee to any additional trustee or separate trustee shall be sufficient to warrant such additional trustee or separate trustee, as the case may be, to take the requested, approved or consented to action.

(d) Subject to Indenture, etc. Each additional trustee and separate trustee appointed pursuant to this Section 7.2 shall be subject to, and shall have the benefit of Sections 3 through 9 hereof insofar as they apply to the Indenture Trustee. Notwithstanding any other provision of this Section 7.2, (i) the powers, duties, obligations and rights of any additional trustee or separate trustee appointed pursuant to this Section 7.2 shall not in any case exceed those of the Indenture Trustee hereunder, (ii) all powers, duties, obligations and rights conferred upon the Indenture Trustee in respect of the receipt, custody, investment and payment of moneys or the investment of moneys shall be exercised solely by the Indenture Trustee and (iii) no power hereby given to, or exercisable as provided herein by, any such additional trustee or separate trustee shall be exercised hereunder by such additional trustee or separate trustee except jointly with, or with the consent of, the Indenture Trustee.

## SECTION 8. SUPPLEMENTS AND AMENDMENTS TO THIS INDENTURE AND OTHER DOCUMENTS

Section 8.1. Supplemental Indenture and Other Amendment With Consent; Conditions and Limitations. At any time and from time to time, subject to Sections 8.2 and 8.3 hereof, but only upon the written direction of a Majority in Interest of Noteholders and the written consent of the Owner Lessor, (a) the Indenture Trustee shall execute an amendment or supplement hereto for the purpose of adding provisions to, or changing or eliminating provisions of, this Indenture as specified in such request, and (b) the Indenture Trustee, as the case may be, shall enter into or consent to such written amendment of or supplement to any Assigned Document as each other party thereto may agree to and as may be specified in such request, or execute and deliver such written waiver or modification of or consent to the terms of any such agreement or document as may be specified in such request; provided, however, that without the consent of the Noteholders representing one hundred percent (100%) of the outstanding principal amount of the Notes, such percentage to be determined in the same manner as provided in the definition of the term "Majority in Interest of Noteholders," no such supplement to or amendment of this Indenture or any Assigned Document, or waiver or modification of or consent to the terms hereof or thereof, shall (i) modify the definition of the terms "Majority in Interest of Noteholders" or reduce the percentage of Noteholders required to take or approve any action hereunder, (ii) change the amount or the time of payment of any amount owing or payable under any Note or change the rate or manner of calculation of interest payable on any Note, (iii) alter or modify the provisions of Section 3 hereof with respect to the manner of payment or the order of priorities in which distributions thereunder shall be made as between the Noteholders and the Owner Lessor, (iv) reduce the amount (except to any amount as shall be sufficient to pay the aggregate principal of, and interest on all outstanding Notes) or extend the time of payment of Periodic Rent or Termination Value except as expressly provided in Section 3.5 of the Facility Leases, or change any of the circumstances under which Periodic Rent or Termination Value is payable, (v) consent to any assignment of the Facility Leases if in connection therewith the Facility Lessees will be released from its obligation to pay Periodic Rent and Termination Value, except as expressly provided in Section 13 of the Participation Agreement, or release the Facility

Lessees of their obligation to pay Periodic Rent or Termination Value or change the absolute and unconditional character of such obligations as set forth in

Section 9 of the Facility Leases; or (vi) consent to any release of the Guarantor under Section 8.4 of the Guaranty.

Section 8.2. Supplemental Indentures and other Amendments Without Consent. Without the consent of any Noteholders but subject to the provisions of

Section 8.3, and only after notice thereof shall have been sent to the Noteholders and with the consent of the Owner Lessor, the Indenture Trustee shall enter into any indenture or indentures supplemental hereto or execute any amendment, modification, supplement, waiver or consent with respect to any other Operative Document (a) to evidence the appointment of a co-manager in accordance with the terms of the LLC Agreement, or to evidence the succession of a successor as the Indenture Trustee hereunder, the removal of the Indenture Trustee or the appointment of any separate or additional trustee or trustees, in each case if done pursuant to the provisions of Section 7 hereof and to define the rights, powers, duties and obligations conferred upon any such separate trustee or trustees or co-trustee or co-trustees, (b) to correct, confirm or amplify the description of any property at any time subject to the Lien of this Indenture or to convey, transfer, assign, mortgage or pledge any property to or with the Indenture Trustee, (c) to provide for any evidence of the creation and issuance of any Additional Notes pursuant to, and subject to the conditions of,

Section 2.12 and to establish the form and the terms of such Additional Notes,

(d) to cure any ambiguity in, to correct or supplement any defective or inconsistent provision of, or to add to or modify any other provisions and agreements in, this Indenture or any other Operative Document in any manner that will not in the judgment of the Indenture Trustee materially adversely affect the interests of the Noteholders, (e) to grant or confer upon the Indenture Trustee for the benefit of the Noteholders any additional rights, remedies, powers, authority or security which may be lawfully granted or conferred and which are not contrary or inconsistent with this Indenture, (f) to add to the covenants or agreements to be observed by the Facility Lessees or the Owner Lessor and which are not contrary to this Indenture, to add Indenture Events of Defaults for the benefit of Noteholders or surrender any right or power of the Owner Lessor, provided it has consented thereto, (g) to effect the assumption of all or, to the extent otherwise provided hereunder, part of the Lessor Notes by the Facility Lessees, provided that the supplemental indenture will contain all of the covenants applicable to the Facility Lessees contained in the Facility Leases and the Participation Agreement for the benefit of the Indenture Trustees or the holders of such Lessor Notes, such that the Facility Lessees' obligations contained therein, if applicable in the event that the Facility Leases are terminated, will continue to be in full force and effect, (h) to comply with requirements of the SEC, any applicable law, rules or regulations of any exchange or quotation system on which the Certificates are listed, or any regulatory body, (i) to modify, eliminate or add to the provisions of any Operative Documents to such extent as shall be necessary to qualify or continue the qualification of this Lease Indenture or the Pass Through Trust Agreements (including any supplements thereto) under the Trust Indenture Act, or similar federal statute enacted after the Closing Date, and to add to this Indenture such other provisions as may be expressly required or permitted by the Trust Indenture Act of 1939, and (j) to effect any indenture or indentures supplemental hereto or any amendment, modification, supplement, waiver or consent with respect to any other Operative Document, provided such supplemental indenture, amendment, modification, supplement, waiver or consent shall not reasonably be expected to materially and adversely affect the interest of the Noteholders; provided, however, that no such amendment, modification, supplement, waiver or consent contemplated by this Section 8.2 shall, without the consent of the holder of each then outstanding

Note, cause any of the events specified in clauses (i) through (v) of the first sentence of Section 8.1 hereof to occur; and provided, further, that no such amendment, modification, supplement, waiver or consent contemplated by this

Section 8.2 shall, without the consent of the holder of a Majority in Interest of Noteholders, modify the provisions of Sections 5.2, 5.6, 6, or 13.1 or [ ] of the Participation Agreement, or modify in any material respect the provisions of either Calpine Guaranty (other than, in each case, any amendment, modification, supplement, waiver or consent having no adverse affect on the interest of the Noteholders).

Section 8.3. Conditions to Action by the Indenture Trustee. If in the opinion of the Indenture Trustee any document required to be executed pursuant to the terms of Section 8.1 or 8.2 or the election referred to in Section 9.13 hereof adversely affects any immunity or indemnity in favor of the Indenture Trustee under this Indenture or the Participation Agreement, or would materially increase its administrative duties or responsibilities hereunder or thereunder or may result in personal liability for it (unless it shall have been provided an indemnity satisfactory to the Indenture Trustee), the Indenture Trustee may in its discretion decline to execute such document or the election. With every such document and election, the Indenture Trustee shall be furnished with evidence that all necessary consents have been obtained and with an opinion of counsel that such document complies with the provisions of this Indenture, does not deprive the Indenture Trustee or the holders of the Notes of the benefits of the Lien hereby created on any property subject hereto or of the assignments contained herein (except as otherwise consented to in accordance with Section 8.1 hereof) and that all consents required by the terms hereof in connection with the execution of such document or the making of such election have been obtained. The Indenture Trustee shall be fully authorized and protected in relying on such opinion.

## SECTION 9. MISCELLANEOUS

### Section 9.1. Surrender, Defeasance and Release.

(a) Surrender and Cancellation of Indenture. This Indenture shall be surrendered and cancelled and the trusts created hereby shall terminate and this Indenture shall be of no further force or effect upon satisfaction of the conditions set forth in the proviso to the Granting Clause hereof. Upon any such surrender, cancellation, and termination, the Indenture Trustee shall pay all moneys or other properties or proceeds constituting part of the Indenture Estate (the distribution of which is not otherwise provided for herein) to the Owner Lessor, and the Indenture Trustee shall, upon request and at the cost and expense of the Owner Lessor, execute and deliver proper instruments acknowledging such cancellation and termination and evidencing the release of the security, rights and interests created hereby. If this Indenture is terminated pursuant to this Section 9.1(a), the Indenture Trustee shall promptly notify the Facility Lessees and the Owner Participant of such termination.

(b) Release.

(i) Whenever a Component is replaced pursuant to the Facility Leases, such component shall automatically and without further act of any Person be released from the Lien of this Lease Indenture and the Indenture Trustee shall, upon the written request of the Owner Lessor or the Facility Lessees, execute and deliver to, and as directed in

writing by, the Facility Lessees or the Owner Lessor an appropriate instrument (in due form for recording) releasing the replaced Component from the Lien of this Indenture.

(ii) Whenever the Facility Lessees are entitled to acquire or have transferred to it their respective Facilities pursuant to the express terms of the Facility Leases, the Indenture Trustee shall release the Indenture Estate from the Lien of this Indenture and execute and deliver to, or as directed in writing by, the Facility Lessees or the Owner Lessor an appropriate instrument (in due form for recording) releasing the Indenture Estate from the Lien of this Indenture; provided that all sums secured by this Indenture have been paid to the Persons entitled to such sums.

Section 9.2. Conveyances Pursuant to Section 4.2 of Site Leases and Subleases. Sales, grants of leases or easements and conveyances of portions of the Tiverton and Rumford Sites, rights of way, easements or leasehold interest made by the Facility Lessees in accordance with Section 4.2 of the Site Leases and Subleases shall automatically, without further act of any Person, be released from this Lease Indenture.

Section 9.3. Appointment of the Indenture Trustee as Attorney; Further Assurances. The Owner Lessor hereby constitutes the Indenture Trustee the true and lawful attorney of the Owner Lessor irrevocably with full power as long as the Lease Indenture is in effect (in the name of the Owner Lessor or otherwise) to ask, require, demand, receive, compound and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Assigned Documents (except to the extent that such moneys and claims constitute Excepted Payments), to endorse any checks or other instruments or orders in connection therewith, to make all such demands and to give all such notices as are permitted by the terms of the Facility Lease to be made or given by the Owner Lessor upon the occurrence and continuance of a Lease Event of Default, to enforce compliance by the Facility Lessees with all terms and provisions of the Facility Leases (except as otherwise provided in Sections 4.3 and 5.6 hereof), and to file any claims or take any action or institute any proceedings which the Indenture Trustee may request in the premises.

Section 9.4. Indenture for Benefit of Certain Persons Only. Nothing in this Indenture, whether express or implied, shall be construed to give to any Person other than the parties hereto, the Owner Participant, the Facility Lessees (with respect to Sections 4.12 and 8.1 hereof) and the Noteholders (and any successor or assign of any thereof) any legal or equitable right, remedy or claim under or in respect of this Indenture, and this Indenture shall be for the sole and exclusive benefit of the parties hereto, the Owner Participant, the Facility Lessees (as provided in Sections 4.12 and 8.1 hereof) and the Noteholders.

Section 9.5. Notices; Furnishing Documents, etc. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein to a party hereto shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) and (b)

above, in each case addressed to such party and copy party at its address set forth below or at such other address as such party or copy party may from time to time designate by written notice to the other party:

**If to the Owner Lessor:**

PMCC Calpine New England Investment LLC

c/o Phillip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, Connecticut 06905 Telephone No.: (914) 335-8170 Facsimile No.: (914) 335-8287 Attention: Vice President-Leasing

with a copy to:

Philip Morris Capital Corporation 225 High Ridge Road, Suite 300 Stamford, Connecticut 06905 Telephone No.: (914) 335-8347 Facsimile No.: (914) 335-8256 Attention: General Counsel

with a copy to the Owner Participant:

PMCC Calpine NEIM LCC

c/o Phillip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, Connecticut 06905 Telephone No.: (914) 335-8170 Facsimile No.: (914) 335-8287 Attention: Vice-President Leasing

with a copy to:

Philip Morris Capital Corporation 225 High Ridge Road, Suite 300 Stamford, Connecticut 06905 Telephone No.: (914) 335-8347 Facsimile No.: (914) 335-8256 Attention: General Counsel

**If to the Indenture Trustee:**

State Street Bank and Trust Company of Connecticut, National Association  
633 West 5th Street, 12th Floor Los Angeles, California 90071 Telephone No.: (860) 244-1822 Facsimile No.: (860) 244-1889

**If to the Facility Lessees:**

**If to the Tiverton Lessee:**

c/o Calpine Corporation  
50 West San Fernando Street, 5th Floor  
San Jose, California 95113

Telephone No.: (408) 995-5115 Facsimile No.: (408) 995-0505 Attention: Asset Manager and General Counsel

c/o Calpine Corporation  
The Pilot House, 2nd Floor Lewis Wharf  
Boston, Massachusetts 02110 Telephone No.: (617) 723-7200 Facsimile No.: (617) 723-7635

**If to the Rumford Lessee:**

c/o Calpine Corporation  
50 West San Fernando Street, 5th Floor  
San Jose, California 95113

Telephone No.: (408) 995-5115 Facsimile No.: (408) 995-0505 Attention: Asset Manager and General Counsel

c/o Calpine Corporation  
The Pilot House, 2nd Floor Lewis Wharf  
Boston, Massachusetts 02110 Telephone No.: (617) 723-7200 Facsimile No.: (617) 723-7635

**If to the Pass Through Trustee:**

State Street Bank and Trust Company of Connecticut, National Association

633 West 5th Street, 12th Floor Los Angeles, California 90071 Telephone No.: (860) 244-1822 Facsimile No.: (860) 244-1889

Section 9.6. Severability. Any provision of this Indenture which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating or rendering unenforceable the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 9.7. Limitation of Liability. It is expressly understood and agreed by the parties hereto that (a) this Indenture is executed and delivered by, not individually or personally but solely as trustee of the Owner Lessor under the LLC Agreement, General Foods Credit Corporation ("GFCC"), not individually or personally but solely as the managing member of PMCC Calpine NEIM LLC, the Owner Participant and the sole managing member of the Owner Lessor, in the exercise of the powers and authority conferred and vested in it pursuant thereto, (b) each of the representations, undertakings and agreements herein made on the part of the Owner Lessor is made and intended not as personal representations, undertakings and agreements by GFCC, but is made and intended for the purpose for binding only the Owner Lessor, (c) nothing herein contained shall be construed as creating any liability on GFCC, individually or personally, to perform any covenant either expressed or implied contained herein, all such liability, if any, being expressly waived by the parties hereto or by any Person claiming by, through or under the parties hereto and (d) under no circumstances shall GFCC, be personally liable for the payment of any indebtedness or expenses of the Owner Lessor or be liable for the breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Lessor under this Indenture.

Section 9.8. Written Changes Only. Subject to Sections 8.1 and 8.2 hereof, no term or provision of this Indenture or any Note may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the parties hereto; and any waiver of the terms hereof or of any Note shall be effective only in the specific instance and for the specific purpose given.

Section 9.9. Counterparts. This Indenture may be executed in separate counterparts, each of which, when so executed and delivered shall be an original, but all such counterparts shall together constitute one and the same instrument.

Section 9.10. Successors and Permitted Assigns. All covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and permitted assigns and each Noteholder. Any request, notice, direction, consent, waiver or other instrument or action by any Noteholder shall bind the successor and assigns thereof.

Section 9.11. Headings and Table of Contents. The headings of the sections of this Indenture and the Table of Contents are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

Section 9.12. Governing Law. This Indenture and the Notes shall be in all respects governed by and construed in accordance with the laws of the State of New York, including all matters of construction, validity and performance (without giving effect to the conflicts of laws provisions thereof, other than New York General Obligation Law Section 5-1401), except to the extent the laws of the State of Rhode Island and the State of Maine are mandatorily applicable under the laws of the State of Rhode Island and the State of Maine.

Section 9.13. Reorganization Proceedings with Respect to the Lessor Estate. If (a) the Lessor Estate becomes a debtor subject to the reorganization provisions of Title 11 of the United States Code, or any successor provisions, (b) pursuant to such reorganization provisions the Owner Participant is required by reason of the Owner Participant's being held to have recourse liability that it would not otherwise have had under Section 2.5 hereof to the debtor or the trustee of the debtor, directly or indirectly, to make payment on account of any amount payable as principal or interest on the Notes and (c) any Noteholder or the Indenture Trustee actually receives any Excess Amount (as hereinafter defined) which reflects any payment by the Owner Participant on account of clause (b) above, then such Noteholder or the Indenture Trustee, as the case may be, shall promptly refund such Excess Amount, without interest, to the Owner Participant after receipt by such Noteholder or the Indenture Trustee, as the case may be, of a written request for such refund by the Owner Participant (which request shall specify the amount of such Excess Amount and shall set forth in detail the calculation thereof). For purposes of this Section 9.13, "Excess Amount" means the amount by which such payment exceeds the amount which would have been received by such holder and the Indenture Trustee in respect of such principal or interest if the Owner Participant had not become subject to the recourse liability referred to in clause (b) above. Nothing contained in this Section 9.13 shall prevent the Indenture Trustee or any Noteholder from enforcing any personal recourse obligations (and retaining the proceeds thereof) of the Owner Participant under the Participation Agreement.

The Noteholders and the Indenture Trustee agree that should the Lessor Estate become a debtor subject to the reorganization provisions of the Bankruptcy Code, they shall upon the request of the Owner Participant, and provided that the making of the election hereinafter referred to is permitted to be made by them under Applicable Law and will not have any adverse impact on any Noteholder, the Indenture Trustee or the Indenture Estate other than as contemplated by the preceding paragraph, make the election referred to in Section 1111(b)(1)(A)(i) of Title 11 of the Bankruptcy Code or any successor provision if, in the absence of such election, the Noteholders would have recourse against the Owner Participant for the payment of the indebtedness represented by the Notes in circumstance in which such Noteholders would not have recourse under this Indenture if the Lessor Estate had not become a debtor under the Bankruptcy Code.

Section 9.14. Withholding Taxes: Information Reporting. The Indenture Trustee shall exclude and withhold from each distribution of principal, Make-Whole Amount, if any, and interest and other amounts due hereunder or under the Lessor Notes and all withholding taxes applicable thereto as required by law. The Indenture Trustee agrees (i) to act as such

withholding agent and, in connection therewith, whenever any present or future taxes or similar charges are required to be withheld with respect to any amounts payable in respect of the Lessor Notes, to withhold such amounts and timely pay the same to the appropriate authority in the name of and on behalf of the Noteholders and to pay to the Noteholders from amounts received by Paying Agent pursuant hereto such additional amounts so that the net amount actually received by the Noteholders, after reduction for such withheld amounts, shall be equal to the full amount of principal, Make-Whole Amount, interest and other amounts otherwise due and payable hereunder; provided, however, that, notwithstanding the foregoing, the Paying Agent shall be required to pay such additional amounts only if and to the extent that (a) the Facility Lessee is required to indemnify the Noteholders for such amounts under Section 9 of the Participation Agreement and (b) the Facility Lessee has not paid such amounts within three (3) days after notice of nonpayment, (ii) that it will file any necessary withholding tax returns or statements when due, and (iii) that, as promptly as possible after the payment thereof, it will deliver to each Noteholder appropriate documentation showing the payment thereof, together with such additional documentary evidence as such Noteholders may reasonably request from time to time. The Indenture Trustee agrees to file any other information as it may be required to file under United States law.

Any Noteholder which is organized under the laws of a jurisdiction outside the United States shall, on or prior to the date such Noteholder becomes a Holder, (a) so notify the Indenture Trustee, (b) (i) provide the Indenture Trustee with Internal Revenue Service form Form W-8 BEN or W-8 ECI, as appropriate, or (ii) notify the Indenture Trustee that it is not entitled to an exemption from United States withholding tax or a reduction in the rate thereof on payments of interest. Any such Noteholder agrees by its acceptance of a Note, on an ongoing basis, to provide like certification for each taxable year and to notify the Indenture Trustee should subsequent circumstances arise affecting the information provided the Indenture Trustee in clauses (a) and (b) above. The Indenture Trustee shall be fully protected in relying upon, and each Noteholder by its acceptance of a Note hereunder agrees to indemnify and hold the Indenture Trustee harmless against all claims or liability of any kind arising in connection with or related to the Indenture Trustee's reliance upon any such documents, forms or information provided by such Holder to the Indenture Trustee. In addition, if the Indenture Trustee has not withheld taxes on any payment made to any Noteholder, and the Indenture Trustee is subsequently required to remit to any taxing authority any such amount not withheld, such Noteholder shall return such amount to the Indenture Trustee upon written demand by the Indenture Trustee, but only to the extent the Indenture Trustee is not obligated to pay additional amounts with respect to such taxes pursuant to this

Section 9.14. The Indenture Trustee shall be liable only for direct (but not consequential) damages to any Noteholder due to the Indenture Trustee's violation of the Code and only to the extent such liability is caused by the Indenture Trustee's violation of the Code and only to the extent such liability is caused by the Indenture Trustee's failure to act in accordance with its standard of care under this Lease Indenture.

Section 9.15. Fixture Financing Statement. This Indenture also is intended to serve as a fixture financing statement under the Rhode Island and Maine Uniform Commercial Codes. In connection therewith, the following information is provided:

(a) Name and address of Debtor:

PMCC Calpine New England Investment LLC c/o Phillip Morris Capital Corporation 225 High Ridge, Suite 300 Stamford, Connecticut 06905  
Telephone No.: (914) 335-8170 Facsimile No.: (914) 335-8287 Attention: Vice President-Leasing Tax ID Number of Debtor: \_\_\_\_\_

with a copy to:

Philip Morris Capital Corporation 225 High Ridge Road, Suite 300 Stamford, Connecticut 06905 Telephone No.: (914) 335-8347 Facsimile  
No.: (914) 335-8256 Attention: General Counsel

(b) Name and Address of Secured Party (from which information concerning the security interest may be obtained):

State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee 633 West 5th Street, 12th Floor Los Angeles,  
California 90071 Telephone No.: (860) 244-1822 Facsimile No.: (860) 244-1889

(c) The personal property covered by the security interest granted hereunder includes goods which are or are to become fixtures upon the real  
property described in Exhibits A-1 and A-2 hereto.

(d) Recording: This Indenture is to be recorded in the real estate records of the Town of Tiverton, Rhode Island and West Oxford County,  
Maine.

(e) Type of Filing: This is a fixture filing under Section 30-9-401(1)(c) and R.I. Gen. Laws Section 6A-9-401(1)(b) and 6A-9-402(6).

(Remainder of Page Intentionally Left Blank)

IN WITNESS WHEREOF, the parties have caused this Indenture to be duly executed on the day and year first above written.

**STATE STREET BANK AND TRUST COMPANY OF  
CONNECTICUT, NATIONAL ASSOCIATION,  
as Indenture Trustee**

By: /s/ MARK HENSON

-----  
Name: Mark Henson

Title: Assistant Vice President

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC, as  
Owner Lessor**

By: PMCC Calpine NEIM LLC, its managing  
member

By: General Foods Credit Corporation, its  
managing member

By: /s/ ANIL BHATIA

-----  
Name:

Title:

STATE OF NEW YORK )  
 ) SS. :  
COUNTY OF NEW YORK )

The foregoing instrument was acknowledged before me this 19th day of December 2000, by Anil Bhatia, Authorized Signator of General Foods Credit Corporation, Managing Member of PMCC Calpine NEIM LLC, Managing Member of PMCC Calpine New England Investment LLC, and acknowledged the foregoing investment to be his/her free act and deed in said capacity and the free act and deed of said PMCC Calpine New England Investment LLC.

/s/ ANN K. MALLARI

-----  
Notary Public

*My Commission Expires*

Ann K. Mallari  
Notary Public, State of New York  
No. 4936031  
Qualified in New York County  
Commission Expires July 5, 2002

STATE OF NEW YORK )  
 ) SS. :  
COUNTY OF NEW YORK )

The foregoing instrument was acknowledged before me this 19th day of December 2000, by Mark Henson, Assistant Vice President of State Street Bank and Trust Company of Connecticut, National Association, a United States banking corporation, to be the free act and deed on behalf of the corporation.

/s/ ANN K. MALLARI

-----  
Notary Public

*My Commission Expires*

Ann K. Mallari  
Notary Public, State of New York  
No. 4936031  
Qualified in New York County  
Commission Expires July 5, 2002

## **APPENDIX A**

### **DEFINITIONS**

**EXHIBIT A-1  
TO  
LEASE INDENTURE**

**DESCRIPTION OF TIVERTON SITE**

A-2

**EXHIBIT A-2  
TO  
LEASE INDENTURE**

**DESCRIPTION OF RUMFORD SITE**

A-2

**EXHIBIT B-1  
TO  
LEASE INDENTURE**

**FORM OF TIVERTON LESSOR NOTE**

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC  
NONRECOURSE PROMISSORY NOTE (TIVERTON) DUE IN  
A SERIES OF INSTALLMENTS OF PRINCIPAL  
WITH FINAL PAYMENT DATE  
OF JULY 15, 2018**

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT**

Issued at: New York, New York

Issue Date: December 19, 2000

\$190,000,000

PMCC CALPINE NEW ENGLAND INVESTMENT LLC, a Delaware limited liability company (herein called the "Owner Lessor", which term includes any successor person under the Collateral Trust Indenture hereinafter referred to), hereby promises to pay to State Street Bank and Trust Company of Connecticut, National Association, in its capacity as pass through trustee of the Tiverton and Rumford 2000 Pass Through Trust, (the "Pass Through Trustee") or its registered assigns, the principal sum of \$190,000,000, which is due and payable in a series of installments of principal with a final payment date of July 15, 2018, as provided below, together with interest at the rate of 9.00% per annum on the principal remaining unpaid from time to time from and including the Issue Date until paid in full. Interest on the outstanding principal amount under this Note shall be due and payable in arrears semiannually at the rate specified above, commencing on July 15, 2001, and on each July 15th and January 15th thereafter until the principal of this Note is paid in full or made available for payment. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

The principal of this Note shall be due and payable in installments on each of the dates set forth on Schedules 1 hereto. The installment of principal payable on any such date shall be in an aggregate amount equal to the product of the Principal Portion set forth on Schedule 1 multiplied by the percentage set forth on Schedule 1 under the column headed "Principal Amount Payable" for such date unless the Principal Portion has been prepaid; provided, that the final installment of principal shall be equal to the then unpaid principal balance of this Note.

Capitalized terms used in this Note that are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture of Trust, Mortgage and Security Agreement dated as of December 19, 2000 (the "Collateral Trust Indenture"), between the Owner Lessor and State Street Bank and Trust Company of Connecticut, National Association, as trustee (the "Indenture Trustee").

Interest (computed on the basis of a 360-day year of twelve 30-day months) on any overdue principal and premium, if any, and (to the extent permitted by Applicable Law) any overdue interest shall be paid, on demand, from the due date thereof at the Overdue Rate for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Note is not a Business Day, then payment thereof shall be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

Except as otherwise specifically provided in the Collateral Trust Indenture and in the Participation Agreement, all payments of principal, premium, if any, and interest on this Note, and all payments of any other amounts due hereunder or under the Collateral Trust Indenture shall be made only from the Indenture Estate, and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 of the Collateral Trust Indenture. The holder hereof, by its acceptance of this Note, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the holder hereof, as herein provided, and that, none of the Owner Participant, the Owner Lessor or the Indenture Trustee is or shall be personally liable to the holder hereof for any amounts payable under this Note or under the Collateral Trust Indenture, or, except as expressly provided in the Collateral Trust Indenture or, in the case of the Owner Participant and the Owner Lessor, the Participation Agreement for any performance to be rendered under the Collateral Trust Indenture or any Assigned Document or for any liability under the Collateral Trust Indenture or any Assigned Document.

The principal of and premium, if any, and interest on this Note shall be paid by the Indenture Trustee, without any presentment or surrender of this Note, except that, in the case of the final payment in respect of this Note, this Note shall be surrendered to the Indenture Trustee, by mailing a check for the amount then due and payable, in New York Clearing House funds, to the Noteholder, at the last address of the Noteholder appearing on the Note Register, or by whichever of the following methods specified by notice from the Noteholder to the Indenture Trustee: (a) by crediting the amount to be distributed to the Noteholder to an account maintained by the Noteholder with the Indenture Trustee, (b) by making such payment to the Noteholder in immediately available funds at the Indenture Trustee Office, or (c) by transferring such amount in immediately available funds for the account of the Noteholder to the banking institution having bank wire transfer facilities as shall be specified by the Noteholder, such transfer to be subject to telephonic confirmation of payment. All payments due with respect to this Note shall be made (i) as soon as practicable prior to the close of business on the date the amounts to be

distributed by the Indenture Trustee are actually received by the Indenture Trustee if such amounts are received by 12:00 noon, New York City time, on a Business Day or (ii) on the next succeeding Business Day if received after such time or if received on any day other than a Business Day. Prior to due presentment for registration of transfer of this Note, the Owner Lessor and the Indenture Trustee may deem and treat the Person in whose name this Note is registered on the Note Register as the absolute owner and holder of this Note for the purpose of receiving payment of all amounts payable with respect to this Note and for all other purposes, and neither the Owner Lessor nor the Indenture Trustee shall be affected by any notice to the contrary. All payments made on this Note in accordance with the provisions of this paragraph shall be valid and effective to satisfy and discharge the liability on this Note to the extent of the sums so paid and neither the Indenture Trustee nor the Owner Lessor shall have any liability in respect of such payment.

The holder hereof, by its acceptance of this Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 2.7 of the Collateral Trust Indenture, which provides that each payment on the Note shall be applied as follows: first, to the payment of accrued interest (including interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) on this Note to the date of such payment; second, to the payment of the principal amount of, and premium, if any, on this Note then due (including any overdue installments of principal) thereunder; and third, to the extent permitted by Section 2.10 of the Collateral Trust Indenture, the balance, if any, remaining thereafter, to the payment of the principal amount of, and premium, if any, on this Note.

This Note is the Note referred to in the Collateral Trust Indenture as the "Lessor Note". The Collateral Trust Indenture permits the issuance of additional notes ("Additional Lessor Notes"), as provided in Section 2.12 of the Collateral Trust Indenture, and the several Notes may be for varying principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Lessor included in the Indenture Estate are pledged or mortgaged to the Indenture Trustee to the extent provided in the Collateral Trust Indenture as security for the payment of the principal of and premium, if any, and interest on this Note and all other Notes issued and outstanding from time to time under the Collateral Trust Indenture.

Reference is hereby made to the Collateral Trust Indenture for a statement of the rights of the holder of, and the nature and extent of the security for, this Note and of the rights of, and the nature and extent of the security for, the holders of the other Notes and of certain rights of the Owner Lessor and the Owner Participant, as well as for a statement of the terms and conditions of the trust created by the Collateral Trust Indenture, to all of which terms and conditions the holder hereof agrees by its acceptance of this Note.

This Note is subject to redemption, in whole or in part as provided in the Collateral Trust Indenture, as follows: (x) in the case of redemptions under the circumstances set forth in Section 2.10(a) of the Collateral Trust Indenture, at a price

equal to the principal amount of this Note being redeemed together with accrued interest on such principal amount to the Redemption Date, and (y) in the case of redemptions under the circumstances set forth in Sections 2.10(d) of the Collateral Trust Indenture, at a price equal to the principal amount of this Note then outstanding together with accrued interest on such principal amount to the Redemption Date, plus the Make-Whole Premium, if any; provided, however, that no such redemption shall be made until notice thereof is given by the Indenture Trustee to the holder hereof as provided in the Collateral Trust Indenture.

In case either (i) a Regulatory Event of Loss under the Facility Lease shall occur or (ii) the Facility Lease shall have been terminated pursuant to Section 13.1 thereof where the Facility Lessee purchases the Undivided Interest from the Owner Lessor, the obligations of the Owner Lessor under this Note may, subject to the conditions set forth in Section 2.10(b) of the Collateral Trust Indenture, be assumed in whole by the Facility Lessee in which case the Owner Lessor shall be released and discharged from all such obligations. In connection with such an assumption, the holder of this Note may be required to exchange this Note for a new Note evidencing such assumption.

In case a Collateral Trust Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Note together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Lessor and the Owner Participant contained or referred to in the Collateral Trust Indenture, be declared or may become due and payable in the manner and with the effect provided in the Collateral Trust Indenture.

There shall be maintained at the Indenture Trustee Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Collateral Trust Indenture. The transfer of this Note is registrable, as provided in the Collateral Trust Indenture, upon surrender of this Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered holder hereof, together with the amount of any applicable transfer taxes.

It is expressly understood and agreed by the holder of this Note that

(a) this Note is executed and delivered by General Foods Credit Corporation, not individually or personally but solely as the managing member (the "Managing Member"), of PMCC Calpine NEIM LLC, the Owner Participant and the sole managing member of the Owner Lessor, in the exercise of the powers and authority conferred and vested in it pursuant thereto, (b) each of the undertakings and agreements in this Note made on the part of the Owner Lessor is made and intended not as personal undertakings and agreements by the Managing Member but is made and intended for the purpose for binding only the Owner Lessor, (c) nothing contained in this Note shall be construed as creating any liability on the Managing Member individually or personally, to perform any covenant either expressed or implied contained in this Note, all such liability, if any, being expressly waived by the holder of this Note or by any Person claiming by, through or under such holder, and (d) under no circumstances shall the Managing Member, be personally liable for the payment of any indebtedness or expenses of the Owner Lessor or be liable for the

breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Lessor under this Note.

This Note shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Lessor has caused this Note to be duly executed as of the date hereof.

**PMCC CALPINE NEW ENGLAND  
INVESTMENT LLC**

a Delaware limited liability company,

By: PMCC Calpine NEIM LLC,  
a Delaware limited liability company,  
Managing Member

By: General Foods Credit Corporation,  
a Delaware corporation,  
Managing Member

By:

Name:

Title:

This is the Lessor Note referred to in the within-mentioned Collateral Trust Indenture duly executed as of the date hereof.

**STATE STREET BANK AND TRUST  
COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,**  
not in its individual capacity, but solely as  
the Indenture Trustee

By:

Name:

Title:

**FORM OF TRANSFER NOTICE**

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s) assign(s) and transfer(s) unto

**Insert Taxpayer Identification No.**

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

(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_

attorney to transfer said Note on the books of the Issuer with full power of substitution in the premises.

Date:

-----

-----  
(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

**SCHEDULE 1  
TO NOTE**

**Schedule Of Principal Amortization**

Principal Portion: \$190,000,000

Payment Date	Principal Amount Payable (% of Principal Portion)
Dec 19 2000	0.00000000
Jul 15 2001	0.00000000
Jan 15 2002	0.00000000
Jul 15 2002	0.00000000
Jan 15 2003	0.00000000
Jul 15 2003	0.00000000
Jan 15 2004	0.00000000
Jul 15 2004	0.66256831
Jan 15 2005	0.00000000
Jul 15 2005	0.00000000
Jan 15 2006	0.00000000
Jul 15 2006	2.96557377
Jan 15 2007	0.00000000
Jul 15 2007	2.48633880
Jan 15 2008	1.95765027
Jul 15 2008	0.00000000
Jan 15 2009	2.54617486
Jul 15 2009	0.00000000
Jan 15 2010	49.18032787
Jul 15 2010	0.00000000
Jan 15 2011	13.74617486
Jul 15 2011	0.00000000
Jan 15 2012	7.85655738
Jul 15 2012	0.00000000
Jan 15 2013	3.75792350
Jul 15 2013	0.00000000
Jan 15 2014	4.21038251
Jul 15 2014	0.00000000
Jan 15 2015	4.10983607
Jul 15 2015	0.00000000
Jan 15 2016	5.10737705
Jul 15 2016	0.00000000
Jan 15 2017	0.86639344
Jul 15 2017	0.00000000
Jan 15 2018	0.00000000
Jul 15 2018	0.54672131

**EXHIBIT B-2  
TO  
LEASE INDENTURE**

**FORM OF RUMFORD LESSOR NOTE**

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC  
NONRECOURSE PROMISSORY NOTE (RUMFORD) DUE IN  
A SERIES OF INSTALLMENTS OF PRINCIPAL  
WITH FINAL PAYMENT DATE  
OF JULY 15, 2018**

**THIS NOTE HAS NOT BEEN REGISTERED UNDER THE  
SECURITIES ACT OF 1933 AND MAY NOT BE TRANSFERRED,  
SOLD OR OFFERED FOR SALE IN VIOLATION OF SUCH ACT**

Issued at: New York, New York

Issue Date: December 19, 2000

\$176,000,000

PMCC CALPINE NEW ENGLAND INVESTMENT LLC, a Delaware limited liability company (herein called the "Owner Lessor", which term includes any successor person under the Collateral Trust Indenture hereinafter referred to), hereby promises to pay to State Street Bank and Trust Company of Connecticut, National Association, in its capacity as pass through trustee of the Tiverton and Rumford 2000 Pass Through Trust (the "Pass Through Trustee"), or its registered assigns, the principal sum of \$176,000,000, which is due and payable in a series of installments of principal with a final payment date of July 15, 2018, as provided below, together with interest at the rate of 9.00% per annum on the principal remaining unpaid from time to time from and including the Issue Date until paid in full. Interest on the outstanding principal amount under this Note shall be due and payable in arrears semiannually at the rate specified above, commencing on July 15, 2001, and on each July 15th and January 15th thereafter until the principal of this Note is paid in full or made available for payment. Interest shall be computed on the basis of a 360-day year of twelve 30-day months.

The principal of this Note shall be due and payable in installments on each of the dates set forth on Schedules 1 hereto. The installment of principal payable on any such date shall be in an aggregate amount equal to the product of the Principal Portion set forth on Schedule 1 multiplied by the percentage set forth on Schedule 1 under the column headed "Principal Amount Payable" for such date unless the Principal Portion has been prepaid; provided, that the final installment of principal shall be equal to the then unpaid principal balance of this Note.

Capitalized terms used in this Note that are not otherwise defined herein shall have the meanings ascribed thereto in the Indenture of Trust, Mortgage and Security Agreement dated as of December 19, 2000 (the "Collateral Trust Indenture"), between the Owner Lessor and State Street Bank and Trust Company of Connecticut, National Association, as trustee (the "Indenture Trustee").

Interest (computed on the basis of a 360-day year of twelve 30-day months) on any overdue principal and premium, if any, and (to the extent permitted by Applicable Law) any overdue interest shall be paid, on demand, from the due date thereof at the Overdue Rate for the period during which any such principal, premium or interest shall be overdue.

In the event any date on which a payment is due under this Note is not a Business Day, then payment thereof shall be made on the next succeeding Business Day with the same force and effect as if made on the date on which such payment was due.

Except as otherwise specifically provided in the Collateral Trust Indenture and in the Participation Agreement, all payments of principal, premium, if any, and interest on this Note, and all payments of any other amounts due hereunder or under the Collateral Trust Indenture shall be made only from the Indenture Estate, and the Indenture Trustee shall have no obligation for the payment thereof except to the extent that the Indenture Trustee shall have sufficient income or proceeds from the Indenture Estate to make such payments in accordance with the terms of Section 3 of the Collateral Trust Indenture. The holder hereof, by its acceptance of this Note, agrees that it will look solely to the income and proceeds from the Indenture Estate to the extent available for distribution to the holder hereof, as herein provided, and that, none of the Owner Participant, the Owner Lessor or the Indenture Trustee is or shall be personally liable to the holder hereof for any amounts payable under this Note or under the Collateral Trust Indenture, or, except as expressly provided in the Collateral Trust Indenture or, in the case of the Owner Participant and the Owner Lessor, the Participation Agreement for any performance to be rendered under the Collateral Trust Indenture or any Assigned Document or for any liability under the Collateral Trust Indenture or any Assigned Document.

The principal of and premium, if any, and interest on this Note shall be paid by the Indenture Trustee, without any presentment or surrender of this Note, except that, in the case of the final payment in respect of this Note, this Note shall be surrendered to the Indenture Trustee, by mailing a check for the amount then due and payable, in New York Clearing House funds, to the Noteholder, at the last address of the Noteholder appearing on the Note Register, or by whichever of the following methods specified by notice from the Noteholder to the Indenture Trustee: (a) by crediting the amount to be distributed to the Noteholder to an account maintained by the Noteholder with the Indenture Trustee, (b) by making such payment to the Noteholder in immediately available funds at the Indenture Trustee Office, or (c) by transferring such amount in immediately available funds for the account of the Noteholder to the banking institution having bank wire transfer facilities as shall be specified by the Noteholder, such transfer to be subject to telephonic confirmation of payment. All payments due with respect to this Note shall be made (i) as soon as practicable prior to the close of business on the date the amounts to be

distributed by the Indenture Trustee are actually received by the Indenture Trustee if such amounts are received by 12:00 noon, New York City time, on a Business Day or (ii) on the next succeeding Business Day if received after such time or if received on any day other than a Business Day. Prior to due presentment for registration of transfer of this Note, the Owner Lessor and the Indenture Trustee may deem and treat the Person in whose name this Note is registered on the Note Register as the absolute owner and holder of this Note for the purpose of receiving payment of all amounts payable with respect to this Note and for all other purposes, and neither the Owner Lessor nor the Indenture Trustee shall be affected by any notice to the contrary. All payments made on this Note in accordance with the provisions of this paragraph shall be valid and effective to satisfy and discharge the liability on this Note to the extent of the sums so paid and neither the Indenture Trustee nor the Owner Lessor shall have any liability in respect of such payment.

The holder hereof, by its acceptance of this Note, agrees that each payment received by it hereunder shall be applied in the manner set forth in Section 2.7 of the Collateral Trust Indenture, which provides that each payment on the Note shall be applied as follows: first, to the payment of accrued interest (including interest on overdue principal and, to the extent permitted by Applicable Law, overdue interest) on this Note to the date of such payment; second, to the payment of the principal amount of, and premium, if any, on this Note then due (including any overdue installments of principal) thereunder; and third, to the extent permitted by Section 2.10 of the Collateral Trust Indenture, the balance, if any, remaining thereafter, to the payment of the principal amount of, and premium, if any, on this Note.

This Note is the Note referred to in the Collateral Trust Indenture as the "Lessor Note". The Collateral Trust Indenture permits the issuance of additional notes ("Additional Lessor Notes"), as provided in Section 2.12 of the Collateral Trust Indenture, and the several Notes may be for varying principal amounts and may have different maturity dates, interest rates, redemption provisions and other terms. The properties of the Owner Lessor included in the Indenture Estate are pledged or mortgaged to the Indenture Trustee to the extent provided in the Collateral Trust Indenture as security for the payment of the principal of and premium, if any, and interest on this Note and all other Notes issued and outstanding from time to time under the Collateral Trust Indenture.

Reference is hereby made to the Collateral Trust Indenture for a statement of the rights of the holder of, and the nature and extent of the security for, this Note and of the rights of, and the nature and extent of the security for, the holders of the other Notes and of certain rights of the Owner Lessor and the Owner Participant, as well as for a statement of the terms and conditions of the trust created by the Collateral Trust Indenture, to all of which terms and conditions the holder hereof agrees by its acceptance of this Note.

This Note is subject to redemption, in whole or in part as provided in the Collateral Trust Indenture, as follows: (x) in the case of redemptions under the circumstances set forth in Section 2.10(a) of the Collateral Trust Indenture, at a price

equal to the principal amount of this Note being redeemed together with accrued interest on such principal amount to the Redemption Date, and (y) in the case of redemptions under the circumstances set forth in Sections 2.10(d) of the Collateral Trust Indenture, at a price equal to the principal amount of this Note then outstanding together with accrued interest on such principal amount to the Redemption Date, plus the Make-Whole Premium, if any; provided, however, that no such redemption shall be made until notice thereof is given by the Indenture Trustee to the holder hereof as provided in the Collateral Trust Indenture.

In case either (i) a Regulatory Event of Loss under the Facility Lease shall occur or (ii) the Facility Lease shall have been terminated pursuant to Section 13.1 thereof where the Facility Lessee purchases the Undivided Interest from the Owner Lessor, the obligations of the Owner Lessor under this Note may, subject to the conditions set forth in Section 2.10(b) of the Collateral Trust Indenture, be assumed in whole by the Facility Lessee in which case the Owner Lessor shall be released and discharged from all such obligations. In connection with such an assumption, the holder of this Note may be required to exchange this Note for a new Note evidencing such assumption.

In case a Collateral Trust Indenture Event of Default shall occur and be continuing, the unpaid balance of the principal of this Note together with all accrued but unpaid interest thereon may, subject to certain rights of the Owner Lessor and the Owner Participant contained or referred to in the Collateral Trust Indenture, be declared or may become due and payable in the manner and with the effect provided in the Collateral Trust Indenture.

There shall be maintained at the Indenture Trustee Office a register for the purpose of registering transfers and exchanges of Notes in the manner provided in the Collateral Trust Indenture. The transfer of this Note is registrable, as provided in the Collateral Trust Indenture, upon surrender of this Note for registration of transfer duly accompanied by a written instrument of transfer duly executed by or on behalf of the registered holder hereof, together with the amount of any applicable transfer taxes.

It is expressly understood and agreed by the holder of this Note that

(a) this Note is executed and delivered by General Foods Credit Corporation, not individually or personally but solely as the managing member ("Managing Member"), of PMCC Calpine NEIM LLC, the Owner Participant and the sole managing member of the Owner Lessor, in the exercise of the powers and authority conferred and vested in it pursuant thereto, (b) each of the undertakings and agreements in this Note made on the part of the Owner Lessor is made and intended not as personal undertakings and agreements by the Managing Member but is made and intended for the purpose for binding only the Owner Lessor, (c) nothing contained in this Note shall be construed as creating any liability on the Managing Member individually or personally, to perform any covenant either expressed or implied contained in this Note, all such liability, if any, being expressly waived by the holder of this Note or by any Person claiming by, through or under such holder, and (d) under no circumstances shall the Managing Member, be personally liable for the payment of any indebtedness or expenses of the Owner Lessor or be liable for the

breach or failure of any obligation, representation, warranty or covenant made or undertaken by the Owner Lessor under this Note.

This Note shall be governed by the laws of the State of New York.

IN WITNESS WHEREOF, the Owner Lessor has caused this Note to be duly executed as of the date hereof.

**PMCC CALPINE NEW ENGLAND  
INVESTMENT LLC,**

a Delaware limited liability company,

By: PMCC Calpine NEIM LLC,  
a Delaware limited liability company,  
Managing Member

By: General Foods Credit Corporation,  
a Delaware corporation,  
Managing Member

By:

Name:

Title:

This is the Lessor Note referred to in the within-mentioned Collateral Trust Indenture duly executed as of the date hereof.

**STATESTREET BANK AND TRUST  
COMPANY OF CONNECTICUT,  
NATIONAL ASSOCIATION,**  
not in its individual capacity, but  
solely as the Indenture Trustee

By:

Name:

Title:

**FORM OF TRANSFER NOTICE**

FOR VALUE RECEIVED the undersigned registered holder hereby sell(s) assign(s) and transfer(s) unto

**Insert Taxpayer Identification No.**

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

(Please print or typewrite name and address including zip code of assignee)

\_\_\_\_\_

the within Note and all rights thereunder, hereby irrevocably constituting and appointing

\_\_\_\_\_

attorney to transfer said Note on the books of the Issuer with full power of substitution in the premises.

Date:

-----

-----

(Signature of Transferor)

NOTE: The signature to this assignment must correspond with the name as written upon the face of the within-mentioned instrument in every particular, without alteration or any change whatsoever.

**SCHEDULE 1  
TO NOTE**

**Schedule Of Principal Amortization**

Principal Portion: \$176,000,000

Payment Date	Principal Amount Payable (% of Principal Portion)
Dec 19 2000	0.00000000
Jul 15 2001	0.00000000
Jan 15 2002	0.00000000
Jul 15 2002	0.00000000
Jan 15 2003	0.00000000
Jul 15 2003	0.00000000
Jan 15 2004	0.00000000
Jul 15 2004	0.66256831
Jan 15 2005	0.00000000
Jul 15 2005	0.00000000
Jan 15 2006	0.00000000
Jul 15 2006	2.96557377
Jan 15 2007	0.00000000
Jul 15 2007	2.48633880
Jan 15 2008	1.95765027
Jul 15 2008	0.00000000
Jan 15 2009	2.54617486
Jul 15 2009	0.00000000
Jan 15 2010	49.18032787
Jul 15 2010	0.00000000
Jan 15 2011	13.74617486
Jul 15 2011	0.00000000
Jan 15 2012	7.85655738
Jul 15 2012	0.00000000
Jan 15 2013	3.75792350
Jul 15 2013	0.00000000
Jan 15 2014	4.21038251
Jul 15 2014	0.00000000
Jan 15 2015	4.10983607
Jul 15 2015	0.00000000
Jan 15 2016	5.10737705
Jul 15 2016	0.00000000
Jan 15 2017	0.86639344
Jul 15 2017	0.00000000
Jan 15 2018	0.00000000
Jul 15 2018	0.54672131

**EXHIBIT C  
TO  
LEASE INDENTURE**

**FORM OF CERTIFICATE OF AUTHENTICATION**

**Authentication Order**

December 19, 2000

State Street Bank and Trust Company of Connecticut, National Association 225 Asylum Street  
Goodwin Square  
Hartford, Connecticut 06103

Re: Preparation and Registration of Lessor Notes

Ladies and Gentlemen:

Reference is made to the \$366,000,000 in aggregate principal amount of the 9.00% Pass Through Certificates due July 15, 2018 (the "Pass Through Certificates") of the Tiverton and Rumford 2000 Pass Through Trust representing undivided beneficial interests in \$366,000,000 aggregate principal amount of secured lease obligation notes (the "Lessor Notes") of PMCC Calpine New England Investment LLC, a Delaware limited liability company (the "Owner Lessor"), issued pursuant to the Indenture of Trust, Mortgage and Security Agreement, dated as of December 19, 2000, between the Owner Lessor and State Street Bank and Trust Company of Connecticut, National Association, as Indenture Trustee, comprising \$190,000,000 aggregate principal amount of Lessor Notes relating to the Tiverton Generating Station and \$176,000,000 aggregate principal amount of Lessor Notes relating to the Rumford Generating Station.

You are hereby directed to have the Lessor Notes prepared and registered in the name of State Street Bank and Trust Company of Connecticut, National Association, as Pass Through Trustee (the "Pass Through Trustee") under the Pass Through Trust Agreement, dated as of December 19, 2000, among Tiverton Power Associates Limited Partnership, a Rhode Island limited partnership, Rumford Power Associates Limited Partnership, a Maine limited partnership, and the Pass Through Trustee, and to have the Lessor Notes delivered to the Pass Through Trustee at 9:00 a.m., Eastern Standard Time, on December 19, 2000.

**[CONTINUED ON NEXT PAGE]**

Very truly yours,

**PMCC CALPINE NEW ENGLAND  
INVESTMENT LLC**

By PMCC Calpine NEIM LLC,  
its Sole Member

By:

Name:

Title:

**EXHIBIT D-1  
TO  
LEASE INDENTURE**

**DESCRIPTION OF TIVERTON FACILITY  
ATTACHMENT 2**

**REAL PROPERTY DESCRIPTION**

The Transferred Property is composed of all of Seller's right, title and interest in, to and under the following property (excluding, in any event, the Excluded Property):

That certain approximately 265-megawatt net nameplate capacity gas-fired combined cycle electric generating facility (known also as the "Tiverton Facility") together with all structures or improvements, all alterations thereto or replacements thereof, and all other fixtures, attachments, appliances, equipment, machinery and other articles (hereinafter collectively referred to as the "Transferred Property"), in each case located on the land situated in Tiverton, Rhode Island., as described more particularly in Exhibit A attached hereto (the "Tiverton Facility Site").

The Transferred Property shall include, but not be limited to, the following principal components of the Tiverton Facility:

1. One Combustion Turbine -- General Electric Model PG7241 (Serial No. 297273)
2. One Combustion Turbine Generator -- General Electric Model 7FH2 (Serial No. 337X705)
3. One Steam Turbine -- General Electric Model A-10 (Serial No. 270T429)
4. One Steam Turbine Generator -- General Electric 7A6 (Serial No. 290T429)
5. One Air Cooled Condenser -- GEA Power Cooling Systems, Inc. (Serial No. 98-306)
6. One Heat Recovery Steam Generator -- Nooter-Eriksen three pressure level with reheater, contains a selective catalytic reduction for NOx reduction. Nooter-Erikson Job No. 988730

The Transferred Property shall include such improvements located on the easements appurtenant to the Tiverton Facility Site to the extent such property is owned by Seller.

## ATTACHMENT 2

excluded property

The property described below constitutes "Excluded Property":

**THE FOLLOWING EQUIPMENT LOCATED ON, AT OR NEAR THE TIVERTON FACILITY SITE:**

**CTG TRANSFORMER - FERRANTI-PACKARD TYPE OA/FA/FA (17 kV:115kV RATING)**

**SERIAL NO. CL 19343-10102**

**STG TRANSFORMER - FERRANTI-PACKARD TYPE OA/FA/FA (13.6kV:115kV RATING)**

**SERIAL NO. CL 19344-10101**

**AUXILIARY TRANSFORMER - WAUKESHA ELECTRIC SYSTEM CLASS OA/FFA (18kV:4160**

**VOLT RATING) SERIAL NO. 0951014R1259**

**ALTERNATE SOURCE TRANSFORMER - VIRGINIA TRANSFORMER - CLASS OA/OA/FFA**

**(12kV:480 VOLT RATING) SERIAL NO. 4411500A076-9465A**

**THE FOLLOWING BUILDINGS LOCATED ON THE TIVERTON FACILITY SITE:**

**ADMINISTRATION AND OPERATIONS BUILDING**

**THE FOLLOWING TANGIBLE PROPERTY ASSOCIATED WITH THE TIVERTON FACILITY:**

**ANY AND ALL BOOKS AND RECORDS**

**THE TANGIBLE EQUIPMENT ASSOCIATED WITH THE TIVERTON FACILITY WHICH IS ORDINARILY AND CUSTOMARILY REPLACED DURING THE LIFE OF THE FACILITY INCLUDING, BUT NOT LIMITED TO:**

**INVENTORIES**

**SPARE PARTS**

**VEHICLES**

**MAINTENANCE EQUIPMENT**

**OFFICE EQUIPMENT AND SUPPLIES**

**COMPUTER EQUIPMENT AND SOFTWARE**

**LABORATORY EQUIPMENT**

**SAFETY EQUIPMENT**

**THE FOLLOWING INTANGIBLE PROPERTY ASSOCIATED WITH THE TIVERTON FACILITY INCLUDING, BUT NOT LIMITED TO:**

**BANK ACCOUNTS**

**ACCOUNTING INTANGIBLES**

**INTELLECTUAL PROPERTY**

**CONTRACTS**

**GOVERNMENT PERMITS**

**EXHIBIT D-2  
TO  
LEASE INDENTURE**

**DESCRIPTION OF RUMFORD FACILITY**

That certain approximately 265-megawatt net nameplate capacity gas-fired combined cycle electric generating facility (known also as the "Rumford Facility") located at the westerly end of Industrial Park Road, and commonly known as Lots 7, 8 and appurtenant easements thereto as shown on the Plan of Rumford Industrial Park, together with all structures or improvements, all alterations thereto or replacements thereof, and all other fixtures, attachments, appliances, equipment, machinery and other articles, in each case located on the land, or on the easements appurtenant to the land, situated in the Town of Rumford, County of Oxford, State of Maine.

**EXHIBIT 4.12.5**

**EXECUTION COPY**

---

**CALPINE GUARANTY AND PAYMENT AGREEMENT (TIVERTON)**

**Dated as of December 19, 2000**

among

**CALPINE CORPORATION,**

as Guarantor,

and

PMCC Calpine New England Investment LLC, as Owner Lessor,

PMCC Calpine NEIM LLC, as Owner Participant,

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL  
ASSOCIATION,**

not in its individual capacity but solely as Indenture Trustee, and

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL  
ASSOCIATION,**

not in its individual capacity but solely as Pass Through Trustee,

**as Beneficiaries**

**CALPINE NEW ENGLAND PROJECT**

---

**EXHIBITS**

**Exhibit A Equity Portion of Termination Value**

**Exhibit B Debt Portion of Termination Value**

**CALPINE GUARANTY AND PAYMENT AGREEMENT (TIVERTON)**

This CALPINE GUARANTY AND PAYMENT AGREEMENT (TIVERTON), dated as of December 19, 2000 (the "Guaranty"), is entered into by and among Calpine Corporation, a Delaware corporation, as guarantor (the "Guarantor"), PMCC CALPINE NEW ENGLAND INVESTMENT LLC, a Delaware limited liability company, as Owner Lessor, PMCC CALPINE NEIM LLC, a Delaware limited liability company, as Owner Participant, STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity but solely as Indenture Trustee and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity but solely as Pass Through Trustee, and is issued by the Guarantor in favor of the Beneficiaries (as defined in Section 4 below).

**WITNESSETH:**

WHEREAS, Tiverton Power Associates Limited Partnership (the "Tiverton Lessee") is an indirect wholly-owned subsidiary of the Guarantor;

WHEREAS, the Tiverton Lessee is a party to the Participation Agreement dated as of December 19, 2000 (the "Participation Agreement"), among the Tiverton Lessee, Rumford Power Associates Limited Partnership, PMCC Calpine New England Investment LLC, as Owner Lessor, the Guarantor, PMCC Calpine NEIM LLC, as Owner Participant, State Street Bank and Trust Company of Connecticut, N.A., not in its individual capacity, except as expressly provided in the Participation Agreement, but solely as Indenture Trustee and State Street Bank and Trust Company of Connecticut, N.A., not in its individual capacity, except as expressly provided in the Participation Agreement, but solely as Pass Through Trustee;

WHEREAS, the Tiverton Lessee and the Owner Lessor are entering into the Tiverton Facility Lease, to be dated as of December 19, 2000 (as amended, modified or supplemented from time to time pursuant to Section 14.24 of the Participation Agreement, the "Tiverton Facility Lease"), providing for the Owner Lessor's leasing of the Tiverton Facility to the Tiverton Lessee as contemplated therein;

WHEREAS, the Guarantor will obtain benefits as a result of the Tiverton Lessee entering into the Tiverton Facility Lease and the other transactions contemplated by the Participation Agreement; and

WHEREAS, pursuant to Section 4.2 of the Participation Agreement, this Guaranty is required to be provided by the Guarantor.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

## SECTION 1. DEFINITIONS

(a) Capitalized terms used in this Guaranty, including the recitals, and not otherwise defined herein shall have the respective meanings set forth on Appendix A to the Participation Agreement, provided that if a term that is defined in this Guaranty (the "Guaranty Definition") includes in such definition a term that is defined in Appendix A to the Participation Agreement (the "Appendix A Definition"), and the Appendix A Definition in turn includes in such definition a term that is defined both in this Guaranty and in Appendix A to the Participation Agreement (the "Embedded Definition"), then for purposes of the Appendix A Definition as it is used in the Guaranty Definition and for purposes of the Guaranty Definition, the Embedded Definition shall be used as defined in this Guaranty and not as defined in Appendix A to the Participation Agreement. Except as otherwise provided in the previous sentence, the Rules of Interpretation set forth in Appendix A to the Participation Agreement shall apply to the terms used in this Guaranty and specifically defined herein.

(b) As used in this Guaranty, the following terms shall have the respective meanings assigned thereto as follows:

"GAAP" means generally accepted accounting principals in the United States of America as in effect and, to the extent optional, adopted by the Guarantor, on the date of the Guaranty, consistently applied.

"Indebtedness" of any Person means, without duplication,

(i) the principal in respect of indebtedness of such Person for money borrowed and; (ii) all Capitalized Lease Obligations of such Person; (iii) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (i) and (ii) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit); (iv) all obligations of the type referred to in clauses (i) through (iii) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise; and (v) all obligations of the type referred to in clauses (i) through (iv) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation on any date of determination being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured. The amount of Indebtedness of any Person at any date shall be, with respect to unconditional obligations, the outstanding balance at such date of all such obligations as described above and, with respect to any contingent obligations at such date, the maximum liability determined by such Person's board of directors, in good faith, as, in light of the facts and circumstances existing at the time, reasonably likely to be Incurred upon the occurrence of the contingency giving rise to such obligation.

"Lien" means any mortgage, lien, pledge, charge, or other security interest or encumbrance of any kind (including any conditional sale or other title retention agreement and any lease in the nature thereof).

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

"Subsidiary" means, as applied to any Person, any corporation, partnership, trust, association or other business entity of which an aggregate of at least 50% of the outstanding Voting Shares or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

"Voting Shares", with respect to any corporation, means the Capital Stock having the general voting power under ordinary circumstances to elect at least a majority of the board of directors (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

## SECTION 2. GUARANTEED AND PAYMENT OBLIGATIONS

Section 2.1. (a) The Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiaries (except that the obligations referred to in clauses (1), (2) and (5)(A) (relating to clause (1) and clause (2) amounts) are for the benefit only of the Owner Lessor and the Indenture Trustee (as assignee of the Owner Lessor), as their interests may appear), as primary obligor and not merely as a surety, the due, punctual and full payment (when and as the same may become due and payable), and, as applicable, performance by the Tiverton Lessee of all of the Tiverton Lessee's obligations under the Tiverton Operative Documents to which it is a party if the same shall not be performed when due pursuant to the Tiverton Operative Documents, including, without limitation, but without duplication, (1) the Tiverton Lessee's obligation to make Periodic Rent, Supplemental Rent and other payments (in accordance with the terms of the Tiverton Operative Documents) to the Owner Lessor, (2) the Tiverton Lessee's obligation to pay Termination Value (and amounts computed by reference thereto) to the Owner Lessor and all other amounts owed under the Operative Documents under and in accordance with the Tiverton Facility Lease, (3) without duplication of the preceding clause (2), the Tiverton Lessee's obligation to pay the Equity Portion of Periodic Rent and the Equity Portion of Termination Value to the Owner Lessor, (4) the Tiverton Lessee's obligation to make indemnity payments in accordance with the terms of the Participation Agreement and the Tax Indemnity Agreement, (5) the Tiverton Lessee's obligation, pursuant to Section 3.3 of the Tiverton Facility Lease, to pay as Supplemental Rent an amount equal to (A) interest at the applicable Overdue Rate on any amount under clauses (1), (2), (3), (4) and 5(B) of this Section 2.1(a), not paid when due and (B) any Make-Whole Amount payable by the Owner Lessor to the Certificateholders pursuant to the Participation Agreement, the Tiverton Facility Lease or any other Tiverton Operative

Document to which the Tiverton Lessee is a party and (6) the Tiverton Lessee's obligation to make any and all other payments, and perform all other covenants and agreements, under and in accordance with the terms of the Tiverton Operative Documents.

(b) The Guarantor agrees that upon the occurrence and during the continuance of a Lease Event of Default, it (1) shall pay to the Owner Lessor the Equity Portion of Periodic Rent and the Equity Portion of Termination Value as set forth in Exhibit A hereto, upon written demand by the Owner Lessor, such demand to be at the times permitted by, and otherwise subject to, the provisions of Section 5.6 of the Collateral Trust Indenture (so long as the Collateral Trust Indenture is in effect at such time), and (2) shall pay to the Indenture Trustee (as assignee of the Owner Lessor), upon written demand by the Indenture Trustee (as assignee of the Owner Lessor), all other amounts constituting Termination Value as set forth on Exhibit B hereto and Periodic Rent. Such payment obligation shall be effective without reference to or requirement for valuation of the Owner Lessor's Interest or any other security held by any Person for performance of the Tiverton Lessee's obligations under the Tiverton Facility Lease or any other Operative Documents. The Guarantor agrees that it shall make such payment notwithstanding the fact that, pursuant to Section 17.1 of the Tiverton Facility Lease, such amounts might not otherwise be payable by the Lessee. The Guarantor's obligations in this Section 2.1(b) are direct and primary obligations (and not obligations of a guarantor or surety) of the Guarantor to the Owner Lessor and the Indenture Trustee (as assignee of the Owner Lessor), which shall not be affected in any way by the provisions of Section 2.1(a) above or any payments under any other Operative Documents of any amounts until the Owner Lessor and the Indenture Trustee (as assignee of the Owner Lessor) have received full payment of such amounts.

(c) The Guarantor acknowledges that notwithstanding the provisions of the second sentence of Section 8.13 hereof (i) as and to the extent provided in Section 5.6 of the Collateral Trust Indenture (A) upon the occurrence and during the continuation of a Lease Event of Default, the Indenture Trustee and the Owner Lessor may proceed against the Guarantor for the payment of the Termination Value (including without limitation all amounts the Guarantor is obligated to pay under Section 2.1(b) hereof under the circumstances specified therein), (B) upon the occurrence and during the continuation of a Lease Event of Default and the lapse of a period of 180 days after the declaration thereof, the Owner Lessor shall have the right to claim for and be paid to an account designated by it the amounts referred to in clause (3) of paragraph (a) of this Section 2.1 and clause (1) of paragraph (b) of this Section 2.1 (without duplication) (together with Overdue Interest on such amounts) and (C) only the Owner Lessor is entitled to compromise or settle any claim to the amounts referred to in clause (B) above; and unless so compromised or settled by the Owner Lessor, such claim shall survive until such claim shall be paid to the Owner Lessor in full; and (ii) payments made to the Indenture Trustee under this Guaranty with respect to the Debt Portion of Termination Value and the Equity Portion of Termination Value shall first be applied to satisfy the indebtedness evidenced by the Lessor Notes before being applied to satisfy any claim in respect of the amounts and Overdue Interest referred to in the preceding clause (B).

(d) Notwithstanding anything herein or in the Collateral Trust Indenture to the contrary, in the event that an Indenture Event of Default that is attributable to a Lease Event of Default has occurred and is continuing and the Indenture Trustee (as assignee of the Owner Trustee) forecloses upon and sells, assigns or otherwise transfers, its interest in this Guaranty pursuant to the provisions of the Collateral Trust Indenture, the Guarantor shall remain obligated hereunder to pay to the Owner Lessor an amount equal to the amounts referred to in Section 2.1(a)(3) and Section 2.1(b)(1) (but without duplication). Any purchaser, assignee or other transferee of the Indenture Trustee's interest in this Guaranty shall have a claim pursuant to Section 2.1(a)(1) and (2) and Section 2.1(b)(2) of the Guaranty for the Debt Portion of Termination Value (Tiverton) and the Debt Portion of Periodic Rent (Tiverton), but not a claim for the Equity Portion of Termination Value (Tiverton) and the Equity Portion of Periodic Rent (Tiverton).

Section 2.2. In the case of any failure by the Tiverton Lessee to perform and observe any term, provision or condition referred to in Section 2.1 (a) when due pursuant to the Operative Documents, the Guarantor agrees to cause such performance or observance to be done, and in the case of any failure by the Tiverton Lessee to make such payment as and when the same shall become due and payable (by acceleration or otherwise), the Guarantor hereby agrees to make such payment (and, in addition, such further amounts, if any, as shall be sufficient to cover the costs and expenses of collection hereunder) as and when such payment is due and payable.

All obligations and indebtedness set forth in Section 2.1 above, this Section 2.2, and in Section 8.15 below are referred to in this Guaranty as the "Obligations (Tiverton)."

Section 2.3. The obligations of the Guarantor contained herein are direct, independent, and primary obligations of the Guarantor and are absolute, present, unconditional and continuing obligations and are not conditioned in any way upon the institution of suit or the taking of any other action or any attempt to enforce performance of or compliance with the obligations, covenants or undertakings (including any payment obligations) of the Tiverton Lessee and shall constitute a guaranty of, and agreement with respect to, payment and performance and not a guaranty of collection, binding upon the Guarantor and its successors and assigns and shall remain in full force and effect and irrevocable without regard to the genuineness, validity, legality or enforceability of the Participation Agreement, the Tiverton Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Tiverton Operative Document) or the lack of power or authority of the Tiverton Lessee to enter into any of the Participation Agreement, the Tiverton Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Tiverton Operative Document) to which the Tiverton Lessee is a party, or any substitution, release or exchange of any other guaranty of, or agreement with respect to, or any other security for, any of the Obligations (Tiverton) (including any settlement, compromise or other adjustment with respect to the Obligations (Tiverton)) or any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor and shall not be subject to any right of set-off, recoupment or counterclaim and is in no way

conditioned or contingent upon any attempt to collect from the Tiverton Lessee or any other entity or to perfect or enforce any security or upon any other condition or contingency or upon any other action, occurrence or circumstance whatsoever. Without limiting the generality of the foregoing, the Guarantor shall have no right to terminate this Guaranty, or to be released, relieved or discharged from its obligations hereunder, other than upon full payment and satisfaction and performance of all of the Obligations (Tiverton) (subject to Section 8.14 hereof), and such obligations shall be neither affected nor diminished for any other reason whatsoever, including (i) any amendment or supplement to or modification of any of the Participation Agreement, the Tiverton Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Tiverton Operative Document) to which the Tiverton Lessee is a party, any release, extension or renewal of the Tiverton Lessee's obligations under any of the Participation Agreement, the Tiverton Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Tiverton Operative Document) to which the Tiverton Lessee is a party or by which it is bound, including, without limitation, any actions taken by the Indenture Trustee pursuant to the Collateral Trust Indenture, or any subletting, assignment or transfer of the Tiverton Lessee's or any Beneficiary's interest in the Participation Agreement, the Tiverton Facility Lease or any other Tiverton Operative Document in accordance with the terms thereof, (ii) any bankruptcy, insolvency, readjustment, composition, liquidation or similar proceeding with respect to the Tiverton Lessee, Owner Lessor, Owner Participant or any other Person, including, without limitation, termination of the Tiverton Facility Lease and the operation of Section 502(b)(6) of the Bankruptcy Code in connection therewith, (iii) any furnishing or acceptance of additional security or any exchange, substitution, surrender or release of any security, (iv) any waiver, consent or other action or inaction or any exercise or nonexercise of any right, remedy or power with respect to the Obligations (Tiverton) (including any settlement, compromise or other adjustment with respect to the Obligations (Tiverton)) or any of the Participation Agreement, the Tiverton Facility Lease, the Tax Indemnity Agreement or any other agreement (including any Tiverton Operative Document) to which the Tiverton Lessee is a party, (v) without limiting Section 3.6(b) hereof, any merger or consolidation of the Tiverton Lessee or the Guarantor into or with any other Person, or any sale, assignment, conveyance, lease, transfer or other disposition of all or substantially all of the assets or properties of the Tiverton Lessee or the Guarantor, or any change in the structure of the Tiverton Lessee or in the ownership of the Tiverton Lessee by the Guarantor, (vi) any default, misrepresentation, negligence, misconduct or other action or inaction of any kind by any Beneficiary, the Indenture Trustee or any other Person under or in connection with any Tiverton Operative Document or any other agreement relating to this Guaranty, (vii) any action or inaction by any Beneficiary as contemplated in Section 5 of this Guaranty; (viii) any invalidity, irregularity or unenforceability of all or part of the Obligations (Tiverton) or of any security therefor; (ix) any change in the manner, place, timing or schedule of payment or performance of, or in any other term of, all or any of the Obligations (Tiverton); (x) whether the Guarantor is related or unrelated to the Tiverton Lessee, (xi) the assignment by the Owner Lessor of its rights and interests hereunder, under the Tiverton Facility Lease or under any other Tiverton Operative Document in accordance with the Tiverton Operative Documents (or the genuineness, validity, legality or

enforceability of the obligations of the Owner Lessor under the Collateral Trust Indenture) and (xii) any other circumstance whatsoever.

### SECTION 3. GUARANTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.1. The Guarantor represents and warrants, as of the date hereof:

(i) The Guarantor is duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power, authority and the legal right to execute, deliver and perform the terms of this Guaranty and each Operative Document to which it is a party (together, the "Calpine Documents").

(ii) The execution, delivery and performance by the Guarantor of the Calpine Documents have been duly authorized by all necessary corporate action. The Calpine Documents constitute legal, valid and binding obligations of the Guarantor enforceable against the Guarantor in accordance with their respective terms, except as such enforcement may be affected by applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity.

(iii) The execution, delivery and performance of the Calpine Documents will not (a) contravene any provision of law, rule or regulation to which the Guarantor is subject or any judgment, decree or order applicable to the Guarantor, (b) conflict or be inconsistent with or result in any breach of any terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien or other encumbrance upon any of the property or assets of the Guarantor pursuant to the terms of any agreement or other instrument to which the Guarantor is a party or by which it or its property is bound or to which it or its property may be subject, in each case the violation of which would have a material adverse effect on the business, operations, prospects, properties or assets, or in the condition, financial or otherwise, of the Guarantor, or (c) violate or contravene any provision of the articles of incorporation or by-laws of the Guarantor.

(iv) No pending or, to the knowledge of the Guarantor, threatened action, suit, investigation or proceedings against the Guarantor before any Governmental Entity exists which, if determined adversely to the Guarantor, would materially adversely affect the business, operations, prospects, properties or assets, or in its condition, financial or otherwise, or the Guarantor's ability to perform its obligations under the Calpine Documents.

(v) No consent from, authorization or approval or other action by, and no notice to or filing with, any Person is required for the execution, delivery and

performance by the Guarantor of the Calpine Documents except those which have been given and remain in full force and effect.

(vi) The Tiverton Lessee is an indirect, wholly owned subsidiary of the Guarantor.

(vii) The Guarantor is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

(viii) The Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, either, separately or in the aggregate, would result in any material adverse change in any of its businesses, operations, prospects or assets, or in its condition, financial or otherwise, or its ability to perform its obligations under the Calpine Documents.

(ix) The Guarantor is not a party to any agreement or instrument, or subject to any corporate restriction or any judgment, order, writ, injunction, decree, award, rule or regulation, which materially adversely affects, or in the future may materially adversely affect, its business, operations, prospects, properties or assets, or conditions, financial or otherwise, or its ability to perform its obligations the Calpine Documents.

(x) The audited financial statements of the Guarantor and its Consolidated Subsidiaries, as at December 31, 1999, reported on by Arthur Andersen LLP, copies of which have been delivered to the Indenture Trustee, the Pass Through Trustee, the Certificateholders and the Owner Participant, are true, complete and correct and fairly present the financial condition of the Guarantor and its Consolidated Subsidiaries as of the date thereof. The financial statements have been prepared in accordance with GAAP. The Guarantor and its Consolidated Subsidiaries do not have any material liabilities, direct or contingent, except (a) as are disclosed in such financial statements or (b) as arise under the Operative Documents. There has been no material adverse change in the financial condition of the Guarantor and its Consolidated Subsidiaries since the date of the audited financial statements referred to above.

(xi) All factual information relating to the Guarantor (taken as a whole) heretofore or contemporaneously furnished by or on behalf of the Guarantor in writing to the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or the Certificateholders (including, without limitation, all such information contained herein, in the Participation Agreement and in any preliminary or final offering circular distributed in accordance with the terms of the Tiverton Operative Documents) for purposes of or in connection with the Calpine Documents or any transaction contemplated therein is true and accurate in all material respects on the date as of which such information is dated or

certified and not incomplete by omitting to state any fact necessary to make such information relating to the Guarantor (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided; provided, that no representation or warranty is made with regard to (i) any projections or other forward-looking statements provided by or on behalf of the Guarantor, or (ii) the descriptions of the Tiverton Operative Documents or the tax consequences to beneficial owners of Certificates; provided, however, each of the Beneficiaries acknowledges and agrees that (i) Calpine has heretofore provided to the Appraiser, solely in order to assist the Appraiser in connection with the preparation of the appraisal to be delivered by the Appraiser to certain of the Transaction Parties at the Closing, certain (1) general market information, (2) information about the Maine and Rhode Island energy markets and (3) information passed along from other Persons and (ii) that neither of the Facility Lessees makes any representation or warranty whatsoever with respect to the information described in clause (i) above except to the extent expressly set forth in Section 4(b) of the Tax Indemnity Agreement.

(xii) The Guarantor is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such noncompliance as would not, in the aggregate, have a material adverse effect on the business, operations, property, assets or condition (financial or otherwise) of the Guarantor, or the Guarantor's ability to perform its obligations under the Calpine Documents.

(xiii) The Guarantor has filed all tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing (other than any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books), except such non-filing or non-payment, as the case may be, as would not, in the aggregate, have a material adverse effect on the business, operations, property, assets or condition (financial or otherwise) of the Guarantor.

(xiv) No default has occurred under this Guaranty, which default would reasonably be expected to result in a material adverse effect on the business, operations, assets or condition (financial or otherwise) of the Guarantor.

(xv) In accordance with Section 8.12 hereof and Section 14.04 of the Participation Agreement, the Guarantor has validly submitted to the jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York.

Section 3.2. The Guarantor covenants and agrees that on and after the date hereof and until this Guaranty is terminated pursuant to the terms hereof the Guarantor shall:

(a) file with the Owner Participant and the Indenture Trustee, within 15 days after the filing with the SEC, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Guarantor is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Guarantor is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall file with the Owner Participant, and for so long as the Certificates remain outstanding, the Indenture Trustee and the Pass Through Trustee, within 15 days after the Guarantor would have been required to file such documents with the SEC, copies of the annual reports and of the information, documents and other reports which the Guarantor would have been required to file with the SEC if the Guarantor had continued to be subject to such Sections 13 or 15(d). Delivery of such reports, information and documents to the Owner Participant, the Indenture Trustee and the Pass Through Trustee is for informational purposes only and their receipt of the same shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Guarantor's compliance with any of its covenants hereunder (as to which the Owner Participant, the Indenture Trustee and the Pass Through Trustee are entitled to rely exclusively on Officers' Certificates);

(b) furnish to the Beneficiaries, promptly upon the Guarantor obtaining Actual Knowledge of any action, suit or proceeding pending or threatened against the Guarantor before any court or before any governmental department, commission or agency or any arbitrator, which in the Guarantor's good faith opinion would reasonably be likely to result in a material adverse effect on the business, operations, property, assets or condition (financial or otherwise) of the Guarantor, a certificate of a senior officer specifying the nature of such action, suit or proceeding and the proposed response of the Guarantor thereto;

(c) furnish to the Beneficiaries, as soon as possible and in any event within three days after the Guarantor obtains Actual Knowledge of default by the Guarantor of any of its material obligations under this Guaranty, a statement of an authorized officer of the Guarantor setting forth details of such default and the action which the Guarantor has taken and proposes to take with respect thereto. Notwithstanding the foregoing provision in this clause

(c), the Guarantor shall, within 120 days after the close of each fiscal year of the Guarantor in which Certificates are outstanding hereunder, file with the Owner Participant, and if the Certificates are outstanding during any part of such fiscal year, the Indenture Trustee and the Pass Through Trustee, an Officer's Certificate, provided that one Officer executing the same shall be the principal executive officer, the principal financial officer or the principal accounting officer of the Guarantor, covering the period from the date hereof to the end of the fiscal year in which this Guaranty was executed and delivered by the Guarantor, in the case of the first such certificate, and covering the preceding fiscal year in the case of each subsequent certificate, and stating whether or not, to the Actual Knowledge of each

such executing Officer, the Guarantor has complied with and performed and fulfilled all covenants on its part contained in this Guaranty and is not in Default in the performance or observance of any of the terms or provisions contained in this Guaranty, and, if any such signer has obtained Actual Knowledge of any Default by the Guarantor in the performance, observance or fulfillment of any such covenant, terms or provision specifying each such Default and the nature thereof; and

(d) promptly furnish to the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee such other information as the Owner Lessor, Owner Participant, the Indenture Trustee and the Pass Through Trustee may from time to time reasonably request with respect to the Guarantor.

So long as the Indenture Trustee is also serving as the Pass Through Trustee, delivery to the Indenture Trustee shall satisfy the Guarantor's obligation to furnish information to the Pass Through Trustee under this Section 3.2.

Section 3.3. The Guarantor covenants and agrees that it will not transfer or assign or cause to be transferred or assigned the Ownership Interest in the Tiverton Lessee to any other Person, without the prior written consent of the Owner Lessor, the Owner Participant and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture Trustee and the Pass Through Trustee (it being agreed and understood that a consolidation with or merger of the Guarantor into, or a sale by the Guarantor of all or substantially all of its assets to, another Person in accordance with

Section 3.6 hereof shall not be deemed to be a transfer or assignment of the Ownership Interest in the Tiverton Lessee for the purposes of this Section), except as permitted in this Section 3.3 or in Section 8.4 hereof.

Notwithstanding the foregoing, and subject to Section 8.4 below, so long as this Guaranty remains in full force and effect, the Guarantor may transfer a portion of the Ownership Interest in the Tiverton Lessee (provided that following such transfer the Guarantor shall continue to own at least a majority of the Ownership Interest in the Tiverton Lessee, as well as at least a majority of the Ownership Interest in the Rumford Lessee) without the consent of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any other Transaction Party if the following conditions have been satisfied:

(i) the Owner Lessor, the Owner Participant and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Opinion of Counsel to the effect that all regulatory approvals required in connection with such transfer have been obtained;

(ii) all the obligations of the Tiverton Lessee under the Tiverton Operative Documents shall remain in full force and effect, the Guarantor shall reaffirm in writing all of its obligations hereunder in a manner reasonably satisfactory to the Owner Participant, such obligations of the Guarantor shall remain in full force and effect;

(iii) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing at the time of or immediately following such transfer;

(iv) the transfer shall not subject the Tiverton Lessee, the Rumford Lessee, the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee or any Certificateholder to regulation under PUHCA or state laws and regulations regarding the rate and financial or organizational regulation of electric utilities in the affected party's reasonable opinion, nor result in a Regulatory Event of Loss; and

(v) the Tiverton Lessee shall have paid, at no after-tax cost to such parties, all reasonable and documented out-of-pocket expenses (including reasonable attorneys' fees and expenses) of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Lease Indenture Company and the Pass Through Trustee in connection with such assignment.

Section 3.4. Subject to Section 4, the Guarantor shall not, and shall not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction unless (i) the Guarantor or such Restricted Subsidiary would be entitled to create a Lien on such property securing Indebtedness in an amount equal to the Attributable Debt with respect to such transaction without equally and ratably securing the Obligations (Tiverton) pursuant to Section 3.5 or (ii) the net proceeds of such sale are at least equal to the fair value (as determined by the Board of Directors) of such property or asset and the Guarantor or such Restricted Subsidiary shall apply or cause to be applied an amount in cash equal to the net proceeds of such sale to the retirement, within 180 days of the effective date of any such arrangement, of Indebtedness of the Guarantor or any Restricted Subsidiary; provided, however, that in addition to the transactions permitted pursuant to the foregoing clauses (i) and (ii), the Guarantor or any Restricted Subsidiary may enter into a Sale/Leaseback Transaction as long as the sum of (x) the Attributable Debt with respect to such Sale/Leaseback Transaction and all other Sale/Leaseback Transactions entered into pursuant to this proviso plus (y) the amount of outstanding Indebtedness secured by Liens Incurred pursuant to the final proviso to Section 3.5 does not exceed 15% of Consolidated Net Tangible Assets as determined based on the consolidated balance sheet of the Guarantor as of the end of the most recent fiscal quarter for which financial statements are available; and provided, further, that a Restricted Subsidiary may enter into a Sale/Leaseback Transaction with respect to property or assets owned by such Restricted Subsidiary, the proceeds of which are used to explore, drill, develop, construct, purchase, repair, improve or add to property or assets of any Restricted Subsidiary, or to repay (within 365 days of the commencement of full commercial operation of any such property) Indebtedness Incurred to explore, drill, develop, construct, purchase, repair, improve or add to property or assets of any Restricted Subsidiary.

Section 3.5. Subject to Section 4, the Guarantor shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, incur any Lien on any of its properties or assets (including Capital Stock), whether owned at the date hereof or thereafter acquired, in each case to secure Indebtedness of the Guarantor or any

Restricted Subsidiary, other than (a)(1) Liens incurred by the Guarantor or any Restricted Subsidiary securing Indebtedness Incurred by the Guarantor or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Guarantor or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or assets being so financed; (b) Liens existing on the date hereof (other than Liens relating to Indebtedness or other obligations being repaid or Liens that are otherwise extinguished with the proceeds of the offering of the Certificates); (c) Liens on property, assets or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, that any such Lien may not extend to any other property or assets owned by the Guarantor or any Restricted Subsidiary; (d) Liens on property or assets at the time the Guarantor or a Subsidiary acquires the property or asset, including any acquisition by means of a merger or consolidation with or into the Guarantor or a Subsidiary; provided, however, that such Liens are not incurred in connection with, or in contemplation of, such merger or consolidation; and provided, further, that the Lien may not extend to any other property or asset owned by the Guarantor or any Restricted Subsidiary; (e) Liens securing Indebtedness or other obligations of a Subsidiary owing to the Guarantor or a Restricted Subsidiary or of the Guarantor owing to a Subsidiary; (f) Liens incurred on assets that are the subject of a Capitalized Lease Obligation to which the Guarantor or a Subsidiary is a party, which shall include, Liens on the stock or other ownership interest in one or more Restricted Subsidiaries leasing such assets; (g) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (a), (b), (c), (d) and (f), provided, however, that (x) such new Lien shall be limited to all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness); and (h) Liens by which the Obligations (Tiverton) are

secured equally and ratably with other Indebtedness pursuant to this Section 3.5; in any such case without effectively providing that the Obligations (Tiverton) shall be secured equally and ratably with (or prior to) the obligations so secured for so long as such obligations are so secured; provided, however, that the Guarantor or a Restricted Subsidiary may Incur other Liens to secure outstanding Indebtedness as long as the sum of (x) the lesser of (A) the amount of outstanding Indebtedness secured by Liens Incurred pursuant to this proviso (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) and (B) the fair value (as determined by the Board of Directors) of the property securing such item of Indebtedness, plus (y) the Attributable Debt with respect to all Sale/Leaseback Transactions entered into pursuant to the first proviso to Section 3.4 does not exceed 15% of Consolidated Net Tangible Assets as determined based on the Consolidated balance sheet of the Guarantor as of the end of the most recent fiscal quarter for which financial statements are available.

Section 3.6. (a) The Guarantor covenants and agrees that it shall not consolidate or merge with or into any other Person, or sell, assign, convey, lease, transfer or otherwise dispose of, all or substantially all of its properties or assets to any Person or Persons in one or a series of transactions, unless immediately after giving effect to such transaction,

(i) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing;

(ii) either (A) the Guarantor shall be the continuing Person, or (B) the Person (if other than the Guarantor) formed by such consolidation or into which the Guarantor is merged or to which the properties and assets of the Guarantor are sold, assigned, conveyed, transferred, disposed of or leased as aforesaid shall be an entity organized and existing under the laws of the United States or any State thereof or the District of Columbia and shall execute and deliver to the Owner Participant, the Owner Lessor and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee, a Guarantor's Assignment and Assumption Agreement; and

(iii) each of the Owner Participant, the Owner Lessor and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Officer's Certificate of the Guarantor, the surviving entity or the transferee, as the case may be, in form and substance reasonably satisfactory to each of such parties, stating that the proposed merger, consolidation, assignment, conveyance, transfer, disposition, lease or sale, and the Guarantor Assignment and Assumption Agreement complies with the terms of this Section 3(a) and, as to legal matters, an Opinion of Counsel; and

(iv) In addition to the conditions set forth in clauses (i) through (iii) above, the Guarantor, subject to Section 4, will not consummate any such

consolidation, merger or sale of all or substantially all of its properties or assets unless the long-term unsecured debt of the resulting, surviving or succeeding entity shall have a credit rating assigned by the Rating Agencies that is not less than the lower of (x) the credit rating of the long-term unsecured debt of the Guarantor assigned by the Rating Agencies immediately prior to such transaction and (y) a credit rating of the long-term unsecured debt of the resulting, surviving or succeeding entity assigned by the Rating Agencies that is Investment Grade; provided however, the foregoing credit rating condition set forth in this paragraph may be waived by the Owner Participant in its sole discretion, and provided further, that if such credit rating condition is not otherwise satisfied, or waived by the Owner Participant, the Guarantor, the surviving entity or the transferee, as the case may be, may provide (and maintain in accordance with the provisions of Section 5.46(vi)(b) through (k) of the Participation Agreement (with appropriate conforming changes)) in the alternative, either (A) a Qualifying Letter of Credit from a Qualifying Letter of Credit Bank with at least an A rating from S&P and A2 rating from Moody's covering the Equity Portion of Termination Value from time to time throughout the Lease Term, or (B) if the long-term unsecured debt of the surviving entity or the transferee, as the case may be, has a credit rating assigned by the Rating Agencies at least equal to that of Calpine at Closing, a Qualifying Letter of Credit from a Qualifying Letter of Credit Bank with at least an A rating from S&P and A2 from Moody's covering fifty percent (50%) of the Equity Portion of Termination Value from time to time throughout the Lease Term or (C) alternative or additional credit support arrangements which result in the satisfaction of the rating condition in either clause (x) or clause (y) above, provided that such arrangements contemplated in this sub-clause (C) are satisfactory to the Owner Participant and result in the satisfaction of such rating condition.

(b) Upon the consummation of such transaction described in Section 3.6(a), the resulting, surviving or succeeding entity, if other than the Guarantor, shall succeed to, and be substituted for, and may exercise every right and power and shall perform every obligation of, the Guarantor under this Guaranty and each other Calpine Document, and from and after the effective date and time of the consummation of such transfer, the Guarantor shall be released from all obligations accruing hereunder other than those accruing prior to such effective date and time.

Section 3.7. The Guarantor shall, together with each payment it makes hereunder, provide a written notice to each Beneficiary or Beneficiaries which are the intended recipients of such payment of the amount payable to each such Beneficiary and the Tiverton Operative Document(s) with respect to which such payment is being made.

#### SECTION 4. BENEFICIARIES; TERMINATION OF CERTAIN COVENANTS

The Owner Participant, the Owner Lessor, the Trust Company (but only to the extent indemnified under the Participation Agreement) and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture Trustee and the Lease Indenture Company, and (but only to the extent expressly referred to

herein, and with respect to Section 3.2(a) hereof and with respect to the obligations of the Tiverton Lessee under the Participation Agreement) the Pass Through Trustee (for the benefit of the Certificateholders) and the Pass Through Company, in each case, together with their respective permitted successors and assigns (and with respect to clause (ii) below, the other related Persons referred to therein), are each beneficiaries of this Guaranty (each a "Beneficiary" or, together, the "Beneficiaries"); provided that, notwithstanding the foregoing or any other provision of this Guaranty, (i) the Owner Participant shall be the sole and exclusive beneficiary of, and shall have the sole right to enforce, (A) clause (iv) of Section 3.6(a) hereof, (B) clause (4) of Section 2.1(a) hereof to the extent relating to the Tiverton Lessee's indemnity obligation under the Tax Indemnity Agreement, (ii) to the extent that the Tiverton Lessee is obligated to indemnify a particular Beneficiary (or any Affiliate, agent director, officer, or employee thereof) in accordance with

Section 9 of the Participation Agreement, then such Beneficiary (or such Affiliate, agent, director, officer or employee) shall be the sole and exclusive beneficiary of, and shall have the sole right to enforce, the Guarantor's guaranty of, and agreement with respect to, such indemnification obligation hereunder, (iii) the Owner Lessor shall be the sole and exclusive beneficiary of, and shall have the sole right to enforce clause (B) of Section 2.1(c) hereof and the fourth sentence of Section 2.1(b) hereof, and (iv) the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee and the Pass Through Company shall be the sole and exclusive beneficiaries of the provisions of Section 3.4 and Section 3.5 hereof; provided however, with respect to this clause (iii), once the Certificates shall have been paid in full, the covenants set forth in Section 3.4 and Section 3.5 hereof shall, subject to the immediately following sentence, immediately and without any further action terminate and be of no further force or effect. Any amendment, waiver or modification of or supplement to Section 3.4 or Section 3.5 which is consented to by the Indenture Trustee shall be binding upon the Owner Lessor and the Owner Participant. Notwithstanding the foregoing or anything herein or in any of the Tiverton Operative Documents to the contrary, if the Owner Lessor shall have issued additional Lease Debt at the request of the Tiverton Lessee in accordance with Section 11 of the Participation Agreement prior to, simultaneously with, or after payment in full of the Certificates and such new Lease Debt is outstanding on or after the date the Certificates are paid in full, the covenants set forth in Section 3.4 and Section 3.5 shall, to the extent required by the terms of such new Lease Debt, remain in effect or thereafter become effective if not then in effect, but shall be for the sole and exclusive benefit of, and enforceable solely by, the holder of such new Lease Debt. Upon repayment of such new Lease Debt, or compliance with the terms thereof, the covenants set forth in Section 3.4 and Section 3.5 shall immediately and without further action terminate and be of no further force and effect. Notwithstanding any of the preceding provisions, a breach of Sections 3.4 or 3.5 under this Guaranty at such time as such breach shall have become an "Event of Default" under Section 7.1 shall constitute a Lease Event of Default under the circumstances provided in, and to the extent set forth in, the Tiverton Facility Lease.

#### SECTION 5. BENEFICIARIES' RIGHTS

Each Beneficiary may at any time and from time to time without the consent of, or notice to the Guarantor, without incurring responsibility to the Guarantor

and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew or alter, any of the Obligations (Tiverton) due to it, any security therefor, or any liability incurred directly or indirectly in respect thereof, and, subject to clause (d) below, the guaranty and agreement herein made shall apply to the Obligations (Tiverton) due to it as so changed, extended, renewed or altered;

(b) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Obligations (Tiverton) or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof due to it, and/or any offset thereagainst due to it;

(c) exercise or refrain from exercising any rights against the Tiverton Lessee or others or otherwise act or refrain from acting;

(d) settle or compromise any of the Obligations (Tiverton) due to it, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Tiverton Lessee to its creditors other than the Guarantor; provided that any settlement or compromise with respect to, or other reduction (by operation of law or negotiation) of, any of the Obligations (Tiverton) (or amounts underlying such Obligations (Tiverton)) due to it (whether occurring before or after the occurrence of a Lease Event of Default) shall not alter the amount of the original Obligations (Tiverton) due to it guaranteed hereby and the Guarantor acknowledges and agrees that its obligations hereunder shall be for the full amount of the Obligations (Tiverton) due to it without giving effect to any such settlement, compromise or other reduction;

(e) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Tiverton Lessee to such Beneficiary regardless of what liabilities or liabilities of the Tiverton Lessee remain unpaid;

(f) consent to or waive any breach of, or any act, omission or default under, the Participation Agreement or the Tiverton Facility Lease, or otherwise amend, modify or supplement the Participation Agreement or the Tiverton Facility Lease or any of such other instruments or agreements; and/or

(g) act or fail to act in any manner referred to in this Guaranty which may deprive the Guarantor of its right to subrogation against the Tiverton Lessee to recover full indemnity for any payments made pursuant to this Guaranty.

Anything herein to the contrary notwithstanding, any exercise of rights or remedies by any Beneficiary hereunder or under any other Tiverton Operative Document, or the failure or any Beneficiary to exercise any rights or remedies hereunder in accordance with the provisions hereof or under any other Tiverton Operative Document, shall not in

any way adversely affect the ability of any other Beneficiary to exercise its rights or remedies hereunder.

## SECTION 6. SURVIVAL OF GUARANTY AND PAYMENT AGREEMENT (TIVERTON)

Notwithstanding anything to the contrary herein, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any of the amounts paid to any of the Beneficiaries, in whole or in part, is required to be repaid upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of the Guarantor or the Tiverton Lessee or any other Person, or as a result of the appointment of a custodian, interviewer, receiver, trustee, or other officer with similar powers with respect to the Guarantor or the Tiverton Lessee or any other Person or any substantial part of the property of the Guarantor or the Tiverton Lessee or such other Person, all as if such payments had not been made.

## SECTION 7. DEFAULTS; REMEDIES; SUBROGATION

Section 7.1. Defaults. The following events shall constitute an "Event of Default" hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Entity):

(a) the Guarantor or the Tiverton Lessee under the Tiverton Facility Lease shall fail to make any payment with respect to Periodic Rent or Termination Value (including the Equity Portion of Termination Value or Debt Portion of Termination Value) when due and payable under such Tiverton Facility Lease or this Guaranty within five (5) days after the same shall become due thereunder; or

(b) the Guarantor or the Tiverton Lessee shall fail to make any other amount payable under any Tiverton Operative Document after the same shall become due thereunder and such failure shall have continued from a period of ten

(10) Business Days after receipt by the Tiverton Lessee and the Guarantor of written notice of such failure by the Tiverton Lessee and/or the Guarantor, as applicable;

(c) The Guarantor shall fail to comply with its covenants set forth in Section 3.3 (transfer of Lessee ownership), 3.6 (Guarantor merger) or 8.4 (assignment of Guaranty) of this Guaranty.

(d) the Guarantor shall fail to perform or observe any covenant, obligation or agreement to be performed or observed by it under any Calpine Document (other than any covenant, obligation or agreement referred to in clauses (a) or (b) of this Section 7.1) in any material respect, which shall continue unremedied for (1) with respect to the Guarantor's guaranty of, and agreement with respect to, any nonmonetary obligation, covenant or agreement of the Tiverton Lessee under any of the Tiverton Operative Documents, 30 days after receipt by the Guarantor of written notice thereof from the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through

Trustee; provided, however, if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended up to an additional 180 days, so long as the Guarantor diligently pursues such remedy and such condition is reasonably capable of being remedied within such additional 180-day period, and (2) with respect to any other obligation, covenant or agreement hereunder, 30 days after receipt by the Guarantor of written notice thereof;

(e) there shall have occurred either (i) a default by the Guarantor or any Restricted Subsidiary under any instrument or instruments under which there is or may be secured or evidenced any Indebtedness of the Guarantor or any Restricted Subsidiary of the Guarantor (other than the Obligations (Tiverton)) having an outstanding principal amount of \$50,000,000 (or its foreign currency equivalent) or more individually or in the aggregate that has caused the holders thereof to declare such Indebtedness to be due and payable prior to its Stated Maturity, unless such declaration has been rescinded within 30 days or (ii) a default by the Guarantor or any Restricted Subsidiary in the payment when due of any portion of the principal under any such instrument or instruments, and such unpaid portion exceeds \$50,000,000 (or its foreign currency equivalent) individually or in the aggregate and is not paid, or such default is not cured or waived, within any grace period applicable thereto, unless such Indebtedness is discharged within 30 days of the Guarantor or a Restricted Subsidiary becoming aware of such default;

(f) the Guarantor or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case;

(ii) consents to the entry of an order for relief against it in an involuntary case;

(iii) consents to the appointment of a Custodian of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) admits in writing its inability to generally pay its debts as such debts become due;

or takes any comparable action under any foreign laws relating to insolvency;

(g) an involuntary case or other proceeding shall be commenced against the Guarantor or any Significant Subsidiary seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the Bankruptcy Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property or (iii) the winding-up or liquidation of

the Guarantor or such Significant Subsidiary; and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days;

(h) any representation or warranty made by the Guarantor herein shall prove to have been incorrect in any material respect when made or misleading in any material respect when made because of the omission to state a material fact and such incorrect or misleading representation is and continues to be material and unremedied for a period of 30 days after receipt by the Guarantor of written notice thereof; provided, however, that if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended up to an additional 60 days, so long as the Guarantor diligently pursues such remedy and such condition is reasonably capable of being remedied within such additional 60-day period.

The grace periods set forth in Section 7.1(a) and (b) above shall not affect in any way the right hereunder of any Beneficiary entitled to a payment of any amount payable to it, or performance of any obligation, by the Tiverton Lessee under any Tiverton Operative Document to demand prompt payment thereof, or performance thereof, by the Guarantor immediately upon any failure of the Tiverton Lessee to pay or perform the same when it has become due (and, for the avoidance of doubt, without regard to the existence of any cure or grace period before such failure by the Tiverton Lessee becomes a Lease Event of Default); provided, however, notwithstanding the foregoing, no Lease Event of Default under Section 16(m) and no remedies under the Tiverton Facility Lease may be exercised until a Calpine Guaranty Event of Default has occurred and is continuing.

Section 7.2. Remedies. Subject to the last paragraph of Section 7.1, each Beneficiary shall be entitled to (a) all rights and remedies to which it may be entitled hereunder or at law, in equity or by statute and may proceed by appropriate court action to enforce the terms hereof and to recover damages for the breach hereof. Each and every remedy of the Beneficiaries shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. At the option of each Beneficiary and upon notice to the Guarantor, the Guarantor may be joined in any action or proceeding commenced by such Beneficiary against the Tiverton Lessee in respect of any Obligations (Tiverton) and recovery may be had against the Guarantor in such action or proceeding or in any independent action or proceeding against the Guarantor, without any requirement such Beneficiary first assert, prosecute or exhaust any remedy or claim against the Tiverton Lessee. Notwithstanding any of the foregoing, if an Event of Default specified in clause (e) or (f) of Section 7.1 with respect to the Guarantor occurs, all monetary Obligations (Tiverton) shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee.

Section 7.3. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or thereunder or otherwise, until all of the Obligations (Tiverton) and all other obligations of the Tiverton Lessee and the Guarantor owing to any of the Beneficiaries (or any other party) under the Tiverton Operative Documents shall have been paid in full.

If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations (Tiverton) and such other obligations shall not have been paid in full, such amount shall be held in trust for the benefit of the Beneficiary to whom such Obligation (Tiverton) or other obligation is payable and shall forthwith be paid to such Beneficiary to be credited and applied to such Obligation (Tiverton) or other obligation, whether matured or unmatured, in accordance with the terms of the Tiverton Operative Document under which such Obligation (Tiverton) or other obligation arose. If

(i) the Guarantor shall make payment to any Beneficiary of all or any part of the Obligations (Tiverton) or other obligations and (ii) all the Obligations (Tiverton) and such other obligations shall be paid and performed in full, such Beneficiary will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse, subject to Section 6 hereof, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations (Tiverton) and such other obligations resulting from such payment by the Guarantor.

#### Section 7.4. Waiver of Demands, Notices, Etc.

(a) Without limiting the last sentence of Section 7.1, the Guarantor hereby unconditionally waives (i) notice of any of the matters referred to in the second sentence of Section 2.3 hereof; (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve any rights against the Guarantor hereunder, including, without limitation, any demand, proof or notice of non-payment of any Obligation (Tiverton); (iii) any right to the enforcement, assertion or exercise of any right, remedy, power or privilege under or in respect of the Tiverton Facility Lease (or under or in respect of any other agreement including any Tiverton Operative Document); (iv) notice of acceptance of this Guaranty, demand, protest, presentment, notice of default and any requirement of diligence; (v) any requirement to exhaust any remedies or to mitigate any damages resulting from default by the Tiverton Lessee or any Person under the Tiverton Facility Lease (or under any other agreement including any Tiverton Operative Document); and (vi) any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety, or which might otherwise limit recourse against the Guarantor, other than satisfaction in full of the Obligations (Tiverton).

(b) This Guaranty is a continuing one and all of the Obligations (Tiverton) shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of any Beneficiary in exercising any right, power or privilege hereunder and no course of dealing among the Guarantor, any Beneficiary or the Tiverton Lessee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Beneficiary would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Beneficiary to any other or further action in any circumstances without notice or demand.

(c) If a claim is ever made upon any Beneficiary for repayment or recovery of any amount or amounts received in payment or on account of any of the Obligations (Tiverton) and any of the Beneficiaries repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such Beneficiary or any of its property or (b) any settlement or compromise of any such claim effected by such Beneficiary with any such claimant (including the Tiverton Lessee), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Tiverton Facility Lease or other instrument evidencing any liability of the Tiverton Lessee, and the Guarantor shall be and remain liable to the aforesaid Beneficiaries hereunder for the amount so repaid by or recovered from such Beneficiary to the same extent as if such amount had never originally been received by any such Beneficiary.

Section 7.5. Costs and Expenses. The Guarantor agrees to pay on an After-Tax Basis any and all reasonable costs and expenses (including reasonable legal fees) incurred by any Beneficiary in enforcing its rights under this Guaranty.

Section 7.6. Survival of Remedies and Subrogation Rights. The provisions of this Section 7 shall survive the term of this Guaranty and the payment in full of the Obligations (Tiverton) and the termination of the Tiverton Operative Documents.

## SECTION 8. MISCELLANEOUS

Section 8.1. Amendments and Waivers. No term, covenant, agreement or condition of this Guaranty may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by the Guarantor and consented to by the Beneficiaries.

Section 8.2. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the Guarantor hereto at its address set forth below or at such other address as such party may from time to time designate by written notice:

Calpine Corporation  
50 West San Fernando Street, 5th Floor San Jose, CA 95113

Facsimile No.: (408) 975-4648  
Telephone No.: (408) 995-5115  
Attention: General Counsel

Section 8.3. Survival. Except as expressly set forth herein, the warranties and covenants made by the Guarantor shall not survive the expiration or termination of this Guaranty.

Section 8.4. Assignment and Assumption. (a) Except as provided in clause (b) below, this Guaranty may not be assigned by the Guarantor to, or assumed by, any successor to or assign of the Guarantor (it being understood and agreed that a consolidation with or merger of the Guarantor into, or the sale of all or substantially all of its assets to, another Person in accordance with Section 3.6 shall not be deemed such an assignment or assumption for the purposes hereof) without the prior written consent of the Beneficiaries, nor may the Guarantor transfer or assign a majority (or more) of (i) the Ownership Interest in the Tiverton Lessee or (ii) the Ownership Interest in the Rumford Lessee.

(b) Notwithstanding any of the foregoing in this Section 8.4, the Guarantor may transfer a majority (or more) of its Ownership Interest in the Tiverton Lessee to a single third party, provided that the Guarantor assigns this Guaranty to such third party (whereupon the Guarantor shall be released from all obligations under this Guaranty in connection with such transfer) upon satisfaction of the following conditions:

(i) unless the Owner Participant shall have consented to such assignment, such transferee, or a party which unconditionally guarantees such transferee's obligations under the Operative Documents assigned to such transferee (A) shall have significant experience owning or operating gas-fired electric generating facilities in the United States and (B) shall have a tangible net worth of at least \$1 billion after giving effect to such transfer;

(ii) the requirements set forth in Section 3.3(i), (iii), (iv) and (v) of this Guaranty have been satisfied and, immediately after giving effect to such transfer, the transferee shall own (A) at least a majority of the Ownership Interest of the Tiverton Lessee and (B) at least a majority of the Ownership Interest of the Rumford Lessee;

(iii) such transfer occurs (i) subsequent to the tenth year of the Facility Lease Term of the Tiverton Lessee and the Rumford Lessee and (ii) when the aggregate principal amount of the Tiverton Notes is less than \$50 million and the aggregate principal amount of the Rumford Notes is less than \$50 million;

(iv) neither the transferee nor any Affiliate of the transferee shall be involved in any material litigation with the Owner Participant;

(v) the Rating Agencies shall have confirmed that after giving effect to such transfer, the Certificates (if then outstanding) and the transferee (or a party

which guarantees such transferee's obligations under the Operative Documents assigned to such transferee) shall be rated at least Investment Grade (and not be on negative credit watch) by the Rating Agencies;

(vi) all the obligations of the Tiverton Lessee under the Tiverton Operative Documents shall remain in full force and effect, the transferee shall assume all the obligations of the Guarantor under the Operative Documents pursuant to the Guarantor's Assignment and Assumption Agreement and such Operative Documents as so assumed shall remain in full force and effect, and any guaranty of such transferee's obligations pursuant to this Section 8.4 shall be in a form satisfactory to the Owner Participant (it being acknowledged and agreed that any such guaranty which shall be in form and substance substantially similar to this Guaranty shall be deemed to be satisfactory to the Owner Participant); and

(vii) the Owner Participant, the Owner Lessor and, so long as the Lien on the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Opinion of Counsel as to the satisfaction of the conditions set forth in clause (vi) of this Section 8.4(b).

**Section 8.5. Governing Law.** This Guaranty shall be in all respects governed by and construed in accordance with the laws of the State of New York, including all matters of construction, validity and performance (without giving effect to the conflicts of laws provisions, other than New York General Obligations Law Section 5-1401).

**Section 8.6. Severability.** Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 8.7. Headings.** The headings of the sections of this Guaranty are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**Section 8.8. Further Assurances.** The Guarantor will promptly and duly execute and deliver such further documents as may be reasonably requested by the Owner Lessor, all as may be reasonably necessary to affirm the Guarantor's obligations under this Guaranty.

**Section 8.9. Effectiveness of Guaranty.** This Guaranty has been dated as of the date first above written for convenience only. This Guaranty shall be effective on the date of execution and delivery by the Guarantor.

Section 8.10. Acknowledgment by the Guarantor. The Guarantor acknowledges that an executed (or conformed) copy of the Participation Agreement, the Tiverton Facility Lease and the other Operative Documents have been made available to its principal executive officers and such officers are familiar with the contents thereof.

Section 8.11. Tolling. Any acknowledgement or new promise, whether by payment of principal or interest or otherwise and whether by the Tiverton Lessee or others (including the Guarantor), with respect to any of the Obligations (Tiverton) shall, if the statute of limitations in favor of the Guarantor against any Beneficiary shall have commenced to run, toll the running of such statute of limitations, and if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

Section 8.12. Consent to Jurisdiction; Waiver of Trial by Jury; Process Agent.

(a) The Guarantor (i) hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of the Guarantor to remove to the United States District Court for the Southern District of New York) and to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Guaranty, the Tiverton Facility Lease, the other Tiverton Operative Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the Beneficiaries hereunder or their successors or assigns; (ii) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or in such federal court; and (iii) to the extent permitted by Applicable Law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty, the other Tiverton Operative Documents, or the subject matter hereof or thereof may not be enforced in or by such court.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR HEREBY IRREVOCABLY WAIVES THE RIGHT TO DEMAND A TRIAL BY JURY, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS GUARANTY, THE OTHER TIVERTON OPERATIVE DOCUMENTS, OR THE SUBJECT MATTER HEREOF OR THEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY BROUGHT BY ANY OF THE BENEFICIARIES HEREUNDER OR THEIR SUCCESSORS OR ASSIGNS.

(c) By the execution and delivery of this Guaranty, the Guarantor designates, appoints and empowers National Registered Agent, Inc., 440 9th Avenue, 5th Floor, New York, NY 10001 as its authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any such action, suit or

proceeding in the State of New York for so long as any obligation of the Guarantor shall remain outstanding hereunder or under any of the other Tiverton Operative Documents. The Guarantor shall grant an irrevocable power of attorney to National Registered Agent, Inc. in respect of such appointment and shall maintain such power of attorney in full force and effect for so long as any obligation of the Guarantor shall remain outstanding hereunder or under any of the Tiverton Operative Documents.

Section 8.13. Agreement for Benefit of Parties Hereto. Nothing in this Guaranty, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Guaranty or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Guaranty are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns. The Guarantor acknowledges that certain of the rights of the Owner Lessor hereunder have been or shall be assigned to and may be enforced by the Indenture Trustee pursuant to the terms of the Collateral Trust Indenture (excluding, among other things, rights to Excepted Payments), the Guarantor hereby consents to such assignment and the Guarantor agrees to render performance of such assigned obligations directly to the Indenture Trustee (as assignee of the Owner Lessor). The Guarantor agrees to make all payments which have been so assigned owing to the Owner Lessor under this Guaranty directly to the account of the Indenture Trustee to be specified to the Guarantor in writing, or to such other account specified in writing from time to time by the Indenture Trustee.

Section 8.14. Termination of Guaranty. Upon the full payment and satisfaction of the Obligations (Tiverton) and all of the Guarantor's obligations hereunder, this Guaranty shall terminate and shall be of no further effect. Nevertheless, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time, any payment, or any part thereof, of any of the Obligations (Tiverton) is rescinded or must otherwise be returned by any Beneficiary upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Tiverton Lessee or otherwise, all as though such payment had not been made.

Section 8.15. Additional Obligations (Tiverton). Upon the assumption by the Tiverton Lessee of the Tiverton Notes in connection with a termination of the Tiverton Lease, as permitted therein, the obligation of the Tiverton Lessee to pay principal of, and Make-Whole Amount if any, and interest on the Tiverton Notes, and amounts payable by it to the Indenture Trustee under the Collateral Trust Indenture, shall thereupon become Obligations (Tiverton) for all purposes of this Guaranty, and the Guarantor shall therefor execute and deliver to the Indenture Trustee such further guaranties, instruments and documents as the Indenture Trustee may reasonably request in order to more fully effectuate the Guarantor's unconditional guaranty of such additional Obligations (Tiverton).

Section 8.16. Miscellaneous Provisions.

(a) The provisions of Section 2 of this Guaranty are subject to the provisions of Section 14.25 of the Participation Agreement.

(b) When determining the amount of unpaid Equity Portion of Termination Value to be paid by the Guarantor under Section 2 of this Guaranty, the correct amount thereof shall be the applicable amount of Equity Portion of Termination Value (as set forth in Exhibit A hereto) for the date of the demand for payment or if the amount of Equity Portion of Termination Value is not set forth for such date on Exhibit A hereto, the Equity Portion of Termination Value shall be determined by interpolation between the values set forth on Exhibit A for the date next preceding the date of the demand and the date next succeeding the date of the demand on a straight-line basis assuming thirty day months.

(c) The payment obligations of the Guarantor hereunder shall rank pari passu with all other senior unsecured indebtedness of the Guarantor for borrowed money.

[No more text on this page]

IN WITNESS WHEREOF, the parties have caused this Guaranty to be duly executed and delivered on the day and year first above written.

**CALPINE CORPORATION,  
as Guarantor**

By: /s/ ERIC PRYOR

-----  
Name: Eric Pryor  
Title: Authorized Agent

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC,  
a Delaware limited liability company**

By: PMCC Calpine NEIM LLC, a Delaware  
limited liability company, its managing  
member

By: General Foods Credit Corporation, a  
Delaware corporation, its managing  
member

By: /s/ ILLEGIBLE

-----  
Name:  
Title:  
Date:

**PMCC CALPINE NEIM LLC**

By: General Foods Credit Corporation,  
its managing member

By: /s/ ILLEGIBLE

-----  
Name:  
Title:  
Date:

**STATE STREET BANK AND TRUST COMPANY OF  
CONNECTICUT, N.A.,**

not in its individual capacity but  
solely as Indenture Trustee

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President

**STATE STREET BANK AND TRUST COMPANY OF  
CONNECTICUT, N.A.,**

not in its individual capacity but  
solely as Pass Through Trustee

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
Jan 15 2001	22.86727903
Feb 15 2001	23.16421293
Mar 15 2001	23.46383134
Apr 15 2001	23.10615619
May 15 2001	23.36914584
Jun 15 2001	23.65646772
Jul 15 2001	23.91345533
Aug 15 2001	24.1947209
Sep 15 2001	24.47852933
Oct 15 2001	24.73197173
Nov 15 2001	25.00966004
Dec 15 2001	25.28985886
Jan 15 2002	25.53965903
Feb 15 2002	25.81367217
Mar 15 2002	26.09016261
Apr 15 2002	26.36915273
May 15 2002	26.62548058
Jun 15 2002	26.90091551
Jul 15 2002	27.15365603
Aug 15 2002	27.42547124
Sep 15 2002	27.69974388
Oct 15 2002	27.95131156
Nov 15 2002	28.22194334
Dec 15 2002	28.49502185
Jan 15 2003	28.74538461
Feb 15 2003	29.01480057
Mar 15 2003	29.28665226
Apr 15 2003	29.56096171
May 15 2003	29.8144664
Jun 15 2003	30.08578613
Jul 15 2003	30.33627408
Aug 15 2003	30.60454978
Sep 15 2003	30.87525091
Oct 15 2003	31.12511466
Nov 15 2003	31.39276053
Dec 15 2003	31.66282613
Jan 15 2004	31.91204861
Feb 15 2004	32.1790474
Mar 15 2004	32.44846007
Apr 15 2004	32.72030845
May 15 2004	32.97310042
Jun 15 2004	33.24252057
Jul 15 2004	33.49286238
Aug 15 2004	33.75981022

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Sep 15 2004	34.02917147
Oct 15 2004	34.27945384
Nov 15 2004	34.54634171
Dec 15 2004	34.81564245
Jan 15 2005	35.06586376
Feb 15 2005	35.33269001
Mar 15 2005	35.60192859
Apr 15 2005	35.87360129
May 15 2005	36.12756406
Jun 15 2005	36.3972669
Jul 15 2005	36.64924199
Aug 15 2005	34.13337148
Sep 15 2005	34.36494529
Oct 15 2005	34.57844664
Nov 15 2005	34.80732225
Dec 15 2005	35.03826708
Jan 15 2006	35.25113377
Feb 15 2006	35.40632527
Mar 15 2006	35.63561248
Apr 15 2006	35.86697263
May 15 2006	36.0814393
Jun 15 2006	36.31050169
Jul 15 2006	36.52264982
Aug 15 2006	36.49798373
Sep 15 2006	36.72327543
Oct 15 2006	36.93161879
Nov 15 2006	37.1545025
Dec 15 2006	37.37940126
Jan 15 2007	37.58734812
Feb 15 2007	37.80983176
Mar 15 2007	38.03432682
Apr 15 2007	38.2608515
May 15 2007	38.47186527
Jun 15 2007	38.69649268
Jul 15 2007	38.90559204
Aug 15 2007	38.18178711
Sep 15 2007	38.39339011
Oct 15 2007	38.5893473
Nov 15 2007	38.79878201
Dec 15 2007	39.01011018
Jan 15 2008	39.20579005
Feb 15 2008	38.54841156
Mar 15 2008	38.74745863
Apr 15 2008	38.94830524

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
May 15 2008	39.13345615
Jun 15 2008	39.33195532
Jul 15 2008	39.51473756
Aug 15 2008	38.93009454
Sep 15 2008	39.11716566
Oct 15 2008	39.28841654
Nov 15 2008	39.47289001
Dec 15 2008	39.65903125
Jan 15 2009	39.82934386
Feb 15 2009	39.30833934
Mar 15 2009	39.48376974
Apr 15 2009	39.66078617
May 15 2009	39.82171299
Jun 15 2009	39.99588803
Jul 15 2009	40.15394777
Aug 15 2009	39.70416791
Sep 15 2009	39.86839875
Oct 15 2009	40.01642437
Nov 15 2009	40.17758158
Dec 15 2009	40.34019578
Jan 15 2010	40.48659015
Feb 15 2010	40.09199974
Mar 15 2010	40.24528052
Apr 15 2010	40.39994707
May 15 2010	40.542426
Jun 15 2010	40.69525033
Jul 15 2010	40.83587038
Aug 15 2010	40.49720557
Sep 15 2010	40.64273933
Oct 15 2010	40.77600289
Nov 15 2010	40.91952855
Dec 15 2010	41.0643518
Jan 15 2011	41.19689843
Feb 15 2011	40.89858604
Mar 15 2011	41.03657129
Apr 15 2011	41.17580403
May 15 2011	41.30928769
Jun 15 2011	41.44865005
Jul 15 2011	41.5822645
Aug 15 2011	41.31761384
Sep 15 2011	41.45277319
Oct 15 2011	41.58214662
Nov 15 2011	41.71736159
Dec 15 2011	41.85379902

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2012	41.98446209
Feb 15 2012	41.7467369
Mar 15 2012	41.87930533
Apr 15 2012	42.01307228
May 15 2012	42.14316682
Jun 15 2012	42.27769203
Jul 15 2012	42.40855168
Aug 15 2012	42.19726689
Sep 15 2012	42.32898826
Oct 15 2012	42.45701873
Nov 15 2012	42.5894612
Dec 15 2012	42.72310106
Jan 15 2013	42.85306736
Feb 15 2013	42.66394861
Mar 15 2013	42.79507982
Apr 15 2013	42.92739655
May 15 2013	43.05697072
Jun 15 2013	43.19034222
Jul 15 2013	43.32098069
Aug 15 2013	43.15476649
Sep 15 2013	43.28626422
Oct 15 2013	43.41501199
Nov 15 2013	43.54754961
Dec 15 2013	43.68128547
Jan 15 2014	43.81229161
Feb 15 2014	43.6652604
Mar 15 2014	43.79739295
Apr 15 2014	43.93072009
May 15 2014	44.06235973
Jun 15 2014	44.19711808
Jul 15 2014	44.33020187
Aug 15 2014	44.20246009
Sep 15 2014	44.33625218
Oct 15 2014	44.46836097
Nov 15 2014	44.60359272
Dec 15 2014	44.74004706
Jan 15 2015	44.87484218
Feb 15 2015	44.76331529
Mar 15 2015	44.8990504
Apr 15 2015	45.03601266
May 15 2015	45.17244451
Jun 15 2015	45.31128892
Jul 15 2015	45.44961993
Aug 15 2015	45.35377511

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	TERMINATION VALUE
Sep 15 2015	45.49253219
Oct 15 2015	45.6307751
Nov 15 2015	45.77144693
Dec 15 2015	45.91339055
Jan 15 2016	46.05484878
Feb 15 2016	46.19876502
Mar 15 2016	46.34398238
Apr 15 2016	46.49051261
May 15 2016	46.63795681
Jun 15 2016	46.78700787
Jul 15 2016	46.93699569
Aug 15 2016	47.08853706
Sep 15 2016	47.24152443
Oct 15 2016	47.39548415
Nov 15 2016	47.55110963
Dec 15 2016	47.70814209
Jan 15 2017	47.86618347
Feb 15 2017	48.02592751
Mar 15 2017	48.18711577
Apr 15 2017	48.3497613
May 15 2017	48.51423139
Jun 15 2017	48.67995234
Jul 15 2017	48.84752565
Aug 15 2017	45.25639495
Sep 15 2017	45.3747099
Oct 15 2017	45.49444863
Nov 15 2017	45.61503382
Dec 15 2017	45.73670919
Jan 15 2018	45.85983871
Feb 15 2018	45.98384535
Mar 15 2018	46.1089731
Apr 15 2018	46.23523211
May 15 2018	46.36326247
Jun 15 2018	46.49203041
Jul 15 2018	46.62259238
Aug 15 2018	43.04798413
Sep 15 2018	43.12917845
Oct 15 2018	43.21173671
Nov 15 2018	43.29462144
Dec 15 2018	43.37825551
Jan 15 2019	43.46327558
Feb 15 2019	43.54864437
Mar 15 2019	43.63478497
Apr 15 2019	43.72170435

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
May 15 2019	43.81025006
Jun 15 2019	43.89903595
Jul 15 2019	43.98946505
Aug 15 2019	39.52431233
Sep 15 2019	39.5527346
Oct 15 2019	39.58225435
Nov 15 2019	39.61148063
Dec 15 2019	39.64097114
Jan 15 2020	39.67156879
Feb 15 2020	39.70188272
Mar 15 2020	39.73247071
Apr 15 2020	39.76333524
May 15 2020	39.80379041
Jun 15 2020	39.83840359
Jul 15 2020	39.88264131
Aug 15 2020	35.43622633
Sep 15 2020	35.43622633
Oct 15 2020	35.43622633
Nov 15 2020	35.43622633
Dec 15 2020	35.43622633
Jan 15 2021	35.43622633
Feb 15 2021	35.43622633
Mar 15 2021	35.43622633
Apr 15 2021	35.43622633
May 15 2021	35.43622633
Jun 15 2021	35.43622633
Jul 15 2021	35.43622633
Aug 15 2021	31.50180011
Sep 15 2021	31.5018001
Oct 15 2021	31.5018001
Nov 15 2021	31.5018001
Dec 15 2021	31.5018001
Jan 15 2022	31.5018001
Feb 15 2022	31.50180011
Mar 15 2022	31.50180011
Apr 15 2022	31.50180011
May 15 2022	31.50180011
Jun 15 2022	31.50180011
Jul 15 2022	31.50180011
Aug 15 2022	27.56737388
Sep 15 2022	27.56737388
Oct 15 2022	27.56737388
Nov 15 2022	27.56737388
Dec 15 2022	27.56737388

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2023	27.56737388
Feb 15 2023	27.56737388
Mar 15 2023	27.56737388
Apr 15 2023	27.56737388
May 15 2023	27.56737388
Jun 15 2023	27.56737388
Jul 15 2023	27.56737388
Aug 15 2023	23.63294765
Sep 15 2023	23.63294765
Oct 15 2023	23.63294765
Nov 15 2023	23.63294765
Dec 15 2023	23.63294765
Jan 15 2024	23.63294765
Feb 15 2024	23.63294765
Mar 15 2024	23.63294765
Apr 15 2024	23.63294765
May 15 2024	23.63294765
Jun 15 2024	23.63294765
Jul 15 2024	23.63294765
Aug 15 2024	19.69852142
Sep 15 2024	19.69852142
Oct 15 2024	19.69852142
Nov 15 2024	19.69852142
Dec 15 2024	19.69852142
Jan 15 2025	19.69852142
Feb 15 2025	19.69852142
Mar 15 2025	19.69852142
Apr 15 2025	19.69852142
May 15 2025	19.69852142
Jun 15 2025	19.69852142
Jul 15 2025	19.69852142
Aug 15 2025	15.76409519
Sep 15 2025	15.76409519
Oct 15 2025	15.76409519
Nov 15 2025	15.76409519
Dec 15 2025	15.76409519
Jan 15 2026	15.76409519
Feb 15 2026	15.75863071
Mar 15 2026	15.75863071
Apr 15 2026	15.75863071
May 15 2026	15.75863071
Jun 15 2026	15.75863071
Jul 15 2026	15.75863071
Aug 15 2026	15.75316623

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
Sep 15 2026	15.75316623
Oct 15 2026	15.75316623
Nov 15 2026	15.75316623
Dec 15 2026	15.75316623
Jan 15 2027	15.75316623
Feb 15 2027	15.74770174
Mar 15 2027	15.74770174
Apr 15 2027	15.74770174
May 15 2027	15.74770174
Jun 15 2027	15.74770174
Jul 15 2027	15.74770174
Aug 15 2027	15.74223726
Sep 15 2027	15.74223726
Oct 15 2027	15.74223726
Nov 15 2027	15.74223726
Dec 15 2027	15.74223726
Jan 15 2028	15.74223726
Feb 15 2028	15.73677278
Mar 15 2028	15.73677278
Apr 15 2028	15.73677278
May 15 2028	15.73677278
Jun 15 2028	15.73677278
Jul 15 2028	15.73677278
Aug 15 2028	15.7313083
Sep 15 2028	15.7313083
Oct 15 2028	15.7313083
Nov 15 2028	15.7313083
Dec 15 2028	15.7313083
Jan 15 2029	15.7313083
Feb 15 2029	15.72584382
Mar 15 2029	15.72584382
Apr 15 2029	15.72584382
May 15 2029	15.72584382
Jun 15 2029	15.72584382
Jul 15 2029	15.72584382
Aug 15 2029	15.72037934
Sep 15 2029	15.72037934
Oct 15 2029	15.72037934
Nov 15 2029	15.72037934
Dec 15 2029	15.72037934
Jan 15 2030	15.72037934
Feb 15 2030	15.71491486
Mar 15 2030	15.71491486
Apr 15 2030	15.71491486

**EXHIBIT A****EQUITY PORTION OF TERMINATION VALUE****EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
May 15 2030	15.71491486
Jun 15 2030	15.71491486
Jul 15 2030	15.71491486
Aug 15 2030	15.70945038
Sep 15 2030	15.70945038
Oct 15 2030	15.70945038
Nov 15 2030	15.70945038
Dec 15 2030	15.70945038
Jan 15 2031	15.70945038
Feb 15 2031	15.7039859
Mar 15 2031	15.7039859
Apr 15 2031	15.7039859
May 15 2031	15.7039859
Jun 15 2031	15.7039859
Jul 15 2031	15.7039859
Aug 15 2031	15.69852142
Sep 15 2031	15.69852142
Oct 15 2031	15.69852142
Nov 15 2031	15.69852142
Dec 15 2031	15.69852142
Jan 15 2032	15.69852142
Feb 15 2032	15.69305694
Mar 15 2032	15.69305694
Apr 15 2032	15.69305694
May 15 2032	15.69305694
Jun 15 2032	15.69305694
Jul 15 2032	15.69305694
Aug 15 2032	15.68759245
Sep 15 2032	15.68759245
Oct 15 2032	15.70309329
Nov 15 2032	15.70840038
Dec 15 2032	15.71375544
Jan 15 2033	15.74005831
Feb 15 2033	15.74697125
Mar 15 2033	15.75961412
Apr 15 2033	15.77237129
May 15 2033	15.80753044
Jun 15 2033	15.8281497
Jul 15 2033	15.87124201
Aug 15 2033	15.89417135
Sep 15 2033	15.92297542
Oct 15 2033	15.97432654
Nov 15 2033	16.01128416
Dec 15 2033	16.0485759

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2034	16.10849143
Feb 15 2034	16.14839608
Mar 15 2034	16.19432894
Apr 15 2034	16.24067706
May 15 2034	16.31120946
Jun 15 2034	16.36653602
Jul 15 2034	16.44612804
Aug 15 2034	16.50490132
Sep 15 2034	16.5698734
Oct 15 2034	16.65919812
Nov 15 2034	16.73348691
Dec 15 2034	16.80844733
Jan 15 2035	16.9078507
Feb 15 2035	16.98661445
Mar 15 2035	17.07175772
Apr 15 2035	17.15767076
May 15 2035	17.26970174
Jun 15 2035	17.36585142
Jul 15 2035	17.48821159
Aug 15 2035	17.58908905
Sep 15 2035	17.69654595
Oct 15 2035	17.83031557
Nov 15 2035	17.94840042
Dec 15 2035	18.06755285
Jan 15 2036	18.21312374
Feb 15 2036	18.33742173
Mar 15 2036	18.46851093
Apr 15 2036	18.60078527
May 15 2036	18.83544727
Jun 15 2036	19.00476962
Jul 15 2036	19.27681453
Aug 15 2036	19.47816297
Sep 15 2036	19.68699918
Oct 15 2036	19.99891523
Nov 15 2036	20.24619004
Dec 15 2036	20.49570042
Dec 19 2036	20.00546448

**EXHIBIT B****DEBT PORTION OF TERMINATION VALUE****EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Jan 15 2001	80.52000000
Feb 15 2001	81.12000000
Mar 15 2001	81.72000000
Apr 15 2001	82.32000000
May 15 2001	82.92000000
Jun 15 2001	83.52000000
Jul 15 2001	84.12000000
Aug 15 2001	80.60000000
Sep 15 2001	81.20000000
Oct 15 2001	81.80000000
Nov 15 2001	82.40000000
Dec 15 2001	83.00000000
Jan 15 2002	83.60000000
Feb 15 2002	80.60000000
Mar 15 2002	81.20000000
Apr 15 2002	81.80000000
May 15 2002	82.40000000
Jun 15 2002	83.00000000
Jul 15 2002	83.60000000
Aug 15 2002	80.60000000
Sep 15 2002	81.20000000
Oct 15 2002	81.80000000
Nov 15 2002	82.40000000
Dec 15 2002	83.00000000
Jan 15 2003	83.60000000
Feb 15 2003	80.60000000
Mar 15 2003	81.20000000
Apr 15 2003	81.80000000
May 15 2003	82.40000000
Jun 15 2003	83.00000000
Jul 15 2003	83.60000000
Aug 15 2003	80.60000000
Sep 15 2003	81.20000000
Oct 15 2003	81.80000000
Nov 15 2003	82.40000000
Dec 15 2003	83.00000000
Jan 15 2004	83.60000000
Feb 15 2004	80.60000000
Mar 15 2004	81.20000000
Apr 15 2004	81.80000000
May 15 2004	82.40000000
Jun 15 2004	83.00000000
Jul 15 2004	83.60000000
Aug 15 2004	80.06596995

**EXHIBIT B****DEBT PORTION OF TERMINATION VALUE****EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION TERMINATION VALUE
Sep 15 2004	80.66199454
Oct 15 2004	81.25801913
Nov 15 2004	81.85404372
Dec 15 2004	82.45006831
Jan 15 2005	83.04609290
Feb 15 2005	80.06596995
Mar 15 2005	80.66199454
Apr 15 2005	81.25801913
May 15 2005	81.85404372
Jun 15 2005	82.45006831
Jul 15 2005	83.04609290
Aug 15 2005	80.06596995
Sep 15 2005	80.66199454
Oct 15 2005	81.25801913
Nov 15 2005	81.85404372
Dec 15 2005	82.45006831
Jan 15 2006	83.04609290
Feb 15 2006	80.06596995
Mar 15 2006	80.66199454
Apr 15 2006	81.25801913
May 15 2006	81.85404372
Jun 15 2006	82.45006831
Jul 15 2006	83.04609290
Aug 15 2006	77.67571749
Sep 15 2006	78.25394863
Oct 15 2006	78.83217978
Nov 15 2006	79.41041093
Dec 15 2006	79.98864208
Jan 15 2007	80.56687322
Feb 15 2007	77.67571749
Mar 15 2007	78.25394863
Apr 15 2007	78.83217978
May 15 2007	79.41041093
Jun 15 2007	79.98864208
Jul 15 2007	80.56687322
Aug 15 2007	75.67172842
Sep 15 2007	76.23504153
Oct 15 2007	76.79835464
Nov 15 2007	77.36166776
Dec 15 2007	77.92498087
Jan 15 2008	78.48829399
Feb 15 2008	74.09386230
Mar 15 2008	74.64542951
Apr 15 2008	75.19699672

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
May 15 2008	75.74856393
Jun 15 2008	76.30013115
Jul 15 2008	76.85169836
Aug 15 2008	74.09386230
Sep 15 2008	74.64542951
Oct 15 2008	75.19699672
Nov 15 2008	75.74856393
Dec 15 2008	76.30013115
Jan 15 2009	76.85169836
Feb 15 2009	72.04164536
Mar 15 2009	72.57793552
Apr 15 2009	73.11422568
May 15 2009	73.65051585
Jun 15 2009	74.18680601
Jul 15 2009	74.72309617
Aug 15 2009	72.04164536
Sep 15 2009	72.57793552
Oct 15 2009	73.11422568
Nov 15 2009	73.65051585
Dec 15 2009	74.18680601
Jan 15 2010	74.72309617
Feb 15 2010	32.40230109
Mar 15 2010	32.64350929
Apr 15 2010	32.88471749
May 15 2010	33.12592568
Jun 15 2010	33.36713388
Jul 15 2010	33.60834208
Aug 15 2010	32.40230109
Sep 15 2010	32.64350929
Oct 15 2010	32.88471749
Nov 15 2010	33.12592568
Dec 15 2010	33.36713388
Jan 15 2011	33.60834208
Feb 15 2011	21.32288415
Mar 15 2011	21.48161530
Apr 15 2011	21.64034645
May 15 2011	21.79907760
Jun 15 2011	21.95780874
Jul 15 2011	22.11653989
Aug 15 2011	21.32288415
Sep 15 2011	21.48161530
Oct 15 2011	21.64034645
Nov 15 2011	21.79907760
Dec 15 2011	21.95780874

**EXHIBIT B**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
Jan 15 2012	22.11653989
Feb 15 2012	14.99049891
Mar 15 2012	15.10209071
Apr 15 2012	15.21368251
May 15 2012	15.32527432
Jun 15 2012	15.43686612
Jul 15 2012	15.54845792
Aug 15 2012	14.99049891
Sep 15 2012	15.10209071
Oct 15 2012	15.21368251
Nov 15 2012	15.32527432
Dec 15 2012	15.43686612
Jan 15 2013	15.54845792
Feb 15 2013	11.96161257
Mar 15 2013	12.05065683
Apr 15 2013	12.13970109
May 15 2013	12.22874536
Jun 15 2013	12.31778962
Jul 15 2013	12.40683388
Aug 15 2013	11.96161257
Sep 15 2013	12.05065683
Oct 15 2013	12.13970109
Nov 15 2013	12.22874536
Dec 15 2013	12.31778962
Jan 15 2014	12.40683388
Feb 15 2014	8.56804426
Mar 15 2014	8.63182623
Apr 15 2014	8.69560820
May 15 2014	8.75939016
Jun 15 2014	8.82317213
Jul 15 2014	8.88695410
Aug 15 2014	8.56804426
Sep 15 2014	8.63182623
Oct 15 2014	8.69560820
Nov 15 2014	8.75939016
Dec 15 2014	8.82317213
Jan 15 2015	8.88695410
Feb 15 2015	5.25551639
Mar 15 2015	5.29463934
Apr 15 2015	5.33376230
May 15 2015	5.37288525
Jun 15 2015	5.41200820
Jul 15 2015	5.45113115
Aug 15 2015	5.25551639

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Sep 15 2015	5.29463934
Oct 15 2015	5.33376230
Nov 15 2015	5.37288525
Dec 15 2015	5.41200820
Jan 15 2016	5.45113115
Feb 15 2016	1.13897049
Mar 15 2016	1.14744918
Apr 15 2016	1.15592787
May 15 2016	1.16440656
Jun 15 2016	1.17288525
Jul 15 2016	1.18136393
Aug 15 2016	1.13897049
Sep 15 2016	1.14744918
Oct 15 2016	1.15592787
Nov 15 2016	1.16440656
Dec 15 2016	1.17288525
Jan 15 2017	1.18136393
Feb 15 2017	0.44065738
Mar 15 2017	0.44393770
Apr 15 2017	0.44721803
May 15 2017	0.45049836
Jun 15 2017	0.45377869
Jul 15 2017	0.45705902
Aug 15 2017	0.44065738
Sep 15 2017	0.44393770
Oct 15 2017	0.44721803
Nov 15 2017	0.45049836
Dec 15 2017	0.45377869
Jan 15 2018	0.45705902
Feb 15 2018	0.44065738
Mar 15 2018	0.44393770
Apr 15 2018	0.44721803
May 15 2018	0.45049836
Jun 15 2018	0.45377869
Jul 15 2018	0.45705902
Aug 15 2018	0.00000000
Sep 15 2018	0.00000000
Oct 15 2018	0.00000000
Nov 15 2018	0.00000000
Dec 15 2018	0.00000000
Jan 15 2019	0.00000000
Feb 15 2019	0.00000000
Mar 15 2019	0.00000000
Apr 15 2019	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
May 15 2019	0.00000000
Jun 15 2019	0.00000000
Jul 15 2019	0.00000000
Aug 15 2019	0.00000000
Sep 15 2019	0.00000000
Oct 15 2019	0.00000000
Nov 15 2019	0.00000000
Dec 15 2019	0.00000000
Jan 15 2020	0.00000000
Feb 15 2020	0.00000000
Mar 15 2020	0.00000000
Apr 15 2020	0.00000000
May 15 2020	0.00000000
Jun 15 2020	0.00000000
Jul 15 2020	0.00000000
Aug 15 2020	0.00000000
Sep 15 2020	0.00000000
Oct 15 2020	0.00000000
Nov 15 2020	0.00000000
Dec 15 2020	0.00000000
Jan 15 2021	0.00000000
Feb 15 2021	0.00000000
Mar 15 2021	0.00000000
Apr 15 2021	0.00000000
May 15 2021	0.00000000
Jun 15 2021	0.00000000
Jul 15 2021	0.00000000
Aug 15 2021	0.00000000
Sep 15 2021	0.00000000
Oct 15 2021	0.00000000
Nov 15 2021	0.00000000
Dec 15 2021	0.00000000
Jan 15 2022	0.00000000
Feb 15 2022	0.00000000
Mar 15 2022	0.00000000
Apr 15 2022	0.00000000
May 15 2022	0.00000000
Jun 15 2022	0.00000000
Jul 15 2022	0.00000000
Aug 15 2022	0.00000000
Sep 15 2022	0.00000000
Oct 15 2022	0.00000000
Nov 15 2022	0.00000000
Dec 15 2022	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Jan 15 2023	0.00000000
Feb 15 2023	0.00000000
Mar 15 2023	0.00000000
Apr 15 2023	0.00000000
May 15 2023	0.00000000
Jun 15 2023	0.00000000
Jul 15 2023	0.00000000
Aug 15 2023	0.00000000
Sep 15 2023	0.00000000
Oct 15 2023	0.00000000
Nov 15 2023	0.00000000
Dec 15 2023	0.00000000
Jan 15 2024	0.00000000
Feb 15 2024	0.00000000
Mar 15 2024	0.00000000
Apr 15 2024	0.00000000
May 15 2024	0.00000000
Jun 15 2024	0.00000000
Jul 15 2024	0.00000000
Aug 15 2024	0.00000000
Sep 15 2024	0.00000000
Oct 15 2024	0.00000000
Nov 15 2024	0.00000000
Dec 15 2024	0.00000000
Jan 15 2025	0.00000000
Feb 15 2025	0.00000000
Mar 15 2025	0.00000000
Apr 15 2025	0.00000000
May 15 2025	0.00000000
Jun 15 2025	0.00000000
Jul 15 2025	0.00000000
Aug 15 2025	0.00000000
Sep 15 2025	0.00000000
Oct 15 2025	0.00000000
Nov 15 2025	0.00000000
Dec 15 2025	0.00000000
Jan 15 2026	0.00000000
Feb 15 2026	0.00000000
Mar 15 2026	0.00000000
Apr 15 2026	0.00000000
May 15 2026	0.00000000
Jun 15 2026	0.00000000
Jul 15 2026	0.00000000
Aug 15 2026	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Sep 15 2026	0.00000000
Oct 15 2026	0.00000000
Nov 15 2026	0.00000000
Dec 15 2026	0.00000000
Jan 15 2027	0.00000000
Feb 15 2027	0.00000000
Mar 15 2027	0.00000000
Apr 15 2027	0.00000000
May 15 2027	0.00000000
Jun 15 2027	0.00000000
Jul 15 2027	0.00000000
Aug 15 2027	0.00000000
Sep 15 2027	0.00000000
Oct 15 2027	0.00000000
Nov 15 2027	0.00000000
Dec 15 2027	0.00000000
Jan 15 2028	0.00000000
Feb 15 2028	0.00000000
Mar 15 2028	0.00000000
Apr 15 2028	0.00000000
May 15 2028	0.00000000
Jun 15 2028	0.00000000
Jul 15 2028	0.00000000
Aug 15 2028	0.00000000
Sep 15 2028	0.00000000
Oct 15 2028	0.00000000
Nov 15 2028	0.00000000
Dec 15 2028	0.00000000
Jan 15 2029	0.00000000
Feb 15 2029	0.00000000
Mar 15 2029	0.00000000
Apr 15 2029	0.00000000
May 15 2029	0.00000000
Jun 15 2029	0.00000000
Jul 15 2029	0.00000000
Aug 15 2029	0.00000000
Sep 15 2029	0.00000000
Oct 15 2029	0.00000000
Nov 15 2029	0.00000000
Dec 15 2029	0.00000000
Jan 15 2030	0.00000000
Feb 15 2030	0.00000000
Mar 15 2030	0.00000000
Apr 15 2030	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
May 15 2030	0.00000000
Jun 15 2030	0.00000000
Jul 15 2030	0.00000000
Aug 15 2030	0.00000000
Sep 15 2030	0.00000000
Oct 15 2030	0.00000000
Nov 15 2030	0.00000000
Dec 15 2030	0.00000000
Jan 15 2031	0.00000000
Feb 15 2031	0.00000000
Mar 15 2031	0.00000000
Apr 15 2031	0.00000000
May 15 2031	0.00000000
Jun 15 2031	0.00000000
Jul 15 2031	0.00000000
Aug 15 2031	0.00000000
Sep 15 2031	0.00000000
Oct 15 2031	0.00000000
Nov 15 2031	0.00000000
Dec 15 2031	0.00000000
Jan 15 2032	0.00000000
Feb 15 2032	0.00000000
Mar 15 2032	0.00000000
Apr 15 2032	0.00000000
May 15 2032	0.00000000
Jun 15 2032	0.00000000
Jul 15 2032	0.00000000
Aug 15 2032	0.00000000
Sep 15 2032	0.00000000
Oct 15 2032	0.00000000
Nov 15 2032	0.00000000
Dec 15 2032	0.00000000
Jan 15 2033	0.00000000
Feb 15 2033	0.00000000
Mar 15 2033	0.00000000
Apr 15 2033	0.00000000
May 15 2033	0.00000000
Jun 15 2033	0.00000000
Jul 15 2033	0.00000000
Aug 15 2033	0.00000000
Sep 15 2033	0.00000000
Oct 15 2033	0.00000000
Nov 15 2033	0.00000000
Dec 15 2033	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Jan 15 2034	0.00000000
Feb 15 2034	0.00000000
Mar 15 2034	0.00000000
Apr 15 2034	0.00000000
May 15 2034	0.00000000
Jun 15 2034	0.00000000
Jul 15 2034	0.00000000
Aug 15 2034	0.00000000
Sep 15 2034	0.00000000
Oct 15 2034	0.00000000
Nov 15 2034	0.00000000
Dec 15 2034	0.00000000
Jan 15 2035	0.00000000
Feb 15 2035	0.00000000
Mar 15 2035	0.00000000
Apr 15 2035	0.00000000
May 15 2035	0.00000000
Jun 15 2035	0.00000000
Jul 15 2035	0.00000000
Aug 15 2035	0.00000000
Sep 15 2035	0.00000000
Oct 15 2035	0.00000000
Nov 15 2035	0.00000000
Dec 15 2035	0.00000000
Jan 15 2036	0.00000000
Feb 15 2036	0.00000000
Mar 15 2036	0.00000000
Apr 15 2036	0.00000000
May 15 2036	0.00000000
Jun 15 2036	0.00000000
Jul 15 2036	0.00000000
Aug 15 2036	0.00000000
Sep 15 2036	0.00000000
Oct 15 2036	0.00000000
Nov 15 2036	0.00000000
Dec 15 2036	0.00000000
Dec 19 2036	0.00000000

**EXHIBIT 4.12.6**

**EXECUTION COPY**

---

**CALPINE GUARANTY AND PAYMENT AGREEMENT (RUMFORD)**

**Dated as of December 19, 2000**

among

**CALPINE CORPORATION,**

as Guarantor,

and

PMCC Calpine New England Investment LLC, as Owner Lessor,

PMCC Calpine NEIM LLC, as Owner Participant,

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL  
ASSOCIATION,**

not in its individual capacity but solely as Indenture Trustee, and

**STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL  
ASSOCIATION,**

not in its individual capacity but solely as Pass Through Trustee,

**as Beneficiaries**

**CALPINE NEW ENGLAND PROJECT**

---

**EXHIBITS**

**Exhibit A Equity Portion of Termination Value**

**Exhibit B Debt Portion of Termination Value**

## **CALPINE GUARANTY AND PAYMENT AGREEMENT (RUMFORD)**

This CALPINE GUARANTY AND PAYMENT AGREEMENT (RUMFORD), dated as of December 19, 2000 (the "Guaranty"), is entered into by and among Calpine Corporation, a Delaware corporation, as guarantor (the "Guarantor"), PMCC CALPINE NEW ENGLAND INVESTMENT LLC, a Delaware limited liability company, as Owner Lessor, PMCC CALPINE NEIM LLC, a Delaware limited liability company, as Owner Participant, STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity but solely as Indenture Trustee and STATE STREET BANK AND TRUST COMPANY OF CONNECTICUT, NATIONAL ASSOCIATION, not in its individual capacity but solely as Pass Through Trustee, and is issued by the Guarantor in favor of the Beneficiaries (as defined in Section 4 below).

### **WITNESSETH:**

WHEREAS, Rumford Power Associates Limited Partnership (the "Rumford Lessee") is an indirect wholly-owned subsidiary of the Guarantor;

WHEREAS, the Rumford Lessee is a party to the Participation Agreement dated as of December 19, 2000 (the "Participation Agreement"), among the Rumford Lessee, Rumford Power Associates Limited Partnership, PMCC Calpine New England Investment LLC, as Owner Lessor, the Guarantor, PMCC Calpine NEIM LLC, as Owner Participant, State Street Bank and Trust Company of Connecticut, N.A., not in its individual capacity, except as expressly provided in the Participation Agreement, but solely as Indenture Trustee and State Street Bank and Trust Company of Connecticut, N.A., not in its individual capacity, except as expressly provided in the Participation Agreement, but solely as Pass Through Trustee;

WHEREAS, the Rumford Lessee and the Owner Lessor are entering into the Rumford Facility Lease, to be dated as of December 19, 2000 (as amended, modified or supplemented from time to time pursuant to Section 14.24 of the Participation Agreement, the "Rumford Facility Lease"), providing for the Owner Lessor's leasing of the Rumford Facility to the Rumford Lessee as contemplated therein;

WHEREAS, the Guarantor will obtain benefits as a result of the Rumford Lessee entering into the Rumford Facility Lease and the other transactions contemplated by the Participation Agreement; and

WHEREAS, pursuant to Section 4.2 of the Participation Agreement, this Guaranty is required to be provided by the Guarantor.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantor agrees as follows:

## SECTION 1. DEFINITIONS

(a) Capitalized terms used in this Guaranty, including the recitals, and not otherwise defined herein shall have the respective meanings set forth on Appendix A to the Participation Agreement, provided that if a term that is defined in this Guaranty (the "Guaranty Definition") includes in such definition a term that is defined in Appendix A to the Participation Agreement (the "Appendix A Definition"), and the Appendix A Definition in turn includes in such definition a term that is defined both in this Guaranty and in Appendix A to the Participation Agreement (the "Embedded Definition"), then for purposes of the Appendix A Definition as it is used in the Guaranty Definition and for purposes of the Guaranty Definition, the Embedded Definition shall be used as defined in this Guaranty and not as defined in Appendix A to the Participation Agreement. Except as otherwise provided in the previous sentence, the Rules of Interpretation set forth in Appendix A to the Participation Agreement shall apply to the terms used in this Guaranty and specifically defined herein.

(b) As used in this Guaranty, the following terms shall have the respective meanings assigned thereto as follows:

"GAAP" means generally accepted accounting principals in the United States of America as in effect and, to the extent optional, adopted by the Guarantor, on the date of the Guaranty, consistently applied.

"Indebtedness" of any Person means, without duplication,

(i) the principal in respect of indebtedness of such Person for money borrowed and; (ii) all Capitalized Lease Obligations of such Person; (iii) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction (other than obligations with respect to letters of credit securing obligations (other than obligations described in (i) and (ii) above) entered into in the ordinary course of business of such Person to the extent such letters of credit are not drawn upon or, if and to the extent drawn upon, such drawing is reimbursed no later than the tenth Business Day following receipt by such Person of a demand for reimbursement following payment on the letter of credit); (iv) all obligations of the type referred to in clauses (i) through (iii) of other Persons and all dividends of other Persons for the payment of which, in either case, such Person is responsible or liable, directly or indirectly, as obligor, guarantor or otherwise; and (v) all obligations of the type referred to in clauses (i) through (iv) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person), the amount of such obligation on any date of determination being deemed to be the lesser of the value of such property or assets or the amount of the obligation so secured. The amount of Indebtedness of any Person at any date shall be, with respect to unconditional obligations, the outstanding balance at such date of all such obligations as described above and, with respect to any contingent obligations at such date, the maximum liability determined by such Person's board of directors, in good faith, as, in light of the facts and circumstances existing at the time, reasonably likely to be Incurred upon the occurrence of the contingency giving rise to such obligation.

"Lien" means any mortgage, lien, pledge, charge, or other security interest or encumbrance of any kind (including any conditional sale or other title retention agreement and any lease in the nature thereof).

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

"Subsidiary" means, as applied to any Person, any corporation, partnership, trust, association or other business entity of which an aggregate of at least 50% of the outstanding Voting Shares or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more Subsidiaries of such Person.

"Voting Shares", with respect to any corporation, means the Capital Stock having the general voting power under ordinary circumstances to elect at least a majority of the board of directors (irrespective of whether or not at the time stock of any other class or classes shall have or might have voting power by reason of the happening of any contingency).

## SECTION 2. GUARANTEED AND PAYMENT OBLIGATIONS

Section 2.1. (a) The Guarantor hereby unconditionally and irrevocably guarantees to the Beneficiaries (except that the obligations referred to in clauses (1), (2) and (5)(A) (relating to clause (1) and clause (2) amounts) are for the benefit only of the Owner Lessor and the Indenture Trustee (as assignee of the Owner Lessor), as their interests may appear), as primary obligor and not merely as a surety, the due, punctual and full payment (when and as the same may become due and payable), and, as applicable, performance by the Rumford Lessee of all of the Rumford Lessee's obligations under the Rumford Operative Documents to which it is a party if the same shall not be performed when due pursuant to the Rumford Operative Documents, including, without limitation, but without duplication, (1) the Rumford Lessee's obligation to make Periodic Rent, Supplemental Rent and other payments (in accordance with the terms of the Rumford Operative Documents) to the Owner Lessor, (2) the Rumford Lessee's obligation to pay Termination Value (and amounts computed by reference thereto) to the Owner Lessor and all other amounts owed under the Operative Documents under and in accordance with the Rumford Facility Lease, (3) without duplication of the preceding clause (2), the Rumford Lessee's obligation to pay the Equity Portion of Periodic Rent and the Equity Portion of Termination Value to the Owner Lessor, (4) the Rumford Lessee's obligation to make indemnity payments in accordance with the terms of the Participation Agreement and the Tax Indemnity Agreement, (5) the Rumford Lessee's obligation, pursuant to Section 3.3 of the Rumford Facility Lease, to pay as Supplemental Rent an amount equal to (A) interest at the applicable Overdue Rate on any amount under clauses (1), (2), (3), (4) and 5(B) of this Section 2.1(a), not paid when due and (B) any Make-Whole Amount payable by the Owner Lessor to the Certificateholders pursuant to the Participation Agreement, the

Rumford Facility Lease or any other Rumford Operative Document to which the Rumford Lessee is a party and (6) the Rumford Lessee's obligation to make any and all other payments, and perform all other covenants and agreements, under and in accordance with the terms of the Rumford Operative Documents.

(b) The Guarantor agrees that upon the occurrence and during the continuance of a Lease Event of Default, it (1) shall pay to the Owner Lessor the Equity Portion of Periodic Rent and the Equity Portion of Termination Value as set forth in Exhibit A hereto, upon written demand by the Owner Lessor, such demand to be at the times permitted by, and otherwise subject to, the provisions of Section 5.6 of the Collateral Trust Indenture (so long as the Collateral Trust Indenture is in effect at such time), and (2) shall pay to the Indenture Trustee (as assignee of the Owner Lessor), upon written demand by the Indenture Trustee (as assignee of the Owner Lessor), all other amounts constituting Termination Value as set forth on Exhibit B hereto and Periodic Rent. Such payment obligation shall be effective without reference to or requirement for valuation of the Owner Lessor's Interest or any other security held by any Person for performance of the Rumford Lessee's obligations under the Rumford Facility Lease or any other Operative Documents. The Guarantor agrees that it shall make such payment notwithstanding the fact that, pursuant to Section 17.1 of the Rumford Facility Lease, such amounts might not otherwise be payable by the Lessee. The Guarantor's obligations in this Section 2.1(b) are direct and primary obligations (and not obligations of a guarantor or surety) of the Guarantor to the Owner Lessor and the Indenture Trustee (as assignee of the Owner Lessor), which shall not be affected in any way by the provisions of Section 2.1(a) above or any payments under any other Operative Documents of any amounts until the Owner Lessor and the Indenture Trustee (as assignee of the Owner Lessor) have received full payment of such amounts.

(c) The Guarantor acknowledges that notwithstanding the provisions of the second sentence of Section 8.13 hereof (i) as and to the extent provided in Section 5.6 of the Collateral Trust Indenture (A) upon the occurrence and during the continuation of a Lease Event of Default, the Indenture Trustee and the Owner Lessor may proceed against the Guarantor for the payment of the Termination Value (including without limitation all amounts the Guarantor is obligated to pay under Section 2.1(b) hereof under the circumstances specified therein), (B) upon the occurrence and during the continuation of a Lease Event of Default and the lapse of a period of 180 days after the declaration thereof, the Owner Lessor shall have the right to claim for and be paid to an account designated by it the amounts referred to in clause (3) of paragraph (a) of this Section 2.1 and clause (1) of paragraph (b) of this Section 2.1 (without duplication) (together with Overdue Interest on such amounts) and (C) only the Owner Lessor is entitled to compromise or settle any claim to the amounts referred to in clause (B) above; and unless so compromised or settled by the Owner Lessor, such claim shall survive until such claim shall be paid to the Owner Lessor in full; and (ii) payments made to the Indenture Trustee under this Guaranty with respect to the Debt Portion of Termination Value and the Equity Portion of Termination Value shall first be applied to satisfy the indebtedness evidenced by the Lessor Notes before being applied to satisfy any claim in respect of the amounts and Overdue Interest referred to in the preceding clause (B).

(d) Notwithstanding anything herein or in the Collateral Trust Indenture to the contrary, in the event that an Indenture Event of Default that is attributable to a Lease Event of Default has occurred and is continuing and the Indenture Trustee (as assignee of the Owner Trustee) forecloses upon and sells, assigns or otherwise transfers, its interest in this Guaranty pursuant to the provisions of the Collateral Trust Indenture, the Guarantor shall remain obligated hereunder to pay to the Owner Lessor an amount equal to the amounts referred to in Section 2.1(a)(3) and Section 2.1(b)(1) (but without duplication). Any purchaser, assignee or other transferee of the Indenture Trustee's interest in this Guaranty shall have a claim pursuant to Section 2.1(a)(1) and (2) and Section 2.1(b)(2) of the Guaranty for the Debt Portion of Termination Value (Rumford) and the Debt Portion of Periodic Rent (Rumford), but not a claim for the Equity Portion of Termination Value (Rumford) and the Equity Portion of Periodic Rent (Rumford).

Section 2.2. In the case of any failure by the Rumford Lessee to perform and observe any term, provision or condition referred to in Section 2.1 (a) when due pursuant to the Operative Documents, the Guarantor agrees to cause such performance or observance to be done, and in the case of any failure by the Rumford Lessee to make such payment as and when the same shall become due and payable (by acceleration or otherwise), the Guarantor hereby agrees to make such payment (and, in addition, such further amounts, if any, as shall be sufficient to cover the costs and expenses of collection hereunder) as and when such payment is due and payable.

All obligations and indebtedness set forth in Section 2.1 above, this Section 2.2, and in Section 8.15 below are referred to in this Guaranty as the "Obligations (Rumford)."

Section 2.3. The obligations of the Guarantor contained herein are direct, independent, and primary obligations of the Guarantor and are absolute, present, unconditional and continuing obligations and are not conditioned in any way upon the institution of suit or the taking of any other action or any attempt to enforce performance of or compliance with the obligations, covenants or undertakings (including any payment obligations) of the Rumford Lessee and shall constitute a guaranty of, and agreement with respect to, payment and performance and not a guaranty of collection, binding upon the Guarantor and its successors and assigns and shall remain in full force and effect and irrevocable without regard to the genuineness, validity, legality or enforceability of the Participation Agreement, the Rumford Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Rumford Operative Document) or the lack of power or authority of the Rumford Lessee to enter into any of the Participation Agreement, the Rumford Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Rumford Operative Document) to which the Rumford Lessee is a party, or any substitution, release or exchange of any other guaranty of, or agreement with respect to, or any other security for, any of the Obligations (Rumford) (including any settlement, compromise or other adjustment with respect to the Obligations (Rumford)) or any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor and shall not be subject to any right of set-off, recoupment or counterclaim and is in no way

conditioned or contingent upon any attempt to collect from the Rumford Lessee or any other entity or to perfect or enforce any security or upon any other condition or contingency or upon any other action, occurrence or circumstance whatsoever. Without limiting the generality of the foregoing, the Guarantor shall have no right to terminate this Guaranty, or to be released, relieved or discharged from its obligations hereunder, other than upon full payment and satisfaction and performance of all of the Obligations (Rumford) (subject to Section 8.14 hereof), and such obligations shall be neither affected nor diminished for any other reason whatsoever, including (i) any amendment or supplement to or modification of any of the Participation Agreement, the Rumford Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Rumford Operative Document) to which the Rumford Lessee is a party, any release, extension or renewal of the Rumford Lessee's obligations under any of the Participation Agreement, the Rumford Facility Lease, the Tax Indemnity Agreement or any other agreement (including any other Rumford Operative Document) to which the Rumford Lessee is a party or by which it is bound, including, without limitation, any actions taken by the Indenture Trustee pursuant to the Collateral Trust Indenture, or any subletting, assignment or transfer of the Rumford Lessee's or any Beneficiary's interest in the Participation Agreement, the Rumford Facility Lease or any other Rumford Operative Document in accordance with the terms thereof, (ii) any bankruptcy, insolvency, readjustment, composition, liquidation or similar proceeding with respect to the Rumford Lessee, Owner Lessor, Owner Participant or any other Person, including, without limitation, termination of the Rumford Facility Lease and the operation of Section 502(b)(6) of the Bankruptcy Code in connection therewith, (iii) any furnishing or acceptance of additional security or any exchange, substitution, surrender or release of any security, (iv) any waiver, consent or other action or inaction or any exercise or nonexercise of any right, remedy or power with respect to the Obligations (Rumford) (including any settlement, compromise or other adjustment with respect to the Obligations (Rumford)) or any of the Participation Agreement, the Rumford Facility Lease, the Tax Indemnity Agreement or any other agreement (including any Rumford Operative Document) to which the Rumford Lessee is a party, (v) without limiting Section 3.6(b) hereof, any merger or consolidation of the Rumford Lessee or the Guarantor into or with any other Person, or any sale, assignment, conveyance, lease, transfer or other disposition of all or substantially all of the assets or properties of the Rumford Lessee or the Guarantor, or any change in the structure of the Rumford Lessee or in the ownership of the Rumford Lessee by the Guarantor, (vi) any default, misrepresentation, negligence, misconduct or other action or inaction of any kind by any Beneficiary, the Indenture Trustee or any other Person under or in connection with any Rumford Operative Document or any other agreement relating to this Guaranty, (vii) any action or inaction by any Beneficiary as contemplated in Section 5 of this Guaranty; (viii) any invalidity, irregularity or unenforceability of all or part of the Obligations (Rumford) or of any security therefor; (ix) any change in the manner, place, timing or schedule of payment or performance of, or in any other term of, all or any of the Obligations (Rumford); (x) whether the Guarantor is related or unrelated to the Rumford Lessee, (xi) the assignment by the Owner Lessor of its rights and interests hereunder, under the Rumford Facility Lease or under any other Rumford Operative Document in accordance with the Rumford Operative Documents (or the genuineness, validity, legality or

enforceability of the obligations of the Owner Lessor under the Collateral Trust Indenture) and (xii) any other circumstance whatsoever.

### SECTION 3. GUARANTOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS

Section 3.1. The Guarantor represents and warrants, as of the date hereof:

(i) The Guarantor is duly organized, validly existing and in good standing under the laws of the State of Delaware and has full power, authority and the legal right to execute, deliver and perform the terms of this Guaranty and each Operative Document to which it is a party (together, the "Calpine Documents").

(ii) The execution, delivery and performance by the Guarantor of the Calpine Documents have been duly authorized by all necessary corporate action. The Calpine Documents constitute legal, valid and binding obligations of the Guarantor enforceable against the Guarantor in accordance with their respective terms, except as such enforcement may be affected by applicable bankruptcy, insolvency, moratorium and other similar laws affecting creditors' rights generally and by general principles of equity.

(iii) The execution, delivery and performance of the Calpine Documents will not (a) contravene any provision of law, rule or regulation to which the Guarantor is subject or any judgment, decree or order applicable to the Guarantor, (b) conflict or be inconsistent with or result in any breach of any terms, covenants, conditions or provisions of, or constitute a default under, or result in the creation or imposition of (or the obligation to create or impose) any Lien or other encumbrance upon any of the property or assets of the Guarantor pursuant to the terms of any agreement or other instrument to which the Guarantor is a party or by which it or its property is bound or to which it or its property may be subject, in each case the violation of which would have a material adverse effect on the business, operations, prospects, properties or assets, or in the condition, financial or otherwise, of the Guarantor, or (c) violate or contravene any provision of the articles of incorporation or by-laws of the Guarantor.

(iv) No pending or, to the knowledge of the Guarantor, threatened action, suit, investigation or proceedings against the Guarantor before any Governmental Entity exists which, if determined adversely to the Guarantor, would materially adversely affect the business, operations, prospects, properties or assets, or in its condition, financial or otherwise, or the Guarantor's ability to perform its obligations under the Calpine Documents.

(v) No consent from, authorization or approval or other action by, and no notice to or filing with, any Person is required for the execution, delivery and

performance by the Guarantor of the Calpine Documents except those which have been given and remain in full force and effect.

(vi) The Rumford Lessee is an indirect, wholly owned subsidiary of the Guarantor.

(vii) The Guarantor is not an "investment company" or a company controlled by an "investment company" within the meaning of the Investment Company Act of 1940.

(viii) The Guarantor is not in default with respect to any judgment, order, writ, injunction, decree, award, rule or regulation of any court, arbitrator or governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, which, either, separately or in the aggregate, would result in any material adverse change in any of its businesses, operations, prospects or assets, or in its condition, financial or otherwise, or its ability to perform its obligations under the Calpine Documents.

(ix) The Guarantor is not a party to any agreement or instrument, or subject to any corporate restriction or any judgment, order, writ, injunction, decree, award, rule or regulation, which materially adversely affects, or in the future may materially adversely affect, its business, operations, prospects, properties or assets, or conditions, financial or otherwise, or its ability to perform its obligations the Calpine Documents.

(x) The audited financial statements of the Guarantor and its Consolidated Subsidiaries, as at December 31, 1999, reported on by Arthur Andersen LLP, copies of which have been delivered to the Indenture Trustee, the Pass Through Trustee, the Certificateholders and the Owner Participant, are true, complete and correct and fairly present the financial condition of the Guarantor and its Consolidated Subsidiaries as of the date thereof. The financial statements have been prepared in accordance with GAAP. The Guarantor and its Consolidated Subsidiaries do not have any material liabilities, direct or contingent, except (a) as are disclosed in such financial statements or (b) as arise under the Operative Documents. There has been no material adverse change in the financial condition of the Guarantor and its Consolidated Subsidiaries since the date of the audited financial statements referred to above.

(xi) All factual information relating to the Guarantor (taken as a whole) heretofore or contemporaneously furnished by or on behalf of the Guarantor in writing to the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or the Certificateholders (including, without limitation, all such information contained herein, in the Participation Agreement and in any preliminary or final offering circular distributed in accordance with the terms of the Rumford Operative Documents) for purposes of or in connection with the Calpine Documents or any transaction contemplated therein is true and accurate in all material respects on the date as of which such information is dated or

certified and not incomplete by omitting to state any fact necessary to make such information relating to the Guarantor (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided; provided, that no representation or warranty is made with regard to (i) any projections or other forward-looking statements provided by or on behalf of the Guarantor, or (ii) the descriptions of the Rumford Operative Documents or the tax consequences to beneficial owners of Certificates; provided, however, each of the Beneficiaries acknowledges and agrees that (i) Calpine has heretofore provided to the Appraiser, solely in order to assist the Appraiser in connection with the preparation of the appraisal to be delivered by the Appraiser to certain of the Transaction Parties at the Closing, certain (1) general market information, (2) information about the Maine and Rhode Island energy markets and (3) information passed along from other Persons and (ii) that neither of the Facility Lessees makes any representation or warranty whatsoever with respect to the information described in clause (i) above except to the extent expressly set forth in Section 4(b) of the Tax Indemnity Agreement.

(xii) The Guarantor is in compliance with all applicable statutes, regulations and orders of, and all applicable restrictions imposed by, all governmental bodies, domestic or foreign, in respect of the conduct of its business and the ownership of its property (including applicable statutes, regulations, orders and restrictions relating to environmental standards and controls), except such noncompliance as would not, in the aggregate, have a material adverse effect on the business, operations, property, assets or condition (financial or otherwise) of the Guarantor, or the Guarantor's ability to perform its obligations under the Calpine Documents.

(xiii) The Guarantor has filed all tax returns and reports required by law to have been filed by it and has paid all taxes and governmental charges thereby shown to be owing (other than any such taxes or charges which are being diligently contested in good faith by appropriate proceedings and for which adequate reserves in accordance with GAAP shall have been set aside on its books), except such non-filing or non-payment, as the case may be, as would not, in the aggregate, have a material adverse effect on the business, operations, property, assets or condition (financial or otherwise) of the Guarantor.

(xiv) No default has occurred under this Guaranty, which default would reasonably be expected to result in a material adverse effect on the business, operations, assets or condition (financial or otherwise) of the Guarantor.

(xv) In accordance with Section 8.12 hereof and Section 14.04 of the Participation Agreement, the Guarantor has validly submitted to the jurisdiction of the Supreme Court of the State of New York, New York County and the United States District Court for the Southern District of New York.

Section 3.2. The Guarantor covenants and agrees that on and after the date hereof and until this Guaranty is terminated pursuant to the terms hereof the Guarantor shall:

(a) file with the Owner Participant and the Indenture Trustee, within 15 days after the filing with the SEC, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may by rules and regulations prescribe) which the Guarantor is required to file with the SEC pursuant to Section 13 or 15(d) of the Exchange Act. In the event the Guarantor is at any time no longer subject to the reporting requirements of Section 13 or 15(d) of the Exchange Act, it shall file with the Owner Participant, and for so long as the Certificates remain outstanding, the Indenture Trustee and the Pass Through Trustee, within 15 days after the Guarantor would have been required to file such documents with the SEC, copies of the annual reports and of the information, documents and other reports which the Guarantor would have been required to file with the SEC if the Guarantor had continued to be subject to such Sections 13 or 15(d). Delivery of such reports, information and documents to the Owner Participant, the Indenture Trustee and the Pass Through Trustee is for informational purposes only and their receipt of the same shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Guarantor's compliance with any of its covenants hereunder (as to which the Owner Participant, the Indenture Trustee and the Pass Through Trustee are entitled to rely exclusively on Officers' Certificates);

(b) furnish to the Beneficiaries, promptly upon the Guarantor obtaining Actual Knowledge of any action, suit or proceeding pending or threatened against the Guarantor before any court or before any governmental department, commission or agency or any arbitrator, which in the Guarantor's good faith opinion would reasonably be likely to result in a material adverse effect on the business, operations, property, assets or condition (financial or otherwise) of the Guarantor, a certificate of a senior officer specifying the nature of such action, suit or proceeding and the proposed response of the Guarantor thereto;

(c) furnish to the Beneficiaries, as soon as possible and in any event within three days after the Guarantor obtains Actual Knowledge of default by the Guarantor of any of its material obligations under this Guaranty, a statement of an authorized officer of the Guarantor setting forth details of such default and the action which the Guarantor has taken and proposes to take with respect thereto. Notwithstanding the foregoing provision in this clause

(c), the Guarantor shall, within 120 days after the close of each fiscal year of the Guarantor in which Certificates are outstanding hereunder, file with the Owner Participant, and if the Certificates are outstanding during any part of such fiscal year, the Indenture Trustee and the Pass Through Trustee, an Officer's Certificate, provided that one Officer executing the same shall be the principal executive officer, the principal financial officer or the principal accounting officer of the Guarantor, covering the period from the date hereof to the end of the fiscal year in which this Guaranty was executed and delivered by the Guarantor, in the case of the first such certificate, and covering the preceding fiscal year in the case of each subsequent certificate, and stating whether or not, to the Actual Knowledge of each

such executing Officer, the Guarantor has complied with and performed and fulfilled all covenants on its part contained in this Guaranty and is not in Default in the performance or observance of any of the terms or provisions contained in this Guaranty, and, if any such signer has obtained Actual Knowledge of any Default by the Guarantor in the performance, observance or fulfillment of any such covenant, terms or provision specifying each such Default and the nature thereof; and

(d) promptly furnish to the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee such other information as the Owner Lessor, Owner Participant, the Indenture Trustee and the Pass Through Trustee may from time to time reasonably request with respect to the Guarantor.

So long as the Indenture Trustee is also serving as the Pass Through Trustee, delivery to the Indenture Trustee shall satisfy the Guarantor's obligation to furnish information to the Pass Through Trustee under this Section 3.2

Section 3.3. The Guarantor covenants and agrees that it will not transfer or assign or cause to be transferred or assigned the Ownership Interest in the Rumford Lessee to any other Person, without the prior written consent of the Owner Lessor, the Owner Participant and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture Trustee and the Pass Through Trustee (it being agreed and understood that a consolidation with or merger of the Guarantor into, or a sale by the Guarantor of all or substantially all of its assets to, another Person in accordance with

Section 3.6 hereof shall not be deemed to be a transfer or assignment of the Ownership Interest in the Rumford Lessee for the purposes of this Section), except as permitted in this Section 3.3 or in Section 8.4 hereof.

Notwithstanding the foregoing, and subject to Section 8.4 below, so long as this Guaranty remains in full force and effect, the Guarantor may transfer a portion of the Ownership Interest in the Rumford Lessee (provided that following such transfer the Guarantor shall continue to own at least a majority of the Ownership Interest in the Rumford Lessee, as well as at least a majority of the Ownership Interest in the Rumford Lessee) without the consent of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Pass Through Trustee or any other Transaction Party if the following conditions have been satisfied:

(i) the Owner Lessor, the Owner Participant and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Opinion of Counsel to the effect that all regulatory approvals required in connection with such transfer have been obtained;

(ii) all the obligations of the Rumford Lessee under the Rumford Operative Documents shall remain in full force and effect, the Guarantor shall reaffirm in writing all of its obligations hereunder in a manner reasonably satisfactory to the Owner Participant, such obligations of the Guarantor shall remain in full force and effect;

(iii) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing at the time of or immediately following such transfer;

(iv) the transfer shall not subject the Rumford Lessee, the Rumford Lessee, the Owner Participant, the Owner Lessor, the Indenture Trustee, the Pass Through Trustee or any Certificateholder to regulation under PUHCA or state laws and regulations regarding the rate and financial or organizational regulation of electric utilities in the affected party's reasonable opinion, nor result in a Regulatory Event of Loss; and

(v) the Rumford Lessee shall have paid, at no after-tax cost to such parties, all reasonable and documented out-of-pocket expenses (including reasonable attorneys' fees and expenses) of the Owner Lessor, the Owner Participant, the Indenture Trustee, the Lease Indenture Company and the Pass Through Trustee in connection with such assignment.

Section 3.4. Subject to Section 4, the Guarantor shall not, and shall not permit any Restricted Subsidiary to, enter into any Sale/Leaseback Transaction unless (i) the Guarantor or such Restricted Subsidiary would be entitled to create a Lien on such property securing Indebtedness in an amount equal to the Attributable Debt with respect to such transaction without equally and ratably securing the Obligations (Rumford) pursuant to Section 3.5 or (ii) the net proceeds of such sale are at least equal to the fair value (as determined by the Board of Directors) of such property or asset and the Guarantor or such Restricted Subsidiary shall apply or cause to be applied an amount in cash equal to the net proceeds of such sale to the retirement, within 180 days of the effective date of any such arrangement, of Indebtedness of the Guarantor or any Restricted Subsidiary; provided, however, that in addition to the transactions permitted pursuant to the foregoing clauses (i) and (ii), the Guarantor or any Restricted Subsidiary may enter into a Sale/Leaseback Transaction as long as the sum of (x) the Attributable Debt with respect to such Sale/Leaseback Transaction and all other Sale/Leaseback Transactions entered into pursuant to this proviso plus (y) the amount of outstanding Indebtedness secured by Liens Incurred pursuant to the final proviso to Section 3.5 does not exceed 15% of Consolidated Net Tangible Assets as determined based on the consolidated balance sheet of the Guarantor as of the end of the most recent fiscal quarter for which financial statements are available; and provided, further, that a Restricted Subsidiary may enter into a Sale/Leaseback Transaction with respect to property or assets owned by such Restricted Subsidiary, the proceeds of which are used to explore, drill, develop, construct, purchase, repair, improve or add to property or assets of any Restricted Subsidiary, or to repay (within 365 days of the commencement of full commercial operation of any such property) Indebtedness Incurred to explore, drill, develop, construct, purchase, repair, improve or add to property or assets of any Restricted Subsidiary.

Section 3.5. Subject to Section 4, the Guarantor shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, incur any Lien on any of its properties or assets (including Capital Stock), whether owned at the date hereof or thereafter acquired, in each case to secure Indebtedness of the Guarantor or any

Restricted Subsidiary, other than (a)(1) Liens incurred by the Guarantor or any Restricted Subsidiary securing Indebtedness Incurred by the Guarantor or such Restricted Subsidiary, as the case may be, to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of the Guarantor or such Restricted Subsidiary, as the case may be, which Liens may include Liens on the Capital Stock of such Restricted Subsidiary or (2) Liens incurred by any Restricted Subsidiary that does not own, directly or indirectly, at the time of such original incurrence of such Lien under this clause (2) any operating properties or assets, securing Indebtedness Incurred to finance the exploration, drilling, development, construction or purchase of or by, or repairs, improvements or additions to, property or assets of any Restricted Subsidiary that does not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, which Liens may include Liens on the Capital Stock of one or more Restricted Subsidiaries that do not, directly or indirectly, own any operating properties or assets at the time of such original incurrence of such Lien, provided, however, that the Indebtedness secured by any such Lien may not be issued more than 365 days after the later of the exploration, drilling, development, completion of construction, purchase, repair, improvement, addition or commencement of full commercial operation of the property or assets being so financed; (b) Liens existing on the date hereof (other than Liens relating to Indebtedness or other obligations being repaid or Liens that are otherwise extinguished with the proceeds of the offering of the Certificates); (c) Liens on property, assets or shares of stock of a Person at the time such Person becomes a Subsidiary; provided, however, that any such Lien may not extend to any other property or assets owned by the Guarantor or any Restricted Subsidiary; (d) Liens on property or assets at the time the Guarantor or a Subsidiary acquires the property or asset, including any acquisition by means of a merger or consolidation with or into the Guarantor or a Subsidiary; provided, however, that such Liens are not incurred in connection with, or in contemplation of, such merger or consolidation; and provided, further, that the Lien may not extend to any other property or asset owned by the Guarantor or any Restricted Subsidiary; (e) Liens securing Indebtedness or other obligations of a Subsidiary owing to the Guarantor or a Restricted Subsidiary or of the Guarantor owing to a Subsidiary; (f) Liens incurred on assets that are the subject of a Capitalized Lease Obligation to which the Guarantor or a Subsidiary is a party, which shall include, Liens on the stock or other ownership interest in one or more Restricted Subsidiaries leasing such assets; (g) Liens to secure any refinancing, refunding, extension, renewal or replacement (or successive refinancings, refundings, extensions, renewals or replacements) as a whole, or in part, of any Indebtedness secured by any Lien referred to in the foregoing clauses (a), (b), (c), (d) and (f), provided, however, that (x) such new Lien shall be limited to all or part of the same property or assets that secured the original Lien (plus repairs, improvements or additions to such property or assets and Liens on the stock or other ownership interest in one or more Restricted Subsidiaries beneficially owning such property or assets) and (y) the amount of the Indebtedness secured by such Lien at such time (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) is not increased (other than by an amount necessary to pay fees and expenses, including premiums, related to the refinancing, refunding, extension, renewal or replacement of such Indebtedness); and (h) Liens by which the Obligations (Rumford)

are secured equally and ratably with other Indebtedness pursuant to this Section 3.5; in any such case without effectively providing that the Obligations (Rumford) shall be secured equally and ratably with (or prior to) the obligations so secured for so long as such obligations are so secured; provided, however, that the Guarantor or a Restricted Subsidiary may Incur other Liens to secure outstanding Indebtedness as long as the sum of (x) the lesser of (A) the amount of outstanding Indebtedness secured by Liens Incurred pursuant to this proviso (or, if the amount that may be realized in respect of such Lien is limited, by contract or otherwise, such limited lesser amount) and (B) the fair value (as determined by the Board of Directors) of the property securing such item of Indebtedness, plus (y) the Attributable Debt with respect to all Sale/Leaseback Transactions entered into pursuant to the first proviso to Section 3.4 does not exceed 15% of Consolidated Net Tangible Assets as determined based on the Consolidated balance sheet of the Guarantor as of the end of the most recent fiscal quarter for which financial statements are available.

Section 3.6. (a) The Guarantor covenants and agrees that it shall not consolidate or merge with or into any other Person, or sell, assign, convey, lease, transfer or otherwise dispose of, all or substantially all of its properties or assets to any Person or Persons in one or a series of transactions, unless immediately after giving effect to such transaction,

(i) no Significant Lease Default or Lease Event of Default shall have occurred and be continuing;

(ii) either (A) the Guarantor shall be the continuing Person, or (B) the Person (if other than the Guarantor) formed by such consolidation or into which the Guarantor is merged or to which the properties and assets of the Guarantor are sold, assigned, conveyed, transferred, disposed of or leased as aforesaid shall be an entity organized and existing under the laws of the United States or any State thereof or the District of Columbia and shall execute and deliver to the Owner Participant, the Owner Lessor and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee, a Guarantor's Assignment and Assumption Agreement; and

(iii) each of the Owner Participant, the Owner Lessor and, so long as the Lien of the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Officer's Certificate of the Guarantor, the surviving entity or the transferee, as the case may be, in form and substance reasonably satisfactory to each of such parties, stating that the proposed merger, consolidation, assignment, conveyance, transfer, disposition, lease or sale, and the Guarantor Assignment and Assumption Agreement complies with the terms of this Section 3(a) and, as to legal matters, an Opinion of Counsel; and

(iv) In addition to the conditions set forth in clauses (i) through (iii) above, the Guarantor, subject to Section 4, will not consummate any such

consolidation, merger or sale of all or substantially all of its properties or assets unless the long-term unsecured debt of the resulting, surviving or succeeding entity shall have a credit rating assigned by the Rating Agencies that is not less than the lower of (x) the credit rating of the long-term unsecured debt of the Guarantor assigned by the Rating Agencies immediately prior to such transaction and (y) a credit rating of the long-term unsecured debt of the resulting, surviving or succeeding entity assigned by the Rating Agencies that is Investment Grade; provided however, the foregoing credit rating condition set forth in this paragraph may be waived by the Owner Participant in its sole discretion, and provided further, that if such credit rating condition is not otherwise satisfied, or waived by the Owner Participant, the Guarantor, the surviving entity or the transferee, as the case may be, may provide (and maintain in accordance with the provisions of Section 5.46(vi)(b) through (k) of the Participation Agreement (with appropriate conforming changes)) in the alternative, either (A) a Qualifying Letter of Credit from a Qualifying Letter of Credit Bank with at least an A rating from S&P and A2 rating from Moody's covering the Equity Portion of Termination Value from time to time throughout the Lease Term, or (B) if the long-term unsecured debt of the surviving entity or the transferee, as the case may be, has a credit rating assigned by the Rating Agencies at least equal to that of Calpine at Closing, a Qualifying Letter of Credit from a Qualifying Letter of Credit Bank with at least an A rating from S&P and A2 from Moody's covering fifty percent (50%) of the Equity Portion of Termination Value from time to time throughout the Lease Term or (C) alternative or additional credit support arrangements which result in the satisfaction of the rating condition in either clause (x) or clause (y) above, provided that such arrangements contemplated in this sub-clause (C) are satisfactory to the Owner Participant and result in the satisfaction of such rating condition.

(b) Upon the consummation of such transaction described in Section 3.6(a), the resulting, surviving or succeeding entity, if other than the Guarantor, shall succeed to, and be substituted for, and may exercise every right and power and shall perform every obligation of, the Guarantor under this Guaranty and each other Calpine Document, and from and after the effective date and time of the consummation of such transfer, the Guarantor shall be released from all obligations accruing hereunder other than those accruing prior to such effective date and time.

Section 3.7. The Guarantor shall, together with each payment it makes hereunder, provide a written notice to each Beneficiary or Beneficiaries which are the intended recipients of such payment of the amount payable to each such Beneficiary and the Rumford Operative Document(s) with respect to which such payment is being made.

#### SECTION 4. BENEFICIARIES; TERMINATION OF CERTAIN COVENANTS

The Owner Participant, the Owner Lessor, the Trust Company (but only to the extent indemnified under the Participation Agreement) and, so long as the Lien of the Collateral Trust Indenture has not been terminated or discharged, the Indenture Trustee and the Lease Indenture Company, and (but only to the extent expressly referred to

herein, and with respect to Section 3.2(a) hereof and with respect to the obligations of the Rumford Lessee under the Participation Agreement) the Pass Through Trustee (for the benefit of the Certificateholders) and the Pass Through Company, in each case, together with their respective permitted successors and assigns (and with respect to clause (ii) below, the other related Persons referred to therein), are each beneficiaries of this Guaranty (each a "Beneficiary" or, together, the "Beneficiaries"); provided that, notwithstanding the foregoing or any other provision of this Guaranty, (i) the Owner Participant shall be the sole and exclusive beneficiary of, and shall have the sole right to enforce, (A) clause (iv) of Section 3.6(a) hereof, (B) clause (4) of Section 2.1(a) hereof to the extent relating to the Rumford Lessee's indemnity obligation under the Tax Indemnity Agreement, (ii) to the extent that the Rumford Lessee is obligated to indemnify a particular Beneficiary (or any Affiliate, agent director, officer, or employee thereof) in accordance with

Section 9 of the Participation Agreement, then such Beneficiary (or such Affiliate, agent, director, officer or employee) shall be the sole and exclusive beneficiary of, and shall have the sole right to enforce, the Guarantor's guaranty of, and agreement with respect to, such indemnification obligation hereunder, (iii) the Owner Lessor shall be the sole and exclusive beneficiary of, and shall have the sole right to enforce clause (B) of Section 2.1(c) hereof and the fourth sentence of Section 2.1(b) hereof, and (iv) the Indenture Trustee, the Lease Indenture Company, the Pass Through Trustee and the Pass Through Company shall be the sole and exclusive beneficiaries of the provisions of Section 3.4 and Section 3.5 hereof; provided however, with respect to this clause (iii), once the Certificates shall have been paid in full, the covenants set forth in Section 3.4 and Section 3.5 hereof shall, subject to the immediately following sentence, immediately and without any further action terminate and be of no further force or effect. Any amendment, waiver or modification of or supplement to Section 3.4 or Section 3.5 which is consented to by the Indenture Trustee shall be binding upon the Owner Lessor and the Owner Participant. Notwithstanding the foregoing or anything herein or in any of the Rumford Operative Documents to the contrary, if the Owner Lessor shall have issued additional Lease Debt at the request of the Rumford Lessee in accordance with Section 11 of the Participation Agreement prior to, simultaneously with, or after payment in full of the Certificates and such new Lease Debt is outstanding on or after the date the Certificates are paid in full, the covenants set forth in Section 3.4 and Section 3.5 shall, to the extent required by the terms of such new Lease Debt, remain in effect or thereafter become effective if not then in effect, but shall be for the sole and exclusive benefit of, and enforceable solely by, the holder of such new Lease Debt. Upon repayment of such new Lease Debt, or compliance with the terms thereof, the covenants set forth in Section 3.4 and Section 3.5 shall immediately and without further action terminate and be of no further force and effect. Notwithstanding any of the preceding provisions, a breach of Sections 3.4 or 3.5 under this Guaranty at such time as such breach shall have become an "Event of Default" under Section 7.1 shall constitute a Lease Event of Default under the circumstances provided in, and to the extent set forth in, the Rumford Facility Lease.

#### SECTION 5. BENEFICIARIES' RIGHTS

Each Beneficiary may at any time and from time to time without the consent of, or notice to the Guarantor, without incurring responsibility to the Guarantor

and without impairing or releasing the obligations of the Guarantor hereunder, upon or without any terms or conditions and in whole or in part:

(a) change the manner, place or terms of payment of, and/or change or extend the time of payment of, renew or alter, any of the Obligations (Rumford) due to it, any security therefor, or any liability incurred directly or indirectly in respect thereof, and, subject to clause (d) below, the guaranty and agreement herein made shall apply to the Obligations (Rumford) due to it as so changed, extended, renewed or altered;

(b) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order any property by whomsoever at any time pledged or mortgaged to secure, or howsoever securing, the Obligations (Rumford) or any liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof due to it, and/or any offset thereagainst due to it;

(c) exercise or refrain from exercising any rights against the Rumford Lessee or others or otherwise act or refrain from acting;

(d) settle or compromise any of the Obligations (Rumford) due to it, any security therefor or any liability (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any liability (whether due or not) of the Rumford Lessee to its creditors other than the Guarantor; provided that any settlement or compromise with respect to, or other reduction (by operation of law or negotiation) of, any of the Obligations (Rumford) (or amounts underlying such Obligations (Rumford)) due to it (whether occurring before or after the occurrence of a Lease Event of Default) shall not alter the amount of the original Obligations (Rumford) due to it guaranteed hereby and the Guarantor acknowledges and agrees that its obligations hereunder shall be for the full amount of the Obligations (Rumford) due to it without giving effect to any such settlement, compromise or other reduction;

(e) apply any sums by whomsoever paid or howsoever realized to any liability or liabilities of the Rumford Lessee to such Beneficiary regardless of what liabilities or liabilities of the Rumford Lessee remain unpaid;

(f) consent to or waive any breach of, or any act, omission or default under, the Participation Agreement or the Rumford Facility Lease, or otherwise amend, modify or supplement the Participation Agreement or the Rumford Facility Lease or any of such other instruments or agreements; and/or

(g) act or fail to act in any manner referred to in this Guaranty which may deprive the Guarantor of its right to subrogation against the Rumford Lessee to recover full indemnity for any payments made pursuant to this Guaranty.

Anything herein to the contrary notwithstanding, any exercise of rights or remedies by any Beneficiary hereunder or under any other Rumford Operative Document, or the failure or any Beneficiary to exercise any rights or remedies hereunder in accordance with the provisions hereof or under any other Rumford Operative Document, shall not in

any way adversely affect the ability of any other Beneficiary to exercise its rights or remedies hereunder.

## SECTION 6. SURVIVAL OF GUARANTY AND PAYMENT AGREEMENT (RUMFORD)

Notwithstanding anything to the contrary herein, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any of the amounts paid to any of the Beneficiaries, in whole or in part, is required to be repaid upon the insolvency, bankruptcy, dissolution, liquidation, or reorganization of the Guarantor or the Rumford Lessee or any other Person, or as a result of the appointment of a custodian, interviewer, receiver, trustee, or other officer with similar powers with respect to the Guarantor or the Rumford Lessee or any other Person or any substantial part of the property of the Guarantor or the Rumford Lessee or such other Person, all as if such payments had not been made.

## SECTION 7. DEFAULTS; REMEDIES; SUBROGATION

Section 7.1. Defaults. The following events shall constitute an "Event of Default" hereunder (whether any such event shall be voluntary or involuntary or come about or be effected by operation of law or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any Governmental Entity):

(a) the Guarantor or the Rumford Lessee under the Rumford Facility Lease shall fail to make any payment with respect to Periodic Rent or Termination Value (including the Equity Portion of Termination Value or Debt Portion of Termination Value) when due and payable under such Rumford Facility Lease or this Guaranty within five (5) days after the same shall become due thereunder; or

(b) the Guarantor or the Rumford Lessee shall fail to make any other amount payable under any Rumford Operative Document after the same shall become due thereunder and such failure shall have continued from a period of ten (10) Business Days after receipt by the Rumford Lessee and the Guarantor of written notice of such failure by the Rumford Lessee and/or the Guarantor, as applicable;

(c) The Guarantor shall fail to comply with its covenants set forth in Section 3.3 (transfer of Lessee ownership), 3.6 (Guarantor merger) or 8.4 (assignment of Guaranty) of this Guaranty.

(d) the Guarantor shall fail to perform or observe any covenant, obligation or agreement to be performed or observed by it under any Calpine Document (other than any covenant, obligation or agreement referred to in clauses (a) or (b) of this Section 7.1) in any material respect, which shall continue unremedied for (1) with respect to the Guarantor's guaranty of, and agreement with respect to, any nonmonetary obligation, covenant or agreement of the Rumford Lessee under any of the Rumford Operative Documents, 30 days after receipt by the Guarantor of written notice thereof from the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through

Trustee; provided, however, if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended up to an additional 180 days, so long as the Guarantor diligently pursues such remedy and such condition is reasonably capable of being remedied within such additional 180-day period, and (2) with respect to any other obligation, covenant or agreement hereunder, 30 days after receipt by the Guarantor of written notice thereof;

(e) there shall have occurred either (i) a default by the Guarantor or any Restricted Subsidiary under any instrument or instruments under which there is or may be secured or evidenced any Indebtedness of the Guarantor or any Restricted Subsidiary of the Guarantor (other than the Obligations (Rumford)) having an outstanding principal amount of \$50,000,000 (or its foreign currency equivalent) or more individually or in the aggregate that has caused the holders thereof to declare such Indebtedness to be due and payable prior to its Stated Maturity, unless such declaration has been rescinded within 30 days or (ii) a default by the Guarantor or any Restricted Subsidiary in the payment when due of any portion of the principal under any such instrument or instruments, and such unpaid portion exceeds \$50,000,000 (or its foreign currency equivalent) individually or in the aggregate and is not paid, or such default is not cured or waived, within any grace period applicable thereto, unless such Indebtedness is discharged within 30 days of the Guarantor or a Restricted Subsidiary becoming aware of such default;

(f) the Guarantor or any Significant Subsidiary pursuant to or within the meaning of any Bankruptcy Law:

(i) commences a voluntary case;

(ii) consents to the entry of an order for relief against it in an involuntary case;

(iii) consents to the appointment of a Custodian of it or for all or substantially all of its property;

(iv) makes a general assignment for the benefit of its creditors; or

(v) admits in writing its inability to generally pay its debts as such debts become due;

or takes any comparable action under any foreign laws relating to insolvency;

(g) an involuntary case or other proceeding shall be commenced against the Guarantor or any Significant Subsidiary seeking (i) liquidation, reorganization or other relief with respect to it or its debts under Title 11 of the Bankruptcy Code or any bankruptcy, insolvency or other similar law now or hereafter in effect, or (ii) the appointment of a trustee, receiver, liquidator, custodian or other similar official with respect to it or any substantial part of its property or (iii) the winding-up or liquidation of

the Guarantor or such Significant Subsidiary; and such involuntary case or other proceeding shall remain undismissed and unstayed for a period of 60 days;

(h) any representation or warranty made by the Guarantor herein shall prove to have been incorrect in any material respect when made or misleading in any material respect when made because of the omission to state a material fact and such incorrect or misleading representation is and continues to be material and unremedied for a period of 30 days after receipt by the Guarantor of written notice thereof; provided, however, that if such condition cannot be remedied within such 30-day period, then the period within which to remedy such condition shall be extended up to an additional 60 days, so long as the Guarantor diligently pursues such remedy and such condition is reasonably capable of being remedied within such additional 60-day period.

The grace periods set forth in Section 7.1(a) and (b) above shall not affect in any way the right hereunder of any Beneficiary entitled to a payment of any amount payable to it, or performance of any obligation, by the Rumford Lessee under any Rumford Operative Document to demand prompt payment thereof, or performance thereof, by the Guarantor immediately upon any failure of the Rumford Lessee to pay or perform the same when it has become due (and, for the avoidance of doubt, without regard to the existence of any cure or grace period before such failure by the Rumford Lessee becomes a Lease Event of Default); provided, however, notwithstanding the foregoing, no Lease Event of Default under Section 16(m) and no remedies under the Rumford Facility Lease may be exercised until a Calpine Guaranty Event of Default has occurred and is continuing.

Section 7.2. Remedies. Subject to the last paragraph of Section 7.1, each Beneficiary shall be entitled to (a) all rights and remedies to which it may be entitled hereunder or at law, in equity or by statute and may proceed by appropriate court action to enforce the terms hereof and to recover damages for the breach hereof. Each and every remedy of the Beneficiaries shall, to the extent permitted by law, be cumulative and shall be in addition to any other remedy now or hereafter existing at law or in equity. At the option of each Beneficiary and upon notice to the Guarantor, the Guarantor may be joined in any action or proceeding commenced by such Beneficiary against the Rumford Lessee in respect of any Obligations (Rumford) and recovery may be had against the Guarantor in such action or proceeding or in any independent action or proceeding against the Guarantor, without any requirement such Beneficiary first assert, prosecute or exhaust any remedy or claim against the Rumford Lessee. Notwithstanding any of the foregoing, if an Event of Default specified in clause (e) or (f) of Section 7.1 with respect to the Guarantor occurs, all monetary Obligations (Rumford) shall ipso facto become and be immediately due and payable without any declaration or other act on the part of the Owner Participant, the Owner Lessor, the Indenture Trustee or the Pass Through Trustee.

Section 7.3. Subrogation. The Guarantor will not exercise any rights that it may acquire by way of subrogation under this Guaranty, by any payment made hereunder or thereunder or otherwise, until all of the Obligations (Rumford) and all other obligations of the Rumford Lessee and the Guarantor owing to any of the Beneficiaries (or any other party) under the Rumford Operative Documents shall have been paid in full.

If any amount shall be paid to the Guarantor on account of such subrogation rights at any time when all of the Obligations (Rumford) and such other obligations shall not have been paid in full, such amount shall be held in trust for the benefit of the Beneficiary to whom such Obligation (Rumford) or other obligation is payable and shall forthwith be paid to such Beneficiary to be credited and applied to such Obligation (Rumford) or other obligation, whether matured or unmatured, in accordance with the terms of the Rumford Operative Document under which such Obligation (Rumford) or other obligation arose. If (i) the Guarantor shall make payment to any Beneficiary of all or any part of the Obligations (Rumford) or other obligations and (ii) all the Obligations (Rumford) and such other obligations shall be paid and performed in full, such Beneficiary will, at the Guarantor's request and expense, execute and deliver to the Guarantor appropriate documents, without recourse, subject to Section 6 hereof, necessary to evidence the transfer by subrogation to the Guarantor of an interest in the Obligations (Rumford) and such other obligations resulting from such payment by the Guarantor.

#### Section 7.4. Waiver of Demands, Notices, Etc.

(a) Without limiting the last sentence of Section 7.1, the Guarantor hereby unconditionally waives (i) notice of any of the matters referred to in the second sentence of Section 2.3 hereof; (ii) all notices which may be required by statute, rule of law or otherwise, now or hereafter in effect, to preserve any rights against the Guarantor hereunder, including, without limitation, any demand, proof or notice of non-payment of any Obligation (Rumford); (iii) any right to the enforcement, assertion or exercise of any right, remedy, power or privilege under or in respect of the Rumford Facility Lease (or under or in respect of any other agreement including any Rumford Operative Document); (iv) notice of acceptance of this Guaranty, demand, protest, presentment, notice of default and any requirement of diligence; (v) any requirement to exhaust any remedies or to mitigate any damages resulting from default by the Rumford Lessee or any Person under the Rumford Facility Lease (or under any other agreement including any Rumford Operative Document); and (vi) any other circumstance whatsoever which might otherwise constitute a legal or equitable discharge, release or defense of a guarantor or surety, or which might otherwise limit recourse against the Guarantor, other than satisfaction in full of the Obligations (Rumford).

(b) This Guaranty is a continuing one and all of the Obligations (Rumford) shall be conclusively presumed to have been created in reliance hereon. No failure or delay on the part of any Beneficiary in exercising any right, power or privilege hereunder and no course of dealing among the Guarantor, any Beneficiary or the Rumford Lessee shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights, powers and remedies herein expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Beneficiary would otherwise have. No notice to or demand on the Guarantor in any case shall entitle the Guarantor to any other further notice or demand in similar or other circumstances or constitute a waiver of the rights of any Beneficiary to any other or further action in any circumstances without notice or demand.

(c) If a claim is ever made upon any Beneficiary for repayment or recovery of any amount or amounts received in payment or on account of any of the Obligations (Rumford) and any of the Beneficiaries repays all or part of said amount by reason of (a) any judgment, decree or order of any court or administrative body having jurisdiction over such Beneficiary or any of its property or (b) any settlement or compromise of any such claim effected by such Beneficiary with any such claimant (including the Rumford Lessee), then and in such event the Guarantor agrees that any such judgment, decree, order, settlement or compromise shall be binding upon it, notwithstanding any revocation hereof or the cancellation of the Rumford Facility Lease or other instrument evidencing any liability of the Rumford Lessee, and the Guarantor shall be and remain liable to the aforesaid Beneficiaries hereunder for the amount so repaid by or recovered from such Beneficiary to the same extent as if such amount had never originally been received by any such Beneficiary.

Section 7.5. Costs and Expenses. The Guarantor agrees to pay on an After-Tax Basis any and all reasonable costs and expenses (including reasonable legal fees) incurred by any Beneficiary in enforcing its rights under this Guaranty.

Section 7.6. Survival of Remedies and Subrogation Rights. The provisions of this Section 7 shall survive the term of this Guaranty and the payment in full of the Obligations (Rumford) and the termination of the Rumford Operative Documents.

## SECTION 8. MISCELLANEOUS

Section 8.1. Amendments and Waivers. No term, covenant, agreement or condition of this Guaranty may be terminated, amended or compliance therewith waived (either generally or in a particular instance, retroactively or prospectively) except by an instrument or instruments in writing executed by the Guarantor and consented to by the Beneficiaries.

Section 8.2. Notices. Unless otherwise expressly specified or permitted by the terms hereof, all communications and notices provided for herein shall be in writing or by a telecommunications device capable of creating a written record, and any such notice shall become effective (a) upon personal delivery thereof, including, without limitation, by overnight mail or courier service, (b) in the case of notice by United States mail, certified or registered, postage prepaid, return receipt requested, upon receipt thereof, or (c) in the case of notice by such a telecommunications device, upon transmission thereof, provided such transmission is promptly confirmed by either of the methods set forth in clauses (a) or (b) above, in each case addressed to the Guarantor hereto at its address set forth below or at such other address as such party may from time to time designate by written notice:

Calpine Corporation  
50 West San Fernando Street, 5th Floor San Jose, CA 95113

Facsimile No.: (408) 975-4648  
Telephone No.: (408) 995-5115  
Attention: General Counsel

Section 8.3. Survival. Except as expressly set forth herein, the warranties and covenants made by the Guarantor shall not survive the expiration or termination of this Guaranty.

Section 8.4. Assignment and Assumption. (a) Except as provided in clause (b) below, this Guaranty may not be assigned by the Guarantor to, or assumed by, any successor to or assign of the Guarantor (it being understood and agreed that a consolidation with or merger of the Guarantor into, or the sale of all or substantially all of its assets to, another Person in accordance with Section 3.6 shall not be deemed such an assignment or assumption for the purposes hereof) without the prior written consent of the Beneficiaries, nor may the Guarantor transfer or assign a majority (or more) of (i) the Ownership Interest in the Rumford Lessee or (ii) the Ownership Interest in the Rumford Lessee.

(b) Notwithstanding any of the foregoing in this Section 8.4, the Guarantor may transfer a majority (or more) of its Ownership Interest in the Rumford Lessee to a single third party, provided that the Guarantor assigns this Guaranty to such third party (whereupon the Guarantor shall be released from all obligations under this Guaranty in connection with such transfer) upon satisfaction of the following conditions:

(i) unless the Owner Participant shall have consented to such assignment, such transferee, or a party which unconditionally guarantees such transferee's obligations under the Operative Documents assigned to such transferee (A) shall have significant experience owning or operating gas-fired electric generating facilities in the United States and (B) shall have a tangible net worth of at least \$1 billion after giving effect to such transfer;

(ii) the requirements set forth in Section 3.3(i), (iii), (iv) and (v) of this Guaranty have been satisfied and, immediately after giving effect to such transfer, the transferee shall own (A) at least a majority of the Ownership Interest of the Rumford Lessee and (B) at least a majority of the Ownership Interest of the Rumford Lessee;

(iii) such transfer occurs (i) subsequent to the tenth year of the Facility Lease Term of the Rumford Lessee and the Rumford Lessee and (ii) when the aggregate principal amount of the Rumford Notes is less than \$50 million and the aggregate principal amount of the Rumford Notes is less than \$50 million;

(iv) neither the transferee nor any Affiliate of the transferee shall be involved in any material litigation with the Owner Participant;

(v) the Rating Agencies shall have confirmed that after giving effect to such transfer, the Certificates (if then outstanding) and the transferee (or a party

which guarantees such transferee's obligations under the Operative Documents assigned to such transferee) shall be rated at least Investment Grade (and not be on negative credit watch) by the Rating Agencies;

(vi) all the obligations of the Rumford Lessee under the Rumford Operative Documents shall remain in full force and effect, the transferee shall assume all the obligations of the Guarantor under the Operative Documents pursuant to the Guarantor's Assignment and Assumption Agreement and such Operative Documents as so assumed shall remain in full force and effect, and any guaranty of such transferee's obligations pursuant to this Section 8.4 shall be in a form satisfactory to the Owner Participant (it being acknowledged and agreed that any such guaranty which shall be in form and substance substantially similar to this Guaranty shall be deemed to be satisfactory to the Owner Participant); and

(vii) the Owner Participant, the Owner Lessor and, so long as the Lien on the Collateral Trust Indenture shall not have been terminated or discharged, the Indenture Trustee and the Pass Through Trustee shall have received an Opinion of Counsel as to the satisfaction of the conditions set forth in clause (vi) of this Section 8.4(b).

**Section 8.5. Governing Law.** This Guaranty shall be in all respects governed by and construed in accordance with the laws of the State of New York, including all matters of construction, validity and performance (without giving effect to the conflicts of laws provisions, other than New York General Obligations Law Section 5-1401).

**Section 8.6. Severability.** Any provision of this Guaranty that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

**Section 8.7. Headings.** The headings of the sections of this Guaranty are inserted for purposes of convenience only and shall not be construed to affect the meaning or construction of any of the provisions hereof.

**Section 8.8. Further Assurances.** The Guarantor will promptly and duly execute and deliver such further documents as may be reasonably requested by the Owner Lessor, all as may be reasonably necessary to affirm the Guarantor's obligations under this Guaranty.

**Section 8.9. Effectiveness of Guaranty.** This Guaranty has been dated as of the date first above written for convenience only. This Guaranty shall be effective on the date of execution and delivery by the Guarantor.

Section 8.10. Acknowledgment by the Guarantor. The Guarantor acknowledges that an executed (or conformed) copy of the Participation Agreement, the Rumford Facility Lease and the other Operative Documents have been made available to its principal executive officers and such officers are familiar with the contents thereof.

Section 8.11. Tolling. Any acknowledgement or new promise, whether by payment of principal or interest or otherwise and whether by the Rumford Lessee or others (including the Guarantor), with respect to any of the Obligations (Rumford) shall, if the statute of limitations in favor of the Guarantor against any Beneficiary shall have commenced to run, toll the running of such statute of limitations, and if the period of such statute of limitations shall have expired, prevent the operation of such statute of limitations.

Section 8.12. Consent to Jurisdiction; Waiver of Trial by Jury; Process Agent.

(a) The Guarantor (i) hereby irrevocably submits to the nonexclusive jurisdiction of the Supreme Court of the State of New York, New York County (without prejudice to the right of the Guarantor to remove to the United States District Court for the Southern District of New York) and to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York for the purposes of any suit, action or other proceeding arising out of this Guaranty, the Rumford Facility Lease, the other Rumford Operative Documents, or the subject matter hereof or thereof or any of the transactions contemplated hereby or thereby brought by any of the Beneficiaries hereunder or their successors or assigns; (ii) hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such New York State court, or in such federal court; and (iii) to the extent permitted by Applicable Law, hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding any claim that it is not personally subject to the jurisdiction of the above-named courts, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Guaranty, the other Rumford Operative Documents, or the subject matter hereof or thereof may not be enforced in or by such court.

**(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE GUARANTOR HEREBY IRREVOCABLY WAIVES THE RIGHT TO DEMAND A TRIAL BY JURY, IN ANY SUCH SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF THIS GUARANTY, THE OTHER RUMFORD OPERATIVE DOCUMENTS, OR THE SUBJECT MATTER HEREOF OR THEREOF OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY BROUGHT BY ANY OF THE BENEFICIARIES HEREUNDER OR THEIR SUCCESSORS OR ASSIGNS.**

(c) By the execution and delivery of this Guaranty, the Guarantor designates, appoints and empowers National Registered Agent, Inc., 440 9th Avenue, 5th Floor, New York, NY 10001 as its authorized agent to receive for and on its behalf service of any summons, complaint or other legal process in any such action, suit or

proceeding in the State of New York for so long as any obligation of the Guarantor shall remain outstanding hereunder or under any of the other Rumford Operative Documents. The Guarantor shall grant an irrevocable power of attorney to National Registered Agent, Inc. in respect of such appointment and shall maintain such power of attorney in full force and effect for so long as any obligation of the Guarantor shall remain outstanding hereunder or under any of the Rumford Operative Documents.

Section 8.13. Agreement for Benefit of Parties Hereto. Nothing in this Guaranty, express or implied, is intended or shall be construed to confer upon, or to give to, any person other than the parties hereto and their respective successors and assigns, any right, remedy or claim under or by reason of this Guaranty or any covenant, condition or stipulation hereof; and the covenants, stipulations and agreements contained in this Guaranty are and shall be for the sole and exclusive benefit of the parties hereto and their respective successors and assigns. The Guarantor acknowledges that certain of the rights of the Owner Lessor hereunder have been or shall be assigned to and may be enforced by the Indenture Trustee pursuant to the terms of the Collateral Trust Indenture (excluding, among other things, rights to Excepted Payments), the Guarantor hereby consents to such assignment and the Guarantor agrees to render performance of such assigned obligations directly to the Indenture Trustee (as assignee of the Owner Lessor). The Guarantor agrees to make all payments which have been so assigned owing to the Owner Lessor under this Guaranty directly to the account of the Indenture Trustee to be specified to the Guarantor in writing, or to such other account specified in writing from time to time by the Indenture Trustee.

Section 8.14. Termination of Guaranty. Upon the full payment and satisfaction of the Obligations (Rumford) and all of the Guarantor's obligations hereunder, this Guaranty shall terminate and shall be of no further effect. Nevertheless, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time, any payment, or any part thereof, of any of the Obligations (Rumford) is rescinded or must otherwise be returned by any Beneficiary upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Rumford Lessee or otherwise, all as though such payment had not been made.

Section 8.15. Additional Obligations (Rumford). Upon the assumption by the Rumford Lessee of the Rumford Notes in connection with a termination of the Rumford Lease, as permitted therein, the obligation of the Rumford Lessee to pay principal of, and Make-Whole Amount if any, and interest on the Rumford Notes, and amounts payable by it to the Indenture Trustee under the Collateral Trust Indenture, shall thereupon become Obligations (Rumford) for all purposes of this Guaranty, and the Guarantor shall therefor execute and deliver to the Indenture Trustee such further guaranties, instruments and documents as the Indenture Trustee may reasonably request in order to more fully effectuate the Guarantor's unconditional guaranty of such additional Obligations (Rumford).

Section 8.16. Miscellaneous Provisions.

(a) The provisions of Section 2 of this Guaranty are subject to the provisions of Section 14.25 of the Participation Agreement.

(b) When determining the amount of unpaid Equity Portion of Termination Value to be paid by the Guarantor under Section 2 of this Guaranty, the correct amount thereof shall be the applicable amount of Equity Portion of Termination Value (as set forth in Exhibit A hereto) for the date of the demand for payment or if the amount of Equity Portion of Termination Value is not set forth for such date on Exhibit A hereto, the Equity Portion of Termination Value shall be determined by interpolation between the values set forth on Exhibit A for the date next preceding the date of the demand and the date next succeeding the date of the demand on a straight-line basis assuming thirty day months.

(c) The payment obligations of the Guarantor hereunder shall rank pari passu with all other senior unsecured indebtedness of the Guarantor for borrowed money.

[No more text on this page]

IN WITNESS WHEREOF, the parties have caused this Guaranty to be duly executed and delivered on the day and year first above written.

**CALPINE CORPORATION,  
as Guarantor**

By: /s/ ERIC PRYOR

-----  
Name: Eric Pryor  
Title: Authorized Agent

**PMCC CALPINE NEW ENGLAND INVESTMENT LLC,  
a Delaware limited liability company**

By: PMCC Calpine NEIM LLC, a Delaware  
limited liability company, its managing  
member

By: General Foods Credit Corporation, a  
Delaware corporation, its managing  
member

By: /s/ ANIL BHATIA

-----  
Name:  
Title:  
Date:

**PMCC CALPINE NEIM LLC**

By: General Foods Credit Corporation,  
its managing member

By: /s/ ANIL BHATIA

-----  
Name:  
Title:  
Date:

**STATE STREET BANK AND TRUST COMPANY  
OF CONNECTICUT, N.A.,**  
not in its individual capacity but  
solely as Indenture Trustee

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President

**STATE STREET BANK AND TRUST COMPANY  
OF CONNECTICUT, N.A.,**  
not in its individual capacity but  
solely as Pass Through Trustee

By: /s/ MARK HENSON

-----  
Name: Mark Henson  
Title: Assistant Vice President

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2001	22.86727903
Feb 15 2001	23.16421293
Mar 15 2001	23.46383134
Apr 15 2001	23.10615619
May 15 2001	23.36914584
Jun 15 2001	23.65646772
Jul 15 2001	23.91345533
Aug 15 2001	24.1947209
Sep 15 2001	24.47852933
Oct 15 2001	24.73197173
Nov 15 2001	25.00966004
Dec 15 2001	25.28985886
Jan 15 2002	25.53965903
Feb 15 2002	25.81367217
Mar 15 2002	26.09016261
Apr 15 2002	26.36915273
May 15 2002	26.62548058
Jun 15 2002	26.90091551
Jul 15 2002	27.15365603
Aug 15 2002	27.42547124
Sep 15 2002	27.69974388
Oct 15 2002	27.95131156
Nov 15 2002	28.22194334
Dec 15 2002	28.49502185
Jan 15 2003	28.74538461
Feb 15 2003	29.01480057
Mar 15 2003	29.28665226
Apr 15 2003	29.56096171
May 15 2003	29.8144664
Jun 15 2003	30.08578613
Jul 15 2003	30.33627408
Aug 15 2003	30.60454978
Sep 15 2003	30.87525091
Oct 15 2003	31.12511466
Nov 15 2003	31.39276053
Dec 15 2003	31.66282613
Jan 15 2004	31.91204861
Feb 15 2004	32.1790474
Mar 15 2004	32.44846007
Apr 15 2004	32.72030845
May 15 2004	32.97310042
Jun 15 2004	33.24252057
Jul 15 2004	33.49286238
Aug 15 2004	33.75981022

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Sep 15 2004	34.02917147
Oct 15 2004	34.27945384
Nov 15 2004	34.54634171
Dec 15 2004	34.81564245
Jan 15 2005	35.06586376
Feb 15 2005	35.33269001
Mar 15 2005	35.60192859
Apr 15 2005	35.87360129
May 15 2005	36.12756406
Jun 15 2005	36.3972669
Jul 15 2005	36.64924199
Aug 15 2005	34.13337148
Sep 15 2005	34.36494529
Oct 15 2005	34.57844664
Nov 15 2005	34.80732225
Dec 15 2005	35.03826708
Jan 15 2006	35.25113377
Feb 15 2006	35.40632527
Mar 15 2006	35.63561248
Apr 15 2006	35.86697263
May 15 2006	36.0814393
Jun 15 2006	36.31050169
Jul 15 2006	36.52264982
Aug 15 2006	36.49798373
Sep 15 2006	36.72327543
Oct 15 2006	36.93161879
Nov 15 2006	37.1545025
Dec 15 2006	37.37940126
Jan 15 2007	37.58734812
Feb 15 2007	37.80983176
Mar 15 2007	38.03432682
Apr 15 2007	38.2608515
May 15 2007	38.47186527
Jun 15 2007	38.69649268
Jul 15 2007	38.90559204
Aug 15 2007	38.18178711
Sep 15 2007	38.39339011
Oct 15 2007	38.5893473
Nov 15 2007	38.79878201
Dec 15 2007	39.01011018
Jan 15 2008	39.20579005
Feb 15 2008	38.54841156
Mar 15 2008	38.74745863
Apr 15 2008	38.94830524

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
May 15 2008	39.13345615
Jun 15 2008	39.33195532
Jul 15 2008	39.51473756
Aug 15 2008	38.93009454
Sep 15 2008	39.11716566
Oct 15 2008	39.28841654
Nov 15 2008	39.47289001
Dec 15 2008	39.65903125
Jan 15 2009	39.82934386
Feb 15 2009	39.30833934
Mar 15 2009	39.48376974
Apr 15 2009	39.66078617
May 15 2009	39.82171299
Jun 15 2009	39.99588803
Jul 15 2009	40.15394777
Aug 15 2009	39.70416791
Sep 15 2009	39.86839875
Oct 15 2009	40.01642437
Nov 15 2009	40.17758158
Dec 15 2009	40.34019578
Jan 15 2010	40.48659015
Feb 15 2010	40.09199974
Mar 15 2010	40.24528052
Apr 15 2010	40.39994707
May 15 2010	40.542426
Jun 15 2010	40.69525033
Jul 15 2010	40.83587038
Aug 15 2010	40.49720557
Sep 15 2010	40.64273933
Oct 15 2010	40.77600289
Nov 15 2010	40.91952855
Dec 15 2010	41.0643518
Jan 15 2011	41.19689843
Feb 15 2011	40.89858604
Mar 15 2011	41.03657129
Apr 15 2011	41.17580403
May 15 2011	41.30928769
Jun 15 2011	41.44865005
Jul 15 2011	41.5822645
Aug 15 2011	41.31761384
Sep 15 2011	41.45277319
Oct 15 2011	41.58214662
Nov 15 2011	41.71736159
Dec 15 2011	41.85379902

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2012	41.98446209
Feb 15 2012	41.7467369
Mar 15 2012	41.87930533
Apr 15 2012	42.01307228
May 15 2012	42.14316682
Jun 15 2012	42.27769203
Jul 15 2012	42.40855168
Aug 15 2012	42.19726689
Sep 15 2012	42.32898826
Oct 15 2012	42.45701673
Nov 15 2012	42.5894812
Dec 15 2012	42.72310106
Jan 15 2013	42.85306736
Feb 15 2013	42.66394861
Mar 15 2013	42.79507982
Apr 15 2013	42.92739655
May 15 2013	43.05697072
Jun 15 2013	43.19034222
Jul 15 2013	43.32098069
Aug 15 2013	43.15476649
Sep 15 2013	43.28626422
Oct 15 2013	43.41501199
Nov 15 2013	43.54754961
Dec 15 2013	43.68128547
Jan 15 2014	43.81229161
Feb 15 2014	43.6652604
Mar 15 2014	43.79739295
Apr 15 2014	43.93072009
May 15 2014	44.06235973
Jun 15 2014	44.19711808
Jul 15 2014	44.33020187
Aug 15 2014	44.20246009
Sep 15 2014	44.33625218
Oct 15 2014	44.46836097
Nov 15 2014	44.60359272
Dec 15 2014	44.74004706
Jan 15 2015	44.87484218
Feb 15 2015	44.76331529
Mar 15 2015	44.8990504
Apr 15 2015	45.03601266
May 15 2015	45.17244451
Jun 15 2015	45.31128892
Jul 15 2015	45.44961993
Aug 15 2015	45.35377511

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	TERMINATION VALUE
Sep 15 2015	45.49253219
Oct 15 2015	45.6307751
Nov 15 2015	45.77144693
Dec 15 2015	45.91339055
Jan 15 2016	46.05484878
Feb 15 2016	46.19876502
Mar 15 2016	46.34398238
Apr 15 2016	46.49051261
May 15 2016	46.63795681
Jun 15 2016	46.78700787
Jul 15 2016	46.93699569
Aug 15 2016	47.08853706
Sep 15 2016	47.24152443
Oct 15 2016	47.39548415
Nov 15 2016	47.55110963
Dec 15 2016	47.70814209
Jan 15 2017	47.86618347
Feb 15 2017	48.02592751
Mar 15 2017	48.18711577
Apr 15 2017	48.3497613
May 15 2017	48.51423139
Jun 15 2017	48.67995234
Jul 15 2017	48.84752565
Aug 15 2017	45.25639495
Sep 15 2017	45.3747099
Oct 15 2017	45.49444863
Nov 15 2017	45.61503382
Dec 15 2017	45.73670919
Jan 15 2018	45.85983871
Feb 15 2018	45.98384535
Mar 15 2018	46.1089731
Apr 15 2018	46.23523211
May 15 2018	46.36326247
Jun 15 2018	46.49203041
Jul 15 2018	46.62259238
Aug 15 2018	43.04798413
Sep 15 2018	43.12917845
Oct 15 2018	43.21173671
Nov 15 2018	43.29462144
Dec 15 2018	43.37825551
Jan 15 2019	43.46327558
Feb 15 2019	43.54864437
Mar 15 2019	43.63478497
Apr 15 2019	43.72170435

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
May 15 2019	43.81025006
Jun 15 2019	43.89903595
Jul 15 2019	43.98946505
Aug 15 2019	39.52431233
Sep 15 2019	39.5527346
Oct 15 2019	39.58225435
Nov 15 2019	39.61148063
Dec 15 2019	39.64097114
Jan 15 2020	39.67156879
Feb 15 2020	39.70188272
Mar 15 2020	39.73247071
Apr 15 2020	39.76333524
May 15 2020	39.80379041
Jun 15 2020	39.83840359
Jul 15 2020	39.88264131
Aug 15 2020	35.43622633
Sep 15 2020	35.43622633
Oct 15 2020	35.43622633
Nov 15 2020	35.43622633
Dec 15 2020	35.43622633
Jan 15 2021	35.43622633
Feb 15 2021	35.43622633
Mar 15 2021	35.43622633
Apr 15 2021	35.43622633
May 15 2021	35.43622633
Jun 15 2021	35.43622633
Jul 15 2021	35.43622633
Aug 15 2021	31.50180011
Sep 15 2021	31.5018001
Oct 15 2021	31.5018001
Nov 15 2021	31.5018001
Dec 15 2021	31.5018001
Jan 15 2022	31.5018001
Feb 15 2022	31.50180011
Mar 15 2022	31.50180011
Apr 15 2022	31.50180011
May 15 2022	31.50180011
Jun 15 2022	31.50180011
Jul 15 2022	31.50180011
Aug 15 2022	27.56737388
Sep 15 2022	27.56737388
Oct 15 2022	27.56737388
Nov 15 2022	27.56737388
Dec 15 2022	27.56737388

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2023	27.56737388
Feb 15 2023	27.56737388
Mar 15 2023	27.56737388
Apr 15 2023	27.56737388
May 15 2023	27.56737388
Jun 15 2023	27.56737388
Jul 15 2023	27.56737388
Aug 15 2023	23.63294765
Sep 15 2023	23.63294765
Oct 15 2023	23.63294765
Nov 15 2023	23.63294765
Dec 15 2023	23.63294765
Jan 15 2024	23.63294765
Feb 15 2024	23.63294765
Mar 15 2024	23.63294765
Apr 15 2024	23.63294765
May 15 2024	23.63294765
Jun 15 2024	23.63294765
Jul 15 2024	23.63294765
Aug 15 2024	19.69852142
Sep 15 2024	19.69852142
Oct 15 2024	19.69852142
Nov 15 2024	19.69852142
Dec 15 2024	19.69852142
Jan 15 2025	19.69852142
Feb 15 2025	19.69852142
Mar 15 2025	19.69852142
Apr 15 2025	19.69852142
May 15 2025	19.69852142
Jun 15 2025	19.69852142
Jul 15 2025	19.69852142
Aug 15 2025	15.76409519
Sep 15 2025	15.76409519
Oct 15 2025	15.76409519
Nov 15 2025	15.76409519
Dec 15 2025	15.76409519
Jan 15 2026	15.76409519
Feb 15 2026	15.75863071
Mar 15 2026	15.75863071
Apr 15 2026	15.75863071
May 15 2026	15.75863071
Jun 15 2026	15.75863071
Jul 15 2026	15.75863071
Aug 15 2026	15.75316623

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

<u>DATE</u>	<u>EQUITY PORTION OF TERMINATION VALUE</u>
Sep 15 2026	15.75316623
Oct 15 2026	15.75316623
Nov 15 2026	15.75316623
Dec 15 2026	15.75316623
Jan 15 2027	15.75316623
Feb 15 2027	15.74770174
Mar 15 2027	15.74770174
Apr 15 2027	15.74770174
May 15 2027	15.74770174
Jun 15 2027	15.74770174
Jul 15 2027	15.74770174
Aug 15 2027	15.74223726
Sep 15 2027	15.74223726
Oct 15 2027	15.74223726
Nov 15 2027	15.74223726
Dec 15 2027	15.74223726
Jan 15 2028	15.74223726
Feb 15 2028	15.73677278
Mar 15 2028	15.73677278
Apr 15 2028	15.73677278
May 15 2028	15.73677278
Jun 15 2028	15.73677278
Jul 15 2028	15.73677278
Aug 15 2028	15.7313083
Sep 15 2028	15.7313083
Oct 15 2028	15.7313083
Nov 15 2028	15.7313083
Dec 15 2028	15.7313083
Jan 15 2029	15.7313083
Feb 15 2029	15.72584382
Mar 15 2029	15.72584382
Apr 15 2029	15.72584382
May 15 2029	15.72584382
Jun 15 2029	15.72584382
Jul 15 2029	15.72584382
Aug 15 2029	15.72037934
Sep 15 2029	15.72037934
Oct 15 2029	15.72037934
Nov 15 2029	15.72037934
Dec 15 2029	15.72037934
Jan 15 2030	15.72037934
Feb 15 2030	15.71491486
Mar 15 2030	15.71491486
Apr 15 2030	15.71491486

**EXHIBIT A****EQUITY PORTION OF TERMINATION VALUE****EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
May 15 2030	15.71491486
Jun 15 2030	15.71491486
Jul 15 2030	15.71491486
Aug 15 2030	15.70945038
Sep 15 2030	15.70945038
Oct 15 2030	15.70945038
Nov 15 2030	15.70945038
Dec 15 2030	15.70945038
Jan 15 2031	15.70945038
Feb 15 2031	15.7039859
Mar 15 2031	15.7039859
Apr 15 2031	15.7039859
May 15 2031	15.7039859
Jun 15 2031	15.7039859
Jul 15 2031	15.7039859
Aug 15 2031	15.69852142
Sep 15 2031	15.69852142
Oct 15 2031	15.69852142
Nov 15 2031	15.69852142
Dec 15 2031	15.69852142
Jan 15 2032	15.69852142
Feb 15 2032	15.69305694
Mar 15 2032	15.69305694
Apr 15 2032	15.69305694
May 15 2032	15.69305694
Jun 15 2032	15.69305694
Jul 15 2032	15.69305694
Aug 15 2032	15.68759245
Sep 15 2032	15.68759245
Oct 15 2032	15.70309329
Nov 15 2032	15.70840038
Dec 15 2032	15.71375544
Jan 15 2033	15.74005831
Feb 15 2033	15.74697125
Mar 15 2033	15.75961412
Apr 15 2033	15.77237129
May 15 2033	15.80753044
Jun 15 2033	15.8281497
Jul 15 2033	15.87124201
Aug 15 2033	15.89417135
Sep 15 2033	15.92297542
Oct 15 2033	15.97432654
Nov 15 2033	16.01128416
Dec 15 2033	16.0485759

**EXHIBIT A**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2034	16.10849143
Feb 15 2034	16.14839608
Mar 15 2034	16.19432894
Apr 15 2034	16.24067706
May 15 2034	16.31120946
Jun 15 2034	16.36653602
Jul 15 2034	16.44612804
Aug 15 2034	16.50490132
Sep 15 2034	16.5698734
Oct 15 2034	16.65919812
Nov 15 2034	16.73348691
Dec 15 2034	16.80844733
Jan 15 2035	16.9078507
Feb 15 2035	16.98661445
Mar 15 2035	17.07175772
Apr 15 2035	17.15767076
May 15 2035	17.26970174
Jun 15 2035	17.36585142
Jul 15 2035	17.48821159
Aug 15 2035	17.58908905
Sep 15 2035	17.69654595
Oct 15 2035	17.83031557
Nov 15 2035	17.94840042
Dec 15 2035	18.06755285
Jan 15 2036	18.21312374
Feb 15 2036	18.33742173
Mar 15 2036	18.46851093
Apr 15 2036	18.60078527
May 15 2036	18.83544727
Jun 15 2036	19.00476962
Jul 15 2036	19.27681453
Aug 15 2036	19.47816297
Sep 15 2036	19.68699918
Oct 15 2036	19.99891523
Nov 15 2036	20.24619004
Dec 15 2036	20.49570042
Dec 19 2036	20.00546448

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Jan 15 2001	80.52000000
Feb 15 2001	81.12000000
Mar 15 2001	81.72000000
Apr 15 2001	82.32000000
May 15 2001	82.92000000
Jun 15 2001	83.52000000
Jul 15 2001	84.12000000
Aug 15 2001	80.60000000
Sep 15 2001	81.20000000
Oct 15 2001	81.80000000
Nov 15 2001	82.40000000
Dec 15 2001	83.00000000
Jan 15 2002	83.60000000
Feb 15 2002	80.60000000
Mar 15 2002	81.20000000
Apr 15 2002	81.80000000
May 15 2002	82.40000000
Jun 15 2002	83.00000000
Jul 15 2002	83.60000000
Aug 15 2002	80.60000000
Sep 15 2002	81.20000000
Oct 15 2002	81.80000000
Nov 15 2002	82.40000000
Dec 15 2002	83.00000000
Jan 15 2003	83.60000000
Feb 15 2003	80.60000000
Mar 15 2003	81.20000000
Apr 15 2003	81.80000000
May 15 2003	82.40000000
Jun 15 2003	83.00000000
Jul 15 2003	83.60000000
Aug 15 2003	80.60000000
Sep 15 2003	81.20000000
Oct 15 2003	81.80000000
Nov 15 2003	82.40000000
Dec 15 2003	83.00000000
Jan 15 2004	83.60000000
Feb 15 2004	80.60000000
Mar 15 2004	81.20000000
Apr 15 2004	81.80000000
May 15 2004	82.40000000
Jun 15 2004	83.00000000
Jul 15 2004	83.60000000
Aug 15 2004	80.06596995

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION TERMINATION VALUE
Sep 15 2004	80.66199454
Oct 15 2004	81.25801913
Nov 15 2004	81.85404372
Dec 15 2004	82.45006831
Jan 15 2005	83.04609290
Feb 15 2005	80.06596995
Mar 15 2005	80.66199454
Apr 15 2005	81.25801913
May 15 2005	81.85404372
Jun 15 2005	82.45006831
Jul 15 2005	83.04609290
Aug 15 2005	80.06596995
Sep 15 2005	80.66199454
Oct 15 2005	81.25801913
Nov 15 2005	81.85404372
Dec 15 2005	82.45006831
Jan 15 2006	83.04609290
Feb 15 2006	80.06596995
Mar 15 2006	80.66199454
Apr 15 2006	81.25801913
May 15 2006	81.85404372
Jun 15 2006	82.45006831
Jul 15 2006	83.04609290
Aug 15 2006	77.67571749
Sep 15 2006	78.25394863
Oct 15 2006	78.83217978
Nov 15 2006	79.41041093
Dec 15 2006	79.98864208
Jan 15 2007	80.56687322
Feb 15 2007	77.67571749
Mar 15 2007	78.25394863
Apr 15 2007	78.83217978
May 15 2007	79.41041093
Jun 15 2007	79.98864208
Jul 15 2007	80.56687322
Aug 15 2007	75.67172842
Sep 15 2007	76.23504153
Oct 15 2007	76.79835464
Nov 15 2007	77.36166776
Dec 15 2007	77.92498087
Jan 15 2008	78.48829399
Feb 15 2008	74.09386230
Mar 15 2008	74.64542951
Apr 15 2008	75.19699672

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
May 15 2008	75.74856393
Jun 15 2008	76.30013115
Jul 15 2008	76.85169836
Aug 15 2008	74.09386230
Sep 15 2008	74.64542951
Oct 15 2008	75.19699672
Nov 15 2008	75.74856393
Dec 15 2008	76.30013115
Jan 15 2009	76.85169836
Feb 15 2009	72.04164536
Mar 15 2009	72.57793552
Apr 15 2009	73.11422568
May 15 2009	73.65051585
Jun 15 2009	74.18680601
Jul 15 2009	74.72309617
Aug 15 2009	72.04164536
Sep 15 2009	72.57793552
Oct 15 2009	73.11422568
Nov 15 2009	73.65051585
Dec 15 2009	74.18680601
Jan 15 2010	74.72309617
Feb 15 2010	32.40230109
Mar 15 2010	32.64350929
Apr 15 2010	32.88471749
May 15 2010	33.12592568
Jun 15 2010	33.36713388
Jul 15 2010	33.60834208
Aug 15 2010	32.40230109
Sep 15 2010	32.64350929
Oct 15 2010	32.88471749
Nov 15 2010	33.12592568
Dec 15 2010	33.36713388
Jan 15 2011	33.60834208
Feb 15 2011	21.32288415
Mar 15 2011	21.48161530
Apr 15 2011	21.64034645
May 15 2011	21.79907760
Jun 15 2011	21.95780874
Jul 15 2011	22.11653989
Aug 15 2011	21.32288415
Sep 15 2011	21.48161530
Oct 15 2011	21.64034645
Nov 15 2011	21.79907760
Dec 15 2011	21.95780874

**EXHIBIT B**

**EQUITY PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	EQUITY PORTION OF TERMINATION VALUE
Jan 15 2012	22.11653989
Feb 15 2012	14.99049891
Mar 15 2012	15.10209071
Apr 15 2012	15.21368251
May 15 2012	15.32527432
Jun 15 2012	15.43686612
Jul 15 2012	15.54845792
Aug 15 2012	14.99049891
Sep 15 2012	15.10209071
Oct 15 2012	15.21368251
Nov 15 2012	15.32527432
Dec 15 2012	15.43686612
Jan 15 2013	15.54845792
Feb 15 2013	11.96161257
Mar 15 2013	12.05065683
Apr 15 2013	12.13970109
May 15 2013	12.22874536
Jun 15 2013	12.31778962
Jul 15 2013	12.40683388
Aug 15 2013	11.96161257
Sep 15 2013	12.05065683
Oct 15 2013	12.13970109
Nov 15 2013	12.22874536
Dec 15 2013	12.31778962
Jan 15 2014	12.40683388
Feb 15 2014	8.56804426
Mar 15 2014	8.63182623
Apr 15 2014	8.69560820
May 15 2014	8.75939016
Jun 15 2014	8.82317213
Jul 15 2014	8.88695410
Aug 15 2014	8.56804426
Sep 15 2014	8.63182623
Oct 15 2014	8.69560820
Nov 15 2014	8.75939016
Dec 15 2014	8.82317213
Jan 15 2015	8.88695410
Feb 15 2015	5.25551639
Mar 15 2015	5.29463934
Apr 15 2015	5.33376230
May 15 2015	5.37288525
Jun 15 2015	5.41200820
Jul 15 2015	5.45113115
Aug 15 2015	5.25551639

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Sep 15 2015	5.29463934
Oct 15 2015	5.33376230
Nov 15 2015	5.37288525
Dec 15 2015	5.41200820
Jan 15 2016	5.45113115
Feb 15 2016	1.13897049
Mar 15 2016	1.14744918
Apr 15 2016	1.15592787
May 15 2016	1.16440656
Jun 15 2016	1.17288525
Jul 15 2016	1.18136393
Aug 15 2016	1.13897049
Sep 15 2016	1.14744918
Oct 15 2016	1.15592787
Nov 15 2016	1.16440656
Dec 15 2016	1.17288525
Jan 15 2017	1.18136393
Feb 15 2017	0.44065738
Mar 15 2017	0.44393770
Apr 15 2017	0.44721803
May 15 2017	0.45049836
Jun 15 2017	0.45377869
Jul 15 2017	0.45705902
Aug 15 2017	0.44065738
Sep 15 2017	0.44393770
Oct 15 2017	0.44721803
Nov 15 2017	0.45049836
Dec 15 2017	0.45377869
Jan 15 2018	0.45705902
Feb 15 2018	0.44065738
Mar 15 2018	0.44393770
Apr 15 2018	0.44721803
May 15 2018	0.45049836
Jun 15 2018	0.45377869
Jul 15 2018	0.45705902
Aug 15 2018	0.00000000
Sep 15 2018	0.00000000
Oct 15 2018	0.00000000
Nov 15 2018	0.00000000
Dec 15 2018	0.00000000
Jan 15 2019	0.00000000
Feb 15 2019	0.00000000
Mar 15 2019	0.00000000
Apr 15 2019	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
May 15 2019	0.00000000
Jun 15 2019	0.00000000
Jul 15 2019	0.00000000
Aug 15 2019	0.00000000
Sep 15 2019	0.00000000
Oct 15 2019	0.00000000
Nov 15 2019	0.00000000
Dec 15 2019	0.00000000
Jan 15 2020	0.00000000
Feb 15 2020	0.00000000
Mar 15 2020	0.00000000
Apr 15 2020	0.00000000
May 15 2020	0.00000000
Jun 15 2020	0.00000000
Jul 15 2020	0.00000000
Aug 15 2020	0.00000000
Sep 15 2020	0.00000000
Oct 15 2020	0.00000000
Nov 15 2020	0.00000000
Dec 15 2020	0.00000000
Jan 15 2021	0.00000000
Feb 15 2021	0.00000000
Mar 15 2021	0.00000000
Apr 15 2021	0.00000000
May 15 2021	0.00000000
Jun 15 2021	0.00000000
Jul 15 2021	0.00000000
Aug 15 2021	0.00000000
Sep 15 2021	0.00000000
Oct 15 2021	0.00000000
Nov 15 2021	0.00000000
Dec 15 2021	0.00000000
Jan 15 2022	0.00000000
Feb 15 2022	0.00000000
Mar 15 2022	0.00000000
Apr 15 2022	0.00000000
May 15 2022	0.00000000
Jun 15 2022	0.00000000
Jul 15 2022	0.00000000
Aug 15 2022	0.00000000
Sep 15 2022	0.00000000
Oct 15 2022	0.00000000
Nov 15 2022	0.00000000
Dec 15 2022	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Jan 15 2023	0.00000000
Feb 15 2023	0.00000000
Mar 15 2023	0.00000000
Apr 15 2023	0.00000000
May 15 2023	0.00000000
Jun 15 2023	0.00000000
Jul 15 2023	0.00000000
Aug 15 2023	0.00000000
Sep 15 2023	0.00000000
Oct 15 2023	0.00000000
Nov 15 2023	0.00000000
Dec 15 2023	0.00000000
Jan 15 2024	0.00000000
Feb 15 2024	0.00000000
Mar 15 2024	0.00000000
Apr 15 2024	0.00000000
May 15 2024	0.00000000
Jun 15 2024	0.00000000
Jul 15 2024	0.00000000
Aug 15 2024	0.00000000
Sep 15 2024	0.00000000
Oct 15 2024	0.00000000
Nov 15 2024	0.00000000
Dec 15 2024	0.00000000
Jan 15 2025	0.00000000
Feb 15 2025	0.00000000
Mar 15 2025	0.00000000
Apr 15 2025	0.00000000
May 15 2025	0.00000000
Jun 15 2025	0.00000000
Jul 15 2025	0.00000000
Aug 15 2025	0.00000000
Sep 15 2025	0.00000000
Oct 15 2025	0.00000000
Nov 15 2025	0.00000000
Dec 15 2025	0.00000000
Jan 15 2026	0.00000000
Feb 15 2026	0.00000000
Mar 15 2026	0.00000000
Apr 15 2026	0.00000000
May 15 2026	0.00000000
Jun 15 2026	0.00000000
Jul 15 2026	0.00000000
Aug 15 2026	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Sep 15 2026	0.00000000
Oct 15 2026	0.00000000
Nov 15 2026	0.00000000
Dec 15 2026	0.00000000
Jan 15 2027	0.00000000
Feb 15 2027	0.00000000
Mar 15 2027	0.00000000
Apr 15 2027	0.00000000
May 15 2027	0.00000000
Jun 15 2027	0.00000000
Jul 15 2027	0.00000000
Aug 15 2027	0.00000000
Sep 15 2027	0.00000000
Oct 15 2027	0.00000000
Nov 15 2027	0.00000000
Dec 15 2027	0.00000000
Jan 15 2028	0.00000000
Feb 15 2028	0.00000000
Mar 15 2028	0.00000000
Apr 15 2028	0.00000000
May 15 2028	0.00000000
Jun 15 2028	0.00000000
Jul 15 2028	0.00000000
Aug 15 2028	0.00000000
Sep 15 2028	0.00000000
Oct 15 2028	0.00000000
Nov 15 2028	0.00000000
Dec 15 2028	0.00000000
Jan 15 2029	0.00000000
Feb 15 2029	0.00000000
Mar 15 2029	0.00000000
Apr 15 2029	0.00000000
May 15 2029	0.00000000
Jun 15 2029	0.00000000
Jul 15 2029	0.00000000
Aug 15 2029	0.00000000
Sep 15 2029	0.00000000
Oct 15 2029	0.00000000
Nov 15 2029	0.00000000
Dec 15 2029	0.00000000
Jan 15 2030	0.00000000
Feb 15 2030	0.00000000
Mar 15 2030	0.00000000
Apr 15 2030	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
May 15 2030	0.00000000
Jun 15 2030	0.00000000
Jul 15 2030	0.00000000
Aug 15 2030	0.00000000
Sep 15 2030	0.00000000
Oct 15 2030	0.00000000
Nov 15 2030	0.00000000
Dec 15 2030	0.00000000
Jan 15 2031	0.00000000
Feb 15 2031	0.00000000
Mar 15 2031	0.00000000
Apr 15 2031	0.00000000
May 15 2031	0.00000000
Jun 15 2031	0.00000000
Jul 15 2031	0.00000000
Aug 15 2031	0.00000000
Sep 15 2031	0.00000000
Oct 15 2031	0.00000000
Nov 15 2031	0.00000000
Dec 15 2031	0.00000000
Jan 15 2032	0.00000000
Feb 15 2032	0.00000000
Mar 15 2032	0.00000000
Apr 15 2032	0.00000000
May 15 2032	0.00000000
Jun 15 2032	0.00000000
Jul 15 2032	0.00000000
Aug 15 2032	0.00000000
Sep 15 2032	0.00000000
Oct 15 2032	0.00000000
Nov 15 2032	0.00000000
Dec 15 2032	0.00000000
Jan 15 2033	0.00000000
Feb 15 2033	0.00000000
Mar 15 2033	0.00000000
Apr 15 2033	0.00000000
May 15 2033	0.00000000
Jun 15 2033	0.00000000
Jul 15 2033	0.00000000
Aug 15 2033	0.00000000
Sep 15 2033	0.00000000
Oct 15 2033	0.00000000
Nov 15 2033	0.00000000
Dec 15 2033	0.00000000

**EXHIBIT B**

**DEBT PORTION OF TERMINATION VALUE**

**EXPRESSED AS PERCENTAGE OF PURCHASE PRICE**

DATE	DEBT PORTION OF TERMINATION VALUE
Jan 15 2034	0.00000000
Feb 15 2034	0.00000000
Mar 15 2034	0.00000000
Apr 15 2034	0.00000000
May 15 2034	0.00000000
Jun 15 2034	0.00000000
Jul 15 2034	0.00000000
Aug 15 2034	0.00000000
Sep 15 2034	0.00000000
Oct 15 2034	0.00000000
Nov 15 2034	0.00000000
Dec 15 2034	0.00000000
Jan 15 2035	0.00000000
Feb 15 2035	0.00000000
Mar 15 2035	0.00000000
Apr 15 2035	0.00000000
May 15 2035	0.00000000
Jun 15 2035	0.00000000
Jul 15 2035	0.00000000
Aug 15 2035	0.00000000
Sep 15 2035	0.00000000
Oct 15 2035	0.00000000
Nov 15 2035	0.00000000
Dec 15 2035	0.00000000
Jan 15 2036	0.00000000
Feb 15 2036	0.00000000
Mar 15 2036	0.00000000
Apr 15 2036	0.00000000
May 15 2036	0.00000000
Jun 15 2036	0.00000000
Jul 15 2036	0.00000000
Aug 15 2036	0.00000000
Sep 15 2036	0.00000000
Oct 15 2036	0.00000000
Nov 15 2036	0.00000000
Dec 15 2036	0.00000000
Dec 19 2036	0.00000000

**Exhibit 10.2.2**

**CREDIT AGREEMENT**

among

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC**  
a Delaware limited liability company  
(Borrower)

and

THE BANK OF NOVA SCOTIA  
(Lead Arranger, Co-Syndication  
Agent and Bookrunner)

CREDIT SUISSE FIRST BOSTON,  
ACTING THROUGH ITS NEW YORK BRANCH  
(Lead Arranger and  
Administrative Agent)

and

**BANC OF AMERICA SECURITIES LLC**  
(Arranger and Co-Syndication Agent)

and

**ING (U.S.) CAPITAL LLC**  
(Arranger and Co-Syndication Agent)

and

**BAYERISCHE LANDESBANK GIROZENTRALE**  
(Arranger, Co-Documentation Agent and LC Bank)

and

**CIBC WORLD MARKETS CORP.**  
(Arranger and Co-Documentation Agent)

and

**DRESDNER KLEINWORT BENSON NORTH AMERICA SERVICES LLC**  
(Arranger and Co-Documentation Agent)

and

**TD SECURITIES (USA) INC.**  
(Arranger and Co-Documentation Agent)

and

**THE BANKS PARTIES HERETO**

# TABLE OF CONTENTS

	PAGE
ARTICLE 1. DEFINITIONS.....	1
1.1    Definitions.....	1
1.2    Rules of Interpretation.....	1
ARTICLE 2. THE CREDIT FACILITIES.....	1
2.1    Loans.....	1
2.1.1    Loan Facility.....	1
2.1.2    Turbine Purchase Loan Facility.....	3
2.1.3    Interest Provisions Relating to Loans.....	4
2.1.4    Promissory Notes.....	5
2.1.5    Loan Funding.....	6
2.1.6    Conversion of Loans.....	6
2.1.7    Prepayments.....	7
2.2    Letter of Credit Facilities.....	7
2.2.1    Issuance of the Letters of Credit.....	7
2.2.2    Availability.....	8
2.2.3    Notice of LC Activity.....	8
2.2.4    Reimbursement.....	8
2.2.5    Reimbursement Obligation Absolute.....	9
2.2.6    Reduction and Reinstatement of Stated Amount.....	10
2.2.7    Bank Participation.....	10
2.2.8    Commercial Practices.....	11
2.2.9    Term of Letters of Credit.....	11
2.3    Total Commitments.....	12
2.3.1    Loan Commitment.....	12
2.3.2    Turbine Purchase Loan Commitment.....	12
2.3.3    Letter of Credit Commitment.....	12
2.3.4    Reductions and Cancellations.....	12
2.3.5    Turbine Purchase Loan Conversion to Construction Loans.....	12
2.4    Fees.....	13
2.4.1    Fee Letter.....	13
2.4.2    Loan Commitment Fees.....	13
2.4.3    Activation Fees.....	13
2.5    Letter of Credit Fees.....	13
2.6    Other Payment Terms.....	14
2.6.1    Place and Manner.....	14
2.6.2    Date.....	14
2.6.3    Late Payments.....	14
2.6.4    Net of Taxes, Etc.....	14
2.6.5    Application of Payments.....	16
2.6.6    Failure to Pay Administrative Agent.....	16

	2.6.7	Withholding Exemption Certificates.....	16
2.7		Pro Rata Treatment.....	17
	2.7.1	Borrowings, Commitment Reductions, Etc.....	17
	2.7.2	Sharing of Payments, Etc.....	17
2.8		Change of Circumstances.....	18
	2.8.1	Inability to Determine Rates.....	18
	2.8.2	Illegality.....	18
	2.8.3	Increased Costs.....	19
	2.8.4	Capital Requirements.....	19
	2.8.5	Notice; Participating Banks' Rights.....	20
2.9		Funding Losses.....	20
2.10		Alternate Office; Minimization of Costs.....	20
2.11		Extension of Loan Maturity Date.....	21
ARTICLE 3. CONDITIONS PRECEDENT.....			23
3.1		Conditions Precedent to the Closing Date.....	23
	3.1.1	Resolutions.....	23
	3.1.2	Incumbency.....	23
	3.1.3	Formation Documents.....	23
	3.1.4	Good Standing Certificates.....	23
	3.1.5	Satisfactory Proceedings.....	24
	3.1.6	Credit Documents.....	24
	3.1.7	Certificates of Borrower.....	24
	3.1.8	Legal Opinions.....	24
	3.1.9	No Change in Tax Laws.....	24
	3.1.10	Absence of Litigation.....	25
	3.1.11	Payment of Filing Fees.....	25
	3.1.12	Insurance.....	25
	3.1.13	UCC Reports.....	25
	3.1.14	Project Budgets.....	25
	3.1.15	Project Schedules.....	25
	3.1.16	Base Case Project Projections.....	26
	3.1.17	No Material Adverse Change.....	26
	3.1.18	Establishment of Accounts.....	26
	3.1.19	Representations and Warranties.....	26
	3.1.20	Payment of Bank and Consultants Fees.....	26
	3.1.21	Certificate of Independent Engineer.....	26
	3.1.22	Acquisition Closing.....	26
	3.1.23	Initial Contributions.....	26
3.2		Conditions Precedent to the Initial Funding of the Initial Projects.....	26
	3.2.1	Borrower Equity.....	27
	3.2.2	Resolutions.....	27
	3.2.3	Incumbency.....	27
	3.2.4	Formation Documents.....	27
	3.2.5	Good Standing Certificates.....	27
	3.2.6	Satisfactory Proceedings.....	28

3.2.7	Operative Documents.....	28
3.2.8	Certificate of Borrower.....	30
3.2.9	Legal Opinions.....	30
3.2.10	Certificate of Insurance Consultant.....	30
3.2.11	Insurance.....	30
3.2.12	Certificate of the Independent Engineer.....	31
3.2.13	Reports of the Environmental Consultant.....	31
3.2.14	Certificate of the Fuel Consultant.....	31
3.2.15	Certificate of Power Marketing Consultant.....	32
3.2.16	Power Marketing Plan.....	32
3.2.17	Fuel Plan.....	32
3.2.18	Schedule of Applicable Permits and Applicable Third Party Permits.....	32
3.2.19	No Change in Tax Laws.....	33
3.2.20	Absence of Litigation.....	33
3.2.21	Payment of Filing Fees.....	33
3.2.22	Financial Statements.....	34
3.2.23	UCC Reports.....	34
3.2.24	Base Case Project Projections.....	34
3.2.25	Project Schedules; Project Budgets.....	34
3.2.26	No Material Adverse Change.....	35
3.2.27	Real Estate Rights; A.L.T.A. Surveys.....	35
3.2.28	Title Policies.....	35
3.2.29	Regulatory Status.....	36
3.2.30	Notice to Proceed.....	36
3.2.31	Representations and Warranties.....	36
3.2.32	Utilities.....	36
3.2.33	Calpine Compliance.....	36
3.2.34	Calpine Guaranties.....	37
3.2.35	Updated Exhibits.....	37
3.2.36	Calpine Corporation Credit Rating.....	37
3.2.37	Delta Energy Center Project Requirements.....	37
3.3	Conditions Precedent to the Initial Funding of the Subsequent Projects.....	37
3.3.1	Borrower Equity.....	37
3.3.2	Joint Venture Projects.....	37
3.3.3	Resolutions.....	38
3.3.4	Incumbency.....	38
3.3.5	Formation Documents.....	38
3.3.6	Good Standing Certificates.....	38
3.3.7	Satisfactory Proceedings.....	39
3.3.8	Operative Documents.....	39
3.3.9	Certificate of Borrower.....	41
3.3.10	Legal Opinions.....	41
3.3.11	Certificate of Insurance Consultant.....	42
3.3.12	Insurance.....	42
3.3.13	Certificate of the Independent Engineer.....	42

3.3.14	Reports of the Environmental Consultant.....	42
3.3.15	Certificate of the Fuel Consultant.....	43
3.3.16	Certificate of Power Marketing Consultant.....	43
3.3.17	Power Marketing Plan.....	43
3.3.18	Fuel Plan.....	43
3.3.19	Schedule of Applicable Permits and Applicable Third Party Permits.....	44
3.3.20	No Change in Tax Laws.....	45
3.3.21	Absence of Litigation.....	45
3.3.22	Payment of Filing Fees.....	45
3.3.23	Financial Statements.....	45
3.3.24	UCC Reports.....	45
3.3.25	Project Budgets.....	46
3.3.26	Project Schedule.....	46
3.3.27	Base Case Project Projections.....	46
3.3.28	No Material Adverse Change.....	46
3.3.29	Real Estate Rights; A.L.T.A. Surveys.....	46
3.3.30	Title Policies.....	47
3.3.31	Regulatory Status.....	48
3.3.32	Notice to Proceed.....	48
3.3.33	Representations and Warranties.....	48
3.3.34	Utilities.....	48
3.3.35	Calpine Compliance.....	48
3.3.36	Calpine Guaranties.....	48
3.3.37	Updated Exhibits.....	49
3.3.38	Diversification Requirements.....	49
3.3.39	Calpine Corporation Credit Rating.....	49
3.3.40	Initial Projects Satisfaction of Conditions Precedent to Initial Funding.....	49
3.3.41	Modified Conditions Precedent to Initial Funding.....	49
3.4	Conditions Precedent to Each Construction Credit Event.....	50
3.4.1	Monthly Drawdown Frequency.....	50
3.4.2	Notice of Construction Borrowing.....	50
3.4.3	Construction Drawdown Certificate and Engineer's Certificate.....	50
3.4.4	Amount.....	50
3.4.5	Title Policy Endorsement.....	50
3.4.6	Lien Releases.....	51
3.4.7	Applicable Permits.....	51
3.4.8	Equity Contributions.....	51
3.4.9	Additional Documentation.....	51
3.4.10	Acceptable Work; No Liens.....	52
3.4.11	Casualty.....	52
3.4.12	Absence of Litigation.....	52
3.4.13	Insurance.....	52
3.4.14	Available Construction Funds.....	52
3.4.15	Representations and Warranties.....	52

	3.4.16	No Event of Default or Inchoate Default.....	53
	3.4.17	Operative Documents, Applicable Permits and Applicable Third Party Permits in Effect.	53
	3.4.18	No Material Adverse Effect.....	53
	3.4.19	Third Party Funding.....	53
	3.4.20	Debt to Capitalization Ratio.....	53
	3.4.21	Interest Coverage Ratio.....	53
	3.4.22	Funded Projects.....	53
3.5		Conditions Precedent to the Initial Funding of the Turbines.....	54
	3.5.1	Borrower Equity.....	54
	3.5.2	Resolutions.....	54
	3.5.3	Incumbency.....	54
	3.5.4	Formation Documents.....	54
	3.5.5	Good Standing Certificates.....	54
	3.5.6	Satisfactory Proceedings.....	55
	3.5.7	Operative Documents.....	55
	3.5.8	Certificate of Borrower.....	56
	3.5.9	Legal Opinions.....	56
	3.5.10	Insurance.....	56
	3.5.11	Certificate of the Independent Engineer.....	57
	3.5.12	No Change in Tax Laws.....	57
	3.5.13	Absence of Litigation.....	57
	3.5.14	Payment of Filing Fees.....	57
	3.5.15	Financial Statements.....	57
	3.5.16	UCC Reports.....	57
	3.5.17	No Material Adverse Change.....	58
	3.5.18	Representations and Warranties.....	58
	3.5.19	Calpine Compliance.....	58
	3.5.20	Calpine Guaranties.....	58
	3.5.21	Calpine Corporation Credit Rating.....	58
3.6		Conditions Precedent to Each Turbine Purchase Credit Event.....	58
	3.6.1	Monthly Drawdown Frequency.....	58
	3.6.2	Notice of Turbine Purchase Borrowing.....	58
	3.6.3	Turbine Purchase Drawdown Certificate and Engineer's Certificate.....	58
	3.6.4	Amount.....	58
	3.6.5	Equity Contributions.....	59
	3.6.6	Insurance.....	59
	3.6.7	Available Construction Funds.....	59
	3.6.8	Representations and Warranties.....	59
	3.6.9	No Event of Default or Inchoate Default.....	59
	3.6.10	Credit Documents and Turbine Purchase Contract in Effect.....	59
	3.6.11	No Material Adverse Effect.....	59
	3.6.12	Debt to Capitalization Ratio.....	59
	3.6.13	Funded Projects.....	59
3.7		Conditions Precedent to Final Completion.....	60
	3.7.1	Notice of Completion.....	60

3.7.2	Completion.....	60
3.7.3	Annual Budget.....	60
3.7.4	Insurance.....	60
3.7.5	Applicable Permits and Applicable Third Party Permits.....	60
3.7.6	Real Estate Rights; A.L.T.A. Surveys.....	61
3.7.7	Title Policy.....	61
3.7.8	Operating Plans.....	62
3.7.9	Affiliated Party Deeds of Trust.....	62
3.7.10	Equipment Maintenance Agreements.....	62
3.8	Conditions Precedent to the Issuance of Letters of Credit.....	62
3.8.1	Representations and Warranties.....	63
3.8.2	No Event of Default or Inchoate Default.....	63
3.8.3	Operative Documents, Applicable Permits and Applicable Third Party Permits in Effect.	63
3.8.4	No Material Adverse Effect.....	63
3.8.5	Interest Coverage Ratio.....	63
3.8.6	Project Satisfaction of Conditions Precedent to Initial Funding.....	63
3.8.7	Debt to Capitalization Ratio.....	63
3.8.8	Funded Projects.....	63
3.9	Failure of Conditions Precedent to be Satisfied for a Particular Project.....	64
3.10	Funding of Equity.....	64
3.11	No Approval of Work.....	66
3.12	Waiver of Funding; Adjustment of Drawdown Requests.....	66
3.13	Ability of Technical Committee to Defer Satisfaction of Conditions Precedent to Initial Funding for Projects Five Through Twelve.....	66

ARTICLE 4. REPRESENTATIONS AND WARRANTIES..... 67

4.1	Organization.....	67
4.2	Authorization; No Conflict.....	68
4.3	Enforceability.....	68
4.4	Compliance with Law.....	68
4.5	Business, Debt, Contracts, Joint Ventures Etc.....	68
4.6	Adverse Change.....	69
4.7	Investment Company Act, Etc.....	69
4.8	ERISA.....	69
4.9	Permits.....	70
4.10	Qualifying Facility/Exempt Wholesale Generator.....	71
4.11	Hazardous Substance.....	71
4.12	Litigation.....	71
4.13	Labor Disputes and Acts of God.....	72
4.14	Project Documents and Turbine Purchase Contracts.....	72
4.15	Disclosure.....	72
4.16	Private Offering by Borrower.....	73
4.17	Taxes.....	73
4.18	Governmental Regulation.....	73
4.19	Regulation U, Etc.....	73

4.20	Project Budgets; Projections.....	73
4.21	Financial Statements.....	74
4.22	Existing Defaults.....	74
4.23	No Default.....	74
4.24	Offices, Location of Collateral.....	74
4.25	Title and Liens.....	75
4.26	Trademarks.....	76
4.27	Collateral.....	76
4.28	Sufficiency of Project Documents.....	77
4.29	Utilities.....	77
4.30	Roads/Transmission Line.....	78
4.31	Proper Subdivision.....	78
4.32	Flood Zone Disclosure.....	78
4.33	Acquisition of Real Property.....	78
ARTICLE 5. COVENANTS OF BORROWER.....		78
5.1	Use of Proceeds and Revenues.....	78
	5.1.1 Proceeds.....	78
	5.1.2 Revenues.....	79
5.2	Payment.....	79
	5.2.1 Credit Documents.....	79
	5.2.2 Project Documents and Turbine Purchase Contracts.....	79
5.3	Warranty of Title.....	79
5.4	Notices.....	80
5.5	Financial Statements.....	82
5.6	Books, Records, Access.....	83
5.7	Compliance with Laws, Instruments, Etc.....	83
5.8	Reports.....	83
5.9	Existence, Conduct of Business, Properties, Etc.....	85
5.10	Four-Quarter Portfolio Interest Coverage Ratio; Maximum Debt to Capitalization Ratio.....	85
5.11	Indemnification.....	86
5.12	Qualifying Facility/Exempt Wholesale Generator.....	88
5.13	Construction of Each Project.....	89
5.14	Completion.....	89
5.15	Operation of Projects and Annual Operating Budget.....	89
5.16	Preservation of Rights; Further Assurances.....	90
5.17	Project Equity.....	91
	5.17.1 (a).....	92
5.18	Maintenance of Insurance.....	92
5.19	Taxes and Other Government Charges.....	92
5.20	Event of Eminent Domain.....	93
5.21	Power Marketing Plan; Fuel Plan.....	93
5.22	Utility Charges.....	93
5.23	Revenue Payment to Borrower.....	93
5.24	Initial Project Deeds of Trust and Equipment Finance Company Collateral Documents.....	94

5.25	Funded Projects.....	94
ARTICLE 6. NEGATIVE COVENANTS.....		94
6.1	Contingent Liabilities.....	94
6.2	Limitations on Liens.....	95
6.3	Indebtedness.....	95
6.4	Sale or Lease of Assets.....	95
6.5	Changes.....	102
6.6	Distributions.....	102
6.7	Investments.....	103
6.8	Transactions With Affiliates.....	103
6.9	Regulations.....	104
6.10	ERISA.....	104
6.11	Partnerships, Etc.....	104
6.12	Dissolution.....	104
6.13	Amendments; Change Orders; Completion.....	104
6.14	Compliance with Operative Documents.....	107
6.15	Name and Location; Fiscal Year.....	107
6.16	Use of Project Sites.....	107
6.17	Assignment.....	107
6.18	Abandonment of Project or Turbine.....	107
6.19	Hazardous Substance.....	107
6.20	Additional Project Documents.....	107
6.21	Project Budget Amendments.....	108
6.22	Loan Proceeds; Project Revenues.....	108
6.23	Acquisition of Real Property.....	108
6.24	Accounts.....	108
ARTICLE 7. APPLICATION OF FUNDS.....		109
7.1	Construction Account.....	109
7.1.1	Establishment of Account.....	109
7.1.2	Disbursements from Construction Account.....	109
7.1.3	Rights of Administrative Agent.....	110
7.2	Revenue Account.....	111
7.2.1	Establishment of Account; Priority of Payments.....	111
7.2.2	O&M Costs.....	112
7.2.3	Subordinated O&M Costs.....	113
7.2.4	Mandatory Prepayment.....	113
7.3	Operating Account.....	113
7.3.1	Establishment of Account.....	114
7.3.2	Funding.....	114
7.3.3	Withdrawals.....	114
7.3.4	Security Interest.....	114
7.4	Loss Proceeds Account.....	114

7.5	Application of Insurance Proceeds.....	114
7.5.1	General.....	115
7.5.2	Delay in Start Up and Business Interruption Insurance.....	115
7.5.3	Applications; Mandatory Prepayments.....	115
7.5.4	Proceeds Less than \$1,000,000.....	117
7.5.5	Proceeds in Excess of \$1,000,000, Not in Excess of \$10,000,000.....	117
7.5.6	Proceeds in Excess of \$10,000,000.....	117
7.5.7	Repair and Restoration Procedures.....	117
7.5.8	Excess Insurance Proceeds.....	118
7.5.9	Turbine Insurance Proceeds.....	118
7.5.10	Events of Default.....	118
7.6	Application of Eminent Domain Proceeds.....	118
7.7	Application of Certain Damages Payments; Mandatory Prepayments.....	118
7.7.1	Contractor.....	118
7.7.2	Power Purchasers.....	119
7.7.3	Other.....	119
7.8	Working Capital Reserve Account.....	119
7.8.1	Establishment of Account.....	119
7.8.2	Funding.....	119
7.8.3	Withdrawals.....	120
7.8.4	Earnings.....	120
7.9	Security Interest in Proceeds and Accounts.....	120
7.10	Permitted Investments.....	121
7.11	Earnings on Accounts.....	121
7.12	Dominion and Control.....	121
7.13	Termination of Commitments.....	121
7.14	Flow of Funds Between Portfolio Entities.....	121
ARTICLE 8. EVENTS OF DEFAULT; REMEDIES.....		123
8.1	Events of Default.....	123
8.1.1	Failure to Make Payments.....	123
8.1.2	Judgments.....	123
8.1.3	Misstatements; Omissions.....	123
8.1.4	Bankruptcy; Insolvency.....	123
8.1.5	Debt Cross Default.....	124
8.1.6	ERISA.....	124
8.1.7	Breach of Terms of Agreement.....	125
8.1.8	Loss of Qualifying Facility or Eligible Facility Status.....	126
8.1.9	Abandonment.....	126
8.1.10	Security.....	127
8.1.11	Loss of Control.....	127
8.1.12	Loss of or Failure to Obtain Applicable Permits or Applicable Third Party Permits....	127
8.1.13	Loss of Collateral.....	128
8.1.14	Non-Fundamental Defaults.....	128
8.2	Remedies.....	128

8.2.1	No Further Loans or Letters of Credit.....	128
8.2.2	Cash Collateralization of Letters of Credit.....	128
8.2.3	Prepayment of Loans.....	129
8.2.4	Cure by Administrative Agent.....	129
8.2.5	Acceleration.....	129
8.2.6	Cash Collateral.....	129
8.2.7	Possession of Projects and Turbines.....	129
8.2.8	Remedies Under Credit Documents.....	129
ARTICLE 9. SCOPE OF LIABILITY.....		130
ARTICLE 10. ADMINISTRATIVE AGENT; SUBSTITUTION; TECHNICAL COMMITTEE.....		131
10.1	Appointment, Powers and Immunities.....	131
10.2	Reliance by Administrative Agent.....	132
10.3	Non-Reliance.....	132
10.4	Defaults.....	132
10.5	Indemnification.....	132
10.6	Successor Administrative Agent.....	133
10.7	Authorization.....	134
10.8	Administrative Agent, Technical Committee, Bookrunner, Arrangers, Co-Syndication Agents and Co-Documentation Agents.....	134
10.9	Amendments; Waivers.....	134
10.10	Withholding Tax.....	135
10.11	General Provisions as to Payments.....	136
10.12	Substitution of Bank.....	136
10.13	Participation.....	136
10.14	Transfer of Commitment.....	137
10.15	Laws.....	138
10.16	Assignability to Federal Reserve Bank.....	138
10.17	Technical Committee.....	139
10.18	Notices to Technical Committee and Banks.....	139
ARTICLE 11. INDEPENDENT CONSULTANTS.....		139
11.1	Removal and Fees.....	139
11.2	Duties.....	139
11.3	Independent Consultants' Certificates.....	140
11.4	Certification of Dates.....	140
ARTICLE 12. MISCELLANEOUS.....		140
12.1	Addresses.....	140
12.2	Additional Security; Right to Set-Off.....	142
12.3	Delay and Waiver.....	142
12.4	Costs, Expenses and Attorneys' Fees; Syndication.....	142

12.5	Entire Agreement.....	143
12.6	Governing Law.....	144
12.7	Severability.....	144
12.8	Headings.....	144
12.9	Accounting Terms.....	144
12.10	Additional Financing.....	144
12.11	No Partnership, Etc.....	144
12.12	Deed of Trust/Collateral Documents.....	144
12.13	Limitation on Liability.....	144
12.14	Waiver of Jury Trial.....	145
12.15	Consent to Jurisdiction.....	145
12.16	Usury.....	145
12.17	Knowledge and Attribution.....	146
12.18	Successors and Assigns.....	146
12.19	Counterparts.....	146

## INDEX OF EXHIBITS AND SCHEDULES

Exhibit A	Definitions and Rules of Interpretation
	NOTES
Exhibit B	Form of Note
	LOAN DISBURSEMENT PROCEDURES
Exhibit C-1	Form of Notice of Construction Borrowing
Exhibit C-2	Form of Notice of Turbine Purchase Borrowing
Exhibit C-3	Form of Confirmation of Interest Period Selection
Exhibit C-4	Form of Notice of Conversion of Loan Type
Exhibit C-5	Form of Notice of LC Activity
Exhibit C-6	Form of Construction Drawdown Certificate
Exhibit C-7	Form of Engineer's Construction Certificate
Exhibit C-8	Form of Turbine Purchase Drawdown Certificate
Exhibit C-9	Form of Engineer's Turbine Purchase Certificate
Exhibit C-10	Form of Disbursement Requisition
Exhibit C-11	Form of Reserve Account Disbursement Requisition
	EQUITY AND SECURITY-RELATED DOCUMENTS
Exhibit D-1	Form of Depositary Agreement
Exhibit D-2A	Form of Affiliated Party Agreement Guaranty
Exhibit D-2B	Form of Project Completion Guaranty
Exhibit D-2C	Form of Turbine Purchase Guaranty
Exhibit D-2D	Form of Project Owner Guaranty
Exhibit D-3	Form of Deed of Trust
Exhibit D-4A	Form of Borrower Security Agreement
Exhibit D-4B	Form of Project/Turbine Owner Security Agreement
Exhibit D-4C	Development Company Security Agreement
Exhibit D-4D	Form of CCFC II Equipment Finance Company Security Agreement
Exhibit D-4E	Form of Equipment Finance Company Security Agreement
Exhibit D-5	INTENTIONALLY OMITTED
Exhibit D-6	Schedule of Security Filings
Exhibit D-7	Form of Debt Subordination Agreement
Exhibit D-8	Form of Affiliated Subordination Agreement
Exhibit D-9	Form of Pledge Agreement (Pledged Equity Interests)
Exhibit D-10	Form of Portfolio Entity Note
	CONSENTS
Exhibit E-1	Form of Consent for Contracting Party
	CLOSING CERTIFICATES
Exhibit F-1	Form of Borrower's Closing Certificate
Exhibit F-2	Form of Borrower's Project Funding Certificate
Exhibit F-3	Form of Borrower's Turbine Funding Certificate

Exhibit F-4	Form of Insurance Consultant's Certificate
Exhibit F-5	Form of Independent Engineer's Closing Certificate
Exhibit F-6	Form of Independent Engineer's Project Funding Certificate
Exhibit F-7	Form of Independent Engineer's Turbine Funding Certificate
Exhibit F-8	Form of Fuel Consultant's Certificate
Exhibit F-9	Form of Power Marketing Consultant's Certificate
	PROJECT DESCRIPTION EXHIBITS
Exhibit G-1	Description of Initial Projects
Exhibit G-2	Description of Subsequent Projects
Exhibit G-3	Description of Turbines
Exhibit G-4	Project Budgets
Appendix G-4A	Los Medanos Energy Center Project Budget
Appendix G-4B	Baytown Energy Center Project Budget
Appendix G-4C	Carville Project Budget
Appendix G-4D	Panda Oneta Power Project Budget
Appendix G-4E	Santa Rosa-Phase I Project Budget
Appendix G-4F	Delta Energy Center Project Budget
Appendix G-4G	Freestone Energy Center Project Budget
Appendix G-4H	Broad River-Phase II Project Budget
Appendix G-4I	Channel Project Budget
Appendix G-4J	Corpus-Phase I Project Budget
Appendix G-4K	Solutia Project Budget
Appendix G-4L	Morgan Energy Center-Amoco Project Budget
Appendix G-4M	Borrower Budget for Non-Project Allocated Costs
Exhibit G-5	Initial Project Scheduled Completion Dates
Exhibit G-6	Base Case Project Projections
Exhibit G-7	Pending Litigation
Exhibit G-8	Hazardous Substances Disclosure
Exhibit G-9	Form of Power Marketing Plan
Exhibit G-10	Form of Fuel Plan
	OTHER
Exhibit H	Banks/Lending Offices
Exhibit I	Annual Insurance Consultant's Certificate
Exhibit J-1	Form of Withholding Certificate (Treaty)
Exhibit J-2	Form of Withholding Certificate (Effectively Connected)
Exhibit K	Insurance Requirements
Exhibit L	Assignment Agreement
Schedule 1	Required Contribution Percentage
Schedule 3.2	Initial Project Funding Specifics
Schedule 3.3.41	Modified Conditions Precedent to Initial Funding
Schedule 4.24	Chief Executive Offices of Portfolio Entities

THIS CREDIT AGREEMENT (this "Agreement") dated as of October 16, 2000, is entered into among CALPINE CONSTRUCTION FINANCE COMPANY II, LLC, a Delaware limited liability company, as Borrower, CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Lead Arranger and Administrative Agent, THE BANK OF NOVA SCOTIA, as Lead Arranger, Co-Syndication Agent and Bookrunner, BANC OF AMERICA SECURITIES LLC, as Arranger and Co-Syndication Agent, ING (U.S.) CAPITAL LLC, as Arranger and Co-Syndication Agent, BAYERISCHE LANDESBANK GIROZENTRALE, as Arranger, Co-Documentation Agent, and LC Bank, CIBC WORLD MARKETS CORP., as Arranger and Co-Documentation Agent, DRESDNER KLEINWORT BENSON NORTH AMERICA SERVICES LLC, as Arranger and Co-Documentation Agent, TD SECURITIES (USA) INC., as Arranger and Co-Documentation Agent, and the financial institutions listed on Exhibit H hereto (the "Banks").

In consideration of the agreements herein and in the other Credit Documents and in reliance upon the representations and warranties set forth herein and therein, the parties agree as follows:

## **ARTICLE 1. DEFINITIONS**

1.1 Definitions. Except as otherwise expressly provided, capitalized terms used in this Agreement and its exhibits shall have the meanings given in Exhibit A.

1.2 Rules of Interpretation. Except as otherwise expressly provided, the rules of interpretation set forth in Exhibit A shall apply to this Agreement and the other Credit Documents.

## **ARTICLE 2. THE CREDIT FACILITIES**

2.1 Loans.

2.1.1 Loan Facility.

(a) Availability. Subject to the terms and conditions set forth in this Agreement, each Bank severally agrees to advance to Borrower from time to time during the Loan Availability Period such loans as Borrower may request under this Section 2.1.1 (individually, a "Construction Loan" and collectively the "Construction Loans"), in an aggregate principal amount which, when added to such Bank's Proportionate Share of the aggregate principal amount of all Turbine Purchase Loans then outstanding, such Bank's Proportionate Share of the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations owed such Bank, does not exceed such Bank's Loan Commitment. Subject to the terms hereof (including without limitation the conditions to drawdowns set forth in Article 3), Borrower may borrow, repay and reborrow the Construction Loans from time to time during the Loan Availability Period.

(b) Notice of Construction Borrowing. Borrower shall request Construction Loans by delivering to Administrative Agent a written notice in the form of

Exhibit C-1, appropriately completed (a "Notice of Construction Borrowing"), which specifies, among other things:

- (i) The principal portion of the requested Borrowing which will bear interest as provided in (1) Section 2.1.1(c)(i) (individually, a "Base Rate Construction Loan") and/or (2) Section 2.1.1(c)(ii) (individually, a "LIBOR Construction Loan");
- (ii) The amount of the requested Borrowing, which (A) shall be in the minimum amount of \$1,000,000 and (B) when added to all other Construction Loans then outstanding shall not exceed the Total Loan Commitment, minus the sum of (x) the aggregate principal amount of all Turbine Purchase Loans then outstanding plus (y) the aggregate Stated Amount of all Letters of Credit then outstanding plus (z) the aggregate amount of all Reimbursement Obligations then outstanding;
- (iii) The date of the requested Borrowing, which shall be a Banking Day;
- (iv) If the requested Borrowing is to consist of LIBOR Construction Loans, the initial Interest Periods selected by Borrower for such Construction Loans; and
- (v) The Project(s) to which such Borrowing relates.

Borrower shall give each Notice of Construction Borrowing relating to Construction Loans to Administrative Agent so as to provide the Minimum Notice Period applicable to Loans of the Type requested. Any Notice of Construction Borrowing may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable.

(c) Construction Loan Interest. Borrower shall pay interest on the unpaid principal amount of each Construction Loan from the date of such Construction Loan until the maturity or prepayment thereof at the following rates per annum:

- (i) With respect to the principal portion of such Construction Loan which is, and during such periods as such Construction Loan is, a Base Rate Construction Loan, at a rate per annum equal to the Base Rate plus the Applicable Margin, such rate to change from time to time as the Base Rate shall change; and
- (ii) With respect to the principal portion of such Construction Loan which is, and during such portion of such periods as such Construction Loan is, a LIBOR Construction Loan, at a rate per annum, at all times during each Interest Period for such LIBOR Construction Loan, equal to the LIBO Rate for such Interest Period plus the Applicable Margin.

(d) Construction Loan Principal Payments. Borrower shall repay to Administrative Agent, for the account of each Bank, in full on the Loan Maturity Date the unpaid principal amount of all Construction Loans made by such Bank.

### 2.1.2 Turbine Purchase Loan Facility.

(a) Availability. Subject to the terms and conditions set forth in this Agreement, each Bank severally agrees to advance to Borrower from time to time during the Loan Availability Period such loans as Borrower may request under this Section 2.1.2 (individually, a "Turbine Purchase Loan" and collectively the "Turbine Purchase Loans"). Subject to the terms hereof (including without limitation the conditions to drawdowns set forth in Article

3), Borrower may borrow, repay and reborrow the Turbine Purchase Loans from time to time during the Loan Availability Period.

(b) Notice of Turbine Purchase Borrowing. Borrower shall request Turbine Purchase Loans by delivering to Administrative Agent a written notice in the form of Exhibit C-2, appropriately completed (a "Notice of Turbine Purchase Borrowing"), which specifies, among other things:

(i) The principal portion of the requested Borrowing which will bear interest as provided in (1) Section 2.1.2(c)(i) (individually, a "Base Rate Turbine Purchase Loan") and/or (2) Section 2.1.2(c)(ii) (individually, a "LIBOR Turbine Purchase Loan");

(ii) The amount of the requested Borrowing, which (A) shall be in the minimum amount of \$1,000,000 and (B) when added to all other Turbine Purchase Loans then outstanding shall not exceed the lesser of (I) Total Turbine Purchase Loan Commitment and (II) an amount equal to the excess, if any, of (x) the amount of the Total Loan Commitment at such time over (y) the aggregate principal amount of all Loans then outstanding plus the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations;

(iii) The date of the requested Borrowing, which shall be a Banking Day;

(iv) If the requested Borrowing is to consist of LIBOR Turbine Purchase Loans, the initial Interest Periods selected by Borrower for such Turbine Purchase Loans; and

(v) The Turbine(s) to which such Borrowing relates.

Borrower shall give each Notice of Turbine Purchase Borrowing relating to Turbine Purchase Loans to Administrative Agent so as to provide the Minimum Notice Period applicable to Loans of the Type requested. Any Notice of Turbine Purchase Borrowing may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable.

(c) Turbine Purchase Loan Interest. Borrower shall pay interest on the unpaid principal amount of each Turbine Purchase Loan from the date of such Turbine Purchase Loan until the maturity or prepayment thereof at the following rates per annum:

(i) With respect to the principal portion of such Turbine Purchase Loan which is, and during such periods as such Turbine Purchase Loan is, a Base Rate

Turbine Purchase Loan, at a rate per annum equal to the rate of interest per annum then applicable to Base Rate Construction Loans pursuant to Section 2.1.1(c)(i); and

(ii) With respect to the principal portion of such Turbine Purchase Loan which is, and during such portion of such periods as such Turbine Purchase is, a LIBOR Turbine Purchase Loan, at a rate per annum, at all times during each Interest Period for such LIBOR Turbine Purchase Loan, equal to the rate of interest per annum then applicable to LIBOR Construction Loans pursuant to Section 2.1.1(c)(ii).

(d) Turbine Purchase Loan Principal Payments. Borrower shall repay to Administrative Agent, for the account of each Bank, in full on the Loan Maturity Date the unpaid principal amount of all Turbine Purchase Loans made by such Bank.

### 2.1.3 Interest Provisions Relating to Loans.

(a) Interest Payment Dates. Borrower shall pay accrued interest on the unpaid principal amount of each Loan (i) in the case of each Base Rate Loan, on the last Banking Day of each calendar quarter, (ii) in the case of each LIBOR Loan, on the last day of each Interest Period related to such LIBOR Loan and, if such Interest Period is longer than three months, every three months after the date of such LIBOR Loan and (iii) in all cases, upon prepayment (to the extent thereof and including any optional prepayments or Mandatory Prepayments), upon conversion from one Type of Loan to another Type, and on the Loan Maturity Date.

(b) LIBOR Loan Interest Periods.

(i) The initial and subsequent Interest Periods for LIBOR Loans shall be a maximum of one month during the six month period immediately following the Closing Date; provided that Administrative Agent may otherwise approve, in its sole discretion, a longer Interest Period which is requested by Borrower and otherwise complies with the following provisions of this Section 2.1.3(b)(i). Thereafter, each subsequent Interest Period (including any Interest Period referenced in the proviso of the first sentence of this Section 2.1.3(b)) selected by Borrower for all LIBOR Loans shall be one, two, three, six or, if made available by Administrative Agent, 12 months or such other period as close to three months as is practicable to enable Borrower to limit the number of LIBOR Loans as required by this Section 2.1.3(b)(i) or to comply with clauses (C), (D) or (F) of the next sentence. Notwithstanding anything to the contrary in either of the two preceding sentences, (A) any Interest Period which would otherwise end on a day which is not a Banking Day shall be extended to the next succeeding Banking Day unless such next Banking Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Banking Day; (B) any Interest Period which begins on the last Banking Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Banking Day of a calendar month; (C) Borrower may not select Interest Periods which would leave a greater principal amount of Loans subject to Interest Periods ending after a date upon which Loans are or may be required to be repaid than principal amount of Loans scheduled to be outstanding after such date; (D) any Interest Period for a Loan which would otherwise end after the Loan Maturity Date shall end on the Loan

Maturity Date; (E) LIBOR Loans for each Interest Period shall be in the amount of at least \$100,000; and (F) Borrower may not at any time have outstanding more than twelve different Interest Periods relating to LIBOR Loans.

(ii) Borrower may contact Administrative Agent at any time prior to the end of an Interest Period, for a quotation of Interest Rates in effect at such time for given Interest Periods and Administrative Agent shall promptly provide such quotation. Borrower may select an Interest Period telephonically within the time periods specified in Section 2.1.6, which selection shall be irrevocable on and after the applicable Minimum Notice Period. Borrower shall confirm such telephonic notice to Administrative Agent by telecopy on the day such notice is given (in substantially the form of Exhibit C-3, a "Confirmation of Interest Period Selection"). Borrower shall promptly deliver to Administrative Agent the original of the Confirmation of Interest Period Selection initially delivered by telecopy. If Borrower fails to notify Administrative Agent of the next Interest Period for any LIBOR Loans in accordance with this Section 2.1.3(b), such Loans shall automatically convert to Base Rate Loans on the last day of the current Interest Period therefor. Administrative Agent shall as soon as practicable (and, in any case, within two Banking Days after delivery of the Confirmation of Interest Period Selection) notify Borrower of each determination of the Interest Rate applicable to each Loan.

(c) Interest Account and Interest Computations. Borrower authorizes Administrative Agent to record in an account or accounts maintained by Administrative Agent on its books (i) the interest rates applicable to all Loans and the effective dates of all changes thereto, (ii) the Interest Period for each LIBOR Loan, (iii) the date and amount of each principal and interest payment on each Loan and (iv) such other information as Administrative Agent may determine is necessary for the computation of interest payable by Borrower hereunder. Borrower agrees that all computations by Administrative Agent of interest shall be conclusive in the absence of manifest error. All computations of interest on Base Rate Loans shall be based upon a year of 365 or 366 days and the actual days elapsed, and shall be adjusted in accordance with any changes in the Base Rate to take effect on the beginning of the day of such change in the Base Rate. All computations of interest on LIBOR Loans shall be based upon a year of 360 days and the actual days elapsed.

2.1.4 Promissory Notes. The obligation of Borrower to repay the Loans made by each Bank and to pay interest thereon at the rates provided herein shall be evidenced by promissory notes in the form of Exhibit B (individually, a "Note"), each payable to the order of such Bank and in the principal amount of such Bank's Loan Commitment. Borrower authorizes each Bank to record on the schedule annexed to such Bank's Note, the date and amount of each Loan made by such Bank, and each payment or prepayment of principal thereunder and agrees that all such notations shall constitute prima facie evidence of the matters noted. Borrower further authorizes each Bank to attach to and make a part of such Bank's Note continuations of the schedule attached thereto as necessary. No failure to make any such notations, nor any errors in making any such notations, shall affect the validity of Borrower's obligations to repay the full unpaid principal amount of the Loans or the duties of Borrower hereunder or thereunder.

### 2.1.5 Loan Funding.

- (a) Notice. Each Notice of Borrowing shall be delivered by Borrower to Administrative Agent in accordance with Section 12.1. Administrative Agent shall promptly notify each Bank of the contents of each Notice of Borrowing.
- (b) Pro Rata Loans. All Loans shall be made on a pro rata basis by the Banks in accordance with their respective Proportionate Shares of such Loans, with each Borrowing to consist of a Loan by each Bank equal to such Bank's Proportionate Share of such Borrowing.
- (c) Bank Funding. Each Bank shall, before 12:00 noon on the date of each Borrowing, make available to Administrative Agent at its office specified in Section 12.1, in same day funds, such Bank's Proportionate Share of such Borrowing. The failure of any Bank to make the Loan to be made by it as part of any Borrowing shall not relieve any other Bank of its obligation hereunder to make its Loan on the date of such Borrowing. No Bank shall be responsible for the failure of any other Bank to make the Loan to be made by such other Bank on the date of any Borrowing.
- (d) Construction Account. No later than 2:00 p.m. on the date specified in each Notice of Borrowing, if the applicable conditions precedent listed in Article 3 have been satisfied and to the extent Administrative Agent shall have received the appropriate funds from the Banks, Administrative Agent will make available the Loans requested in such Notice of Borrowing (or so much thereof as the Banks shall have approved pursuant to this Agreement) in Dollars and in immediately available funds, at Administrative Agent's New York Branch, and shall deposit such Loans into the Construction Account.

2.1.6 Conversion of Loans. Borrower may convert Loans from one Type of Loans to another Type; provided, however, that (i) any conversion of LIBOR Loans into Base Rate Loans shall be made on, and only on, the first day after the last day of an Interest Period for such LIBOR Loans and (ii) Loans shall be converted only in amounts of \$1,000,000 or more. Borrower shall request such a conversion by a written notice to Administrative Agent in the form of Exhibit C-4, appropriately completed (a "Notice of Conversion of Loan Type"), which specifies:

- (a) The Loans, or portion thereof, which are to be converted;
- (b) The Type into which such Loans, or portion thereof, are to be converted;
- (c) If such Loans are to be converted into LIBOR Loans, the initial Interest Period selected by Borrower for such Loans in accordance with Section 2.1.3(b); and
- (d) The date of the requested conversion, which shall be a Banking Day.

Borrower shall so deliver each Notice of Conversion of Loan Type so as to provide at least the applicable Minimum Notice Period. Any Notice of Conversion of Loan Type may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall

thereafter be irrevocable. Each Notice of Conversion of Loan Type shall be delivered by first-class mail or telecopy to Administrative Agent at the office or to the telecopy number and during the hours specified in Section 12.1; provided, however, that Borrower shall promptly deliver to Administrative Agent the original of any Notice of Conversion of Loan Type initially delivered by telecopy. Administrative Agent shall promptly notify each Bank of the contents of each Notice of Conversion of Loan Type.

#### 2.1.7 Prepayments.

(a) Terms of All Prepayments. Upon the prepayment of any Loan (whether such prepayment is an optional prepayment under Section 2.1.7(b) or a Mandatory Prepayment), Borrower shall pay to Administrative Agent for the account of the Bank which made such Loan, as applicable, (i) all accrued interest to the date of such prepayment on the amount prepaid, (ii) all accrued fees to the date of such prepayment of the amount being prepaid, and (iii) if such prepayment is the prepayment of a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, all Liquidation Costs incurred by such Bank as a result of such prepayment. Notwithstanding the foregoing, Borrower shall have the right, by giving five Banking Days' notice to Administrative Agent, in lieu of prepaying a LIBOR Loan on a day other than the last day of an Interest Period for such LIBOR Loan, to deposit or cause Administrative Agent to deposit, into an account to be held by Depositary Agent (which account shall be subjected to the Lien of the Collateral Documents in a manner satisfactory to Administrative Agent) an amount equal to the LIBOR Loans to be prepaid. Such funds shall be held in such account until the expiration of the Interest Period applicable to the LIBOR Loan to be prepaid at which time the amount deposited in such account shall be used to prepay such LIBOR Loan and any interest accrued on such amount shall be deposited in the Revenue Account. The deposit of amounts into such account shall not constitute a prepayment of Loans and all Loans to be prepaid using the proceeds from such account shall continue to accrue interest at the then applicable interest rate for such Loans until actually prepaid. All amounts in such account shall only be invested in Permitted Investments as directed by and at the expense and risk of Borrower. Borrower may reborrow the principal amount of any Loan which is prepaid.

(b) Optional Prepayments. Subject to Section 2.1.7(a), Borrower may, at its option and without penalty, upon five Banking Days' notice to Administrative Agent, prepay any Loans in whole or in part in minimum amounts of \$5,000,000 or an incremental multiple of \$1,000,000 in excess thereof.

(c) Mandatory Prepayments. Borrower shall prepay (or cause to be prepaid) Loans to the extent required by Section 3.13, 6.4, 7.2.1(9), 7.2.4, 7.5, 7.6, or 7.7 of this Agreement, or any other provision of this Agreement which requires prepayment of Loans (such prepayment, "Mandatory Prepayment").

#### 2.2 Letter of Credit Facilities.

2.2.1 Issuance of the Letters of Credit. Subject to the terms and conditions set forth in this Agreement, LC Bank shall, during the Loan Availability Period, on each Banking Day specified in a Notice of LC Activity described in Section 2.2.3, issue, extend or increase the

Stated Amount (as applicable), for the account of Borrower, of the Letter(s) of Credit to which such Notice of LC Activity relates, and deliver each such Letter of Credit (or a notice of extension or increase in the Stated Amount thereof) to the applicable LC Beneficiary. Subject to Section 2.2.6(b), LC Bank shall not modify the conditions for draws or terms of availability for any Letter of Credit issued and outstanding hereunder without Borrower's consent.

2.2.2 Availability. LC Bank shall, subject to the terms and conditions of the Agreement, at the request and for the account of Borrower, make Letter(s) of Credit available to Borrower and/or the Project Owners solely to enable the Project Owners to provide security for their obligations under Project Documents. No Letter of Credit shall be issued, renewed, replaced or extended by LC Bank until such time (or a reasonable period before such time) as required under the Project Document pursuant to which such Letter of Credit is being issued. The expiration date of each Letter of Credit shall be on or prior to the scheduled Loan Maturity Date.

2.2.3 Notice of LC Activity. Borrower shall request the issuance, extension or increase in the Stated Amount of any Letter of Credit by delivering to Administrative Agent and LC Bank an irrevocable written notice in the form of Exhibit C-5, appropriately completed (a "Notice of LC Activity"), which specifies, among other things:

(a) The particulars of the Letter of Credit to be issued or the specific Letter of Credit to be extended or the Stated Amount of which is to be increased;

(b) The Project to which such Letter of Credit relates;

(c) The issue date and expiration date of the Letter of Credit to be issued or extended (neither of which shall in any event be later than the scheduled Loan Maturity Date);

(d) The Stated Amount of such Letter of Credit which, together with the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations, shall not exceed the lesser of (i) Total Letter of Credit Commitment and (ii) an amount equal to the excess, if any, of (A) the amount of the Total Loan Commitment at such time over (B) the aggregate principal amount of all Loans then outstanding plus the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations; and

(e) The Available Construction Funds which, after taking into effect the issuance of such Letter of Credit, will be equal to or exceed the remaining Project Costs for the Initial Projects and the Funded Subsequent Projects.

Borrower shall give the Notice of LC Activity to Administrative Agent and LC Bank at least five Banking Days before the requested date of issuance of any Letter of Credit, and at least five Banking Days before the requested date of extension, or increase in the Stated Amount, thereof. Any Notice of LC Activity, once given by Borrower, may not be modified or revoked without the prior consent of the LC Bank.

2.2.4 Reimbursement. LC Bank shall notify Borrower of any Drawing Payment under any Letter of Credit within one Banking Day after the date that such Drawing Payment is made (the date such Drawing Payment is made, the "Drawing Date"); provided, however, that

LC Bank's failure to provide such notification shall not relieve Borrower of its Reimbursement Obligation (it being understood, however, that LC Bank shall not be excused from any liability it may have to Borrower as a result of such failure to provide the required notice). No later than 11:00 a.m. on the fifth Banking Day after the Drawing Date, Borrower shall make or cause to be made to LC Bank a Reimbursement Payment in an amount equal to the sum of (a) the full amount of such Drawing Payment and (b) interest thereon for each day or portion thereof until such Reimbursement Payment is made at a rate equal to (i) from the Drawing Date through the fifth Banking Day following the Drawing Date, the LIBO Rate plus the Applicable Margin then applicable to LIBOR Loans and (ii) thereafter, the Default Rate; provided, however, that such Reimbursement Payment shall be for the benefit of each Bank (in proportion to its Proportionate Share of the Total Letter of Credit Commitment) to the extent that, prior to the time such Reimbursement Payment is made, such Bank has, pursuant to Section 2.2.7, paid LC Bank its respective Proportionate Share of the Drawing Payment made by LC Bank. If a Reimbursement Payment is made in the full amount of such Drawing Payment by 3:00 p.m. on the applicable Drawing Date, no interest shall be payable on such Drawing Payment.

2.2.5 Reimbursement Obligation Absolute. The Reimbursement Obligation of Borrower for each Drawing Payment shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under and without regard to any circumstances, including, (a) any lack of validity or enforceability of any of the Operative Documents, (b) any amendment or waiver of or any consent to departure from all or any terms of any of the Operative Documents, (c) the existence of any claim, setoff, defense or other right which Borrower may have at any time against any LC Beneficiary or any transferee of any Letter of Credit (or any Persons for whom any such LC Beneficiary or transferee may be acting), LC Bank, Administrative Agent, any Bank or any other Person, whether in connection with this Agreement, the transactions contemplated herein or in the other Operative Documents, or in any unrelated transaction, (d) any breach of contract or dispute among or between Borrower, LC Bank, Administrative Agent, any Bank, or any other Person, (e) any demand, statement, certificate, draft or other document presented under any Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, (f) payment by LC Bank under any Letter of Credit against presentation of any demand, statement, certificate, draft or other document which does not comply with the terms of such Letter of Credit, (g) any non-application or misapplication by an LC Beneficiary of the proceeds of any Drawing Payment under a Letter of Credit or any other act or omission of an LC Beneficiary in connection with a Letter of Credit, (h) any extension of time for or delay, renewal or compromise of or other indulgence or modification to the Drawing Payment granted or agreed to by LC Bank, Administrative Agent or any Bank, with or without notice to or approval by Borrower, (i) any failure to preserve or protect any Collateral, any failure to perfect or preserve the perfection of any Lien thereon, or the release of any of the Collateral securing the performance or observance of the terms of this Agreement or any of the other Operative Documents, or (j) any other circumstances or happenings whatsoever relating to Borrower, such Reimbursement Obligation or any Project, whether or not similar to any of the foregoing, including the failure of Borrower to occupy or use any Project in the manner contemplated by the Operative Documents or otherwise, any defect in title, design, operation, merchantability, fitness or condition of any Project or in the suitability of any Project for Borrower's purposes or needs, any failure of consideration, destruction of or damage to any Project, any commercial frustration of purpose, the taking by condemnation of title to or the use

of all or any part of any Project, any Regulatory Change, any failure of an LC Beneficiary or any other Person to perform or observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or in connection with the Operative Documents to which each is a party; provided, however, that nothing in this Section 2.2.5 shall relieve LC Bank, Administrative Agent or any Bank from liability for its gross negligence or willful misconduct or breach of this Agreement.

#### 2.2.6 Reduction and Reinstatement of Stated Amount.

(a) The Stated Amount of each Letter of Credit shall be reduced by the amount of Drawing Payments made in respect thereof. Notwithstanding anything to the contrary contained in this Section 2.2, once so reduced, the Stated Amount of any Letter of Credit shall not be reinstated except (i) upon the prior written consent of Administrative Agent, LC Bank and the Required Banks or (ii) upon payment by Borrower of the Reimbursement Obligation corresponding to such Drawing Payment and satisfaction of the conditions for an increase in the Stated Amount of a Letter of Credit set forth in Section 2.2.3 and Article 3.

(b) Upon the occurrence and during the continuation of an Event of Default under Section 8.1.4 or at such time as, pursuant to the terms hereof, Administrative Agent and the Banks have accelerated the Obligations, Administrative Agent (acting at the direction of the LC Bank or the Required Banks) shall be entitled to cancel all outstanding Letters of Credit any time at least 15 days after delivery to the LC Beneficiary of each Letter of Credit that will be canceled a written notice of such intent to cancel, whereupon the LC Beneficiary shall be entitled to draw upon the applicable Letter of Credit in accordance with its terms.

2.2.7 Bank Participation. Each Bank severally agrees to participate with LC Bank in the extension of credit arising from the issuance of the Letters of Credit in an amount equal to such Bank's Proportionate Share of the Stated Amount of each Letter of Credit, and the issuance of a Letter of Credit shall be deemed a confirmation to LC Bank of such participation in such amount. After written notification by LC Bank to Administrative Agent at any time after LC Bank has received notice of or request for any Drawing Payment, Administrative Agent may request the Banks to pay to Administrative Agent on behalf of LC Bank their respective Proportionate Shares of all or any portion of such Drawing Payment made or to be made by LC Bank under any Letter of Credit by contacting each Bank telephonically (promptly confirmed in writing), and specifying the amount of such Drawing Payment (as set forth in LC Bank's written notification of Administrative Agent of the same), such Bank's Proportionate Share thereof, and the date on which such Drawing Payment is to be made or was made (as set forth in LC Bank's written notification of Administrative Agent of the same); provided, however, that Administrative Agent shall not request the Banks to make any payment under this Section 2.2.7 in connection with any portion of a Drawing Payment for which LC Bank has been reimbursed through a Reimbursement Payment by Borrower (unless such Reimbursement Payment has been thereafter recovered by Borrower). Upon receipt of any such request for payment from Administrative Agent, each Bank shall pay to Administrative Agent such Bank's Proportionate Share of the unreimbursed portion of such Drawing Payment, together with interest thereon at a per annum rate equal to the Federal Funds Rate, as in effect from time to time, from the date of such Drawing Payment to the date on which such Bank makes payment, and Administrative

Agent shall promptly thereafter pay to LC Bank all amounts so received. Each Bank's obligation to make each such payment to Administrative Agent shall be absolute, unconditional and irrevocable and shall not be affected by any circumstance whatsoever, including the occurrence or continuance of any Inchoate Default or Event of Default, or the failure of any other Bank to make any payment under this Section 2.2.7, and each Bank further agrees that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. If any Reimbursement Payment is made to Administrative Agent or LC Bank, Administrative Agent or LC Bank, as applicable, shall pay to each Bank which has paid its Proportionate Share of the Drawing Payment such Bank's Proportionate Share of the Reimbursement Payment and shall, in the case of Administrative Agent, pay to LC Bank and, in the case of LC Bank, retain, the balance of such Reimbursement Payment.

2.2.8 Commercial Practices. Borrower assumes all risks of the acts or omissions of any LC Beneficiary or transferee of any Letter of Credit with respect to the use of such Letter of Credit. Borrower agrees that neither LC Bank, Administrative Agent nor any Bank (nor any of their respective directors, officers or employees) shall be liable or responsible for: (a) the use which may be made of any Letter of Credit or for any acts or omissions of any LC Beneficiary or transferee in connection therewith; (b) any reference which may be made to this Agreement or to any Letter of Credit in any agreements, instruments or other documents; (c) the validity, sufficiency or genuineness of documents other than the Letters of Credit, or of any endorsement(s) thereon, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged or any statement therein prove to be untrue or inaccurate in any respect whatsoever; (d) payment by LC Bank against presentation of documents which do not strictly comply with the terms of the applicable Letter of Credit, including failure of any documents to bear any reference or adequate reference to such Letter of Credit; or (e) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except only that LC Bank shall be liable to Borrower for acts or events described in clauses (a) through (e) above, to the extent, but only to the extent, of any direct damages, as opposed to indirect, special or consequential damages, suffered by Borrower which Borrower proves were caused by (i) LC Bank's willful misconduct or gross negligence in determining whether a drawing made under the applicable Letter of Credit complies with the terms and conditions therefor stated in such Letter of Credit or (ii) LC Bank's willful failure to pay under any Letter of Credit after a drawing by the respective LC Beneficiary strictly complying with the terms and conditions of the applicable Letter of Credit. Without limiting the foregoing, LC Bank may accept any document that appears on its face to be in order, without responsibility for further investigation. Borrower hereby waives any right to object to any payment made under a Letter of Credit with regard to a drawing that is in the form provided in such Letter of Credit but which varies with respect to punctuation (except punctuation with respect to any Dollar amount specified therein), capitalization, spelling or similar matters of form.

2.2.9 Term of Letters of Credit. Unless terminated earlier in accordance with its terms, or extended pursuant to Section 2.2.3, each Letter of Credit shall terminate on the earlier to occur of (a) 12:01 a.m., on the Expiration Date stated therein (which shall be no later than the earlier of the Loan Maturity Date and 15 days following the scheduled expiration of the letter of credit obligations under the Project Document in connection with which such Letter of Credit is to be issued) and (b) cancellation of such Letter of Credit pursuant to Section 2.2.6(b).

## 2.3 Total Commitments.

2.3.1 Loan Commitment. The aggregate principal amount of all Loans outstanding at any time or times shall not exceed \$2,500,000,000 or, if such amount is reduced by Borrower pursuant to Section 2.3.4, such lower amount (such amount, so reduced from time to time, the "Total Loan Commitment"), minus the sum of (i) the aggregate Stated Amount of all Letters of Credit then outstanding plus (ii) the aggregate amount of all Reimbursement Obligations then outstanding.

2.3.2 Turbine Purchase Loan Commitment. The aggregate principal amount of all Turbine Purchase Loans outstanding at any time or times shall not exceed \$500,000,000 or, if such amount is reduced by Borrower pursuant to Section 2.3.4, such lower amount (such amount, as so reduced from time to time, the "Total Turbine Purchase Loan Commitment").

2.3.3 Letter of Credit Commitment. The aggregate Stated Amount of all Letters of Credit from time to time outstanding and all outstanding Reimbursement Obligations thereunder shall not exceed \$200,000,000, or, if such amount is reduced by Borrower pursuant to Section 2.3.4, such lower amount (such amount, as so reduced from time to time, the "Total Letter of Credit Commitment").

2.3.4 Reductions and Cancellations. Borrower may, from time to time upon five Banking Days written notice to Administrative Agent, permanently reduce, by an amount of \$10,000,000 or an integral multiple of \$1,000,000 in excess thereof or cancel in its entirety the Total Loan Commitment, the Total Turbine Purchase Loan Commitment and/or the Total Letter of Credit Commitment. Notwithstanding the foregoing, Borrower may not reduce or cancel the Total Loan Commitment, the Total Turbine Purchase Loan Commitment and/or the Total Letter of Credit Commitment if, after giving effect to such reduction or cancellation, (a) the sum of the aggregate principal amount of all Loans then outstanding and the Aggregate LC Stated Amount together with all outstanding Reimbursement Obligations would exceed the Total Loan Commitment, (b) the Available Construction Funds would not, in the reasonable judgment of the Technical Committee and the Independent Engineer, be equal to or exceed remaining Project Costs for all Initial Projects and Funded Subsequent Projects, or (c) such reduction or cancellation would cause a violation of any other provision of this Agreement, the other Credit Documents, any Project Documents, any Turbine Purchase Contracts or have a Material Adverse Effect on Borrower, any Project Owner, any Initial Project or any Funded Subsequent Project. Borrower shall pay to Administrative Agent any Commitment Fees then due upon any cancellation and, from the effective date of any reduction, the Commitment Fees shall be computed on the basis of the Available Loan Commitment, as so reduced. Once reduced or canceled, none of the Total Loan Commitment may be increased or reinstated. Any reductions in the Total Loan Commitment, the Total Turbine Purchase Loan Commitment or the Total Letter of Credit Commitment pursuant to this Section 2.3.4 shall be applied ratably to each Bank's respective Commitments in accordance with Section 2.7.1.

2.3.5 Turbine Purchase Loan Conversion to Construction Loans. In the event a Project satisfies the conditions precedent to initial funding pursuant to Section 3.2 or 3.3, as the case may be, and prior to such initial funding the Turbines assigned to such Project (as set forth in Exhibit G-3), if any, were Funded Turbines, the Turbine Purchase Loans associated with such

Funded Turbines shall be automatically converted for all purposes hereof into Construction Loans and shall cease to be considered outstanding Turbine Purchase Loans, including for purposes of Section 2.3.2, in each case as of the Funding Date with respect to such Project.

#### 2.4 Fees.

2.4.1 Fee Letter. Borrower shall pay to the Lead Arrangers, Arrangers and Administrative Agent solely for the Lead Arrangers', Arrangers' and Administrative Agent's respective accounts the fees described in that certain letter from Borrower to the Lead Arrangers, Arrangers and Administrative Agent dated the Closing Date.

2.4.2 Loan Commitment Fees. On the last Banking Day in each calendar quarter (where all or any portion of such calendar quarter occurs on or after the Closing Date and prior to the Loan Maturity Date) and on the Loan Maturity Date (or, if the Total Loan Commitment is canceled prior to such date, on the date of such cancellation), Borrower shall pay to Administrative Agent, for the benefit of the Banks, accruing from the Closing Date or the first day of such quarter, as the case may be, a commitment fee (the "Commitment Fee") for such quarter (or portion thereof) then ending equal to the product of (a) 0.50% times (b) the daily average Available Loan Commitment for such quarter (or portion thereof) times (c) a fraction, the numerator of which is the number of days in such quarter (or portion thereof) and the denominator of which is the number of days in that calendar year (365 or 366, as the case may be).

2.4.3 Activation Fees. Concurrently with the first Borrowing in respect of each Subsequent Project or Substituted Initial Project that becomes a Funded Project, Borrower shall pay to Administrative Agent, for the benefit of the Banks, an activation fee (the "Activation Fee") equal to the product of (a) 0.25% times (b) the total amount of Project Costs in respect of such Project less any Contributions by Calpine previously applied to pay Project Costs for such Project as reflected in such Project's Project Budget.

#### 2.5 Letter of Credit Fees.

2.5.1 On the last Banking Day in each calendar quarter commencing on or after the Closing Date and through the Loan Maturity Date, on the Expiration Date of each Letter of Credit and on the Loan Maturity Date, Borrower shall pay to Administrative Agent for the benefit of the Banks, accruing from the date of issuance of such Letter of Credit, a Letter of Credit fee (the "Letter of Credit Fee") for such quarter (or portion thereof in the case of payment on the Expiration Date of a Letter of Credit or on the Loan Maturity Date) then ending at the rates per annum described below and computed in the following manner: The Letter of Credit Fee in respect of each Letter of Credit shall be equal to the product of (a) the Applicable Margin with respect to LIBOR Loans applicable at such time, times (b) the daily average Stated Amount of each such Letter of Credit for such quarter (or portion thereof in the case of payment on the Expiration Date of a Letter of Credit or on the Loan Maturity Date) times (c) a fraction, the numerator of which is the number of days in such quarter (or portion thereof in the case of payment on the Expiration Date of a Letter of Credit or on the Loan Maturity Date) and the denominator of which is 360.

2.5.2 Borrower shall pay to LC Bank solely for LC Bank's account the issuing and paying fee and LC Bank's usual and customary charges (or such charges as LC Bank and Borrower may agree) for the opening of any Letter of Credit, for the negotiation of any drafts paid pursuant to any Letter of Credit and for any wire transfers, all as described in that certain letter from Borrower to LC Bank dated the Closing Date.

## 2.6 Other Payment Terms.

2.6.1 Place and Manner. Borrower shall make all payments due to each Bank or Administrative Agent hereunder to Administrative Agent, for the account of such Bank, to The Bank of New York, Federal Reserve Bank of New York ABA#021000018, for further credit to account #8900410825 CSFB Project Finance Fund Clearing Account; Reference: Calpine Construction Finance Company II, in lawful money of the United States and in immediately available funds not later than 12:00 noon on the date on which such payment is due. Any payment made after such time on any day shall be deemed received on the Banking Day after such payment is received. Administrative Agent shall disburse to each Bank each such payment received by Administrative Agent for such Bank, such disbursement to occur on the day such payment is received if received by 12:00 noon or if otherwise reasonably possible, otherwise on the next Banking Day.

2.6.2 Date. Whenever any payment due hereunder shall fall due on a day other than a Banking Day, such payment shall be made on the next succeeding Banking Day (except in the case of any payment relating to a LIBOR Loan where such next succeeding Banking Day is in the next calendar month, in which case such payment shall be made on the next preceding Banking Day), and such extension of time shall be included in the computation of interest or fees, as the case may be.

2.6.3 Late Payments. If any amounts required to be paid by Borrower under this Agreement or the other Credit Documents (including principal or interest payable on any Loan, and any fees or other amounts otherwise payable to Administrative Agent or any Bank) remain unpaid after such amounts are due, Borrower shall pay interest on the aggregate, unpaid balance of such amounts from the date due until those amounts are paid in full at a per annum rate equal to the Default Rate.

## 2.6.4 Net of Taxes, Etc.

(a) Taxes. Subject to each Bank's compliance with Section 2.6.7, any and all payments to or for the benefit of Administrative Agent or any Bank by Borrower hereunder or under any other Credit Document shall be made free and clear of and without deduction, setoff or counterclaim of any kind whatsoever and in such amounts as may be necessary in order that all such payments, after deduction for or on account of any present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto (excluding income and franchise taxes, which include taxes imposed on or measured by the net income or capital of Administrative Agent or such Bank by any jurisdiction or any political subdivision or taxing authority thereof or therein solely as a result of a connection between such Bank and such jurisdiction or political subdivision, other than a connection resulting solely from executing, delivering or performing its obligations or receiving a payment under, or enforcing, this

Agreement or any Note) (all such non-excluded taxes, levies, imposts, deductions, charges, withholdings and liabilities being hereinafter referred to as "Taxes"), shall be equal to the amounts otherwise specified to be paid under this Agreement and the other Credit Documents. If Borrower shall be required by law to withhold or deduct any Taxes from or in respect of any sum payable hereunder or under any other Credit Document to Administrative Agent or any Bank, (i) the sum payable shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section 2.6.4, Administrative Agent or such Bank receives an amount equal to the sum it would have received had no such deductions been made, (ii) Borrower shall make such deductions and (iii) Borrower shall pay the full amount deducted to the relevant taxation authority or other authority in accordance with applicable law. If Borrower shall make any payment under this Section 2.6.4 to or for the benefit of Administrative Agent or any Bank with respect to Taxes and if Administrative Agent or such Bank shall claim any credit or deduction for such Taxes against any other taxes payable by Administrative Agent or such Bank to any taxing jurisdiction then Administrative Agent or such Bank shall pay to Borrower an amount equal to the amount by which such other taxes are actually reduced; provided that the aggregate amount payable by Administrative Agent or such Bank pursuant to this sentence shall not exceed the aggregate amount previously paid by Borrower with respect to such Taxes. In addition, Borrower agrees to pay any present or future stamp, recording or documentary taxes and any other excise or property taxes, charges or similar levies (not including income or franchise taxes) that arise under the laws of the United States of America, the State of New York or any other state or jurisdiction where a Project is located from any payment made hereunder or under any other Credit Document or from the execution or delivery or otherwise with respect to this Agreement or any other Credit Document (hereinafter referred to as "Other Taxes").

(b) Indemnity. Borrower shall indemnify each Bank for the full amount of Taxes and Other Taxes (including any Taxes or Other Taxes imposed by any jurisdiction on amounts payable under this Section 2.6.4 paid by any Bank, or any liability (including penalties, interest and expenses) arising therefrom or with respect thereto, whether or not such Taxes or Other Taxes were correctly or legally asserted; provided that Borrower shall not be obligated to indemnify any Bank for any penalties, interest or expenses relating to Taxes or Other Taxes arising from the indemnitee's gross negligence or willful misconduct. Each Bank agrees to give written notice to Borrower of the assertion of any claim against such Bank relating to such Taxes or Other Taxes as promptly as is practicable after being notified of such assertion, and in no event later than 180 days after the principal officer of such Bank responsible for administering this Agreement obtains knowledge thereof; provided that any Bank's failure to notify Borrower of such assertion within such 180 days period shall not relieve Borrower of its obligation under this Section 2.6.4 with respect to Taxes or Other Taxes arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.6.4 with respect to Taxes or Other Taxes between the end of such period and such time as Borrower receives notice from such Bank as provided herein. Payments by Borrower pursuant to this indemnification shall be made within 30 days from the date such Bank makes written demand therefor (submitted through Administrative Agent), which demand shall be accompanied by a certificate describing in reasonable detail the basis thereof. Each Bank agrees to repay to Borrower any refund (including that portion of any interest that was included as part of such refund with respect to Taxes or Other Taxes paid by Borrower pursuant to this Section 2.6.4) received by such Bank for Taxes or Other Taxes that were paid by Borrower pursuant to this Section 2.6.4 and to contest, with the

approval and participation of and at the expense of Borrower, any such Taxes or Other Taxes which such Bank or Borrower reasonably believes not to have been properly assessed.

(c) Notice. Within 30 days after the date of any payment of Taxes by Borrower, Borrower shall furnish to Administrative Agent, at its address referred to in Section 12.1, the original or a certified copy of a receipt evidencing payment thereof. Borrower shall compensate each Bank for all reasonable losses and expenses sustained by such Bank as a result of any failure by Borrower to so furnish such copy of such receipt.

(d) Survival of Obligations. The obligations of Borrower under this Section 2.6.4 shall survive the termination of this Agreement and the repayment of the Obligations.

2.6.5 Application of Payments. Payments made under this Agreement or the other Credit Documents and other amounts received by Administrative Agent and the Banks under this Agreement or the other Credit Documents shall first be applied to any fees, costs, charges or expenses payable to Administrative Agent or the other Banks hereunder or under the other Credit Documents, next to any accrued but unpaid interest then due and owing, and then to outstanding principal then due and owing or otherwise to be prepaid; provided, with respect to payments applied to accrued but unpaid interest then due and owing or outstanding principal then due and owing or otherwise to be prepaid, such payments shall be applied to such debt associated with or attributable to Projects in the order of the respective dates of Operation of such Projects or, if all Loans associated with or attributable to Projects which have achieved Operation have been paid, then, at Borrower's election, pro rata as to all such debt, to such debt associated with or attributable to Turbines or to such debt associated with or attributable to Projects (in the case of payments of such debt associated with or attributable to Projects, such payment shall be applied in order of the respective anticipated dates of Commercial Operation of such Projects, as set forth in such Projects' Project Schedules).

2.6.6 Failure to Pay Administrative Agent. Unless Administrative Agent shall have received notice from Borrower at least two Banking Days prior to the date on which any payment is due to the Banks hereunder that Borrower will not make such payment in full, Administrative Agent may assume that Borrower has made such payment in full to Administrative Agent on such date and Administrative Agent may, in reliance upon such assumption, cause to be distributed to each Bank on such due date an amount equal to the amount then due such Bank. If and to the extent Borrower shall not have so made such payment in full to Administrative Agent, such Bank shall repay to Administrative Agent forthwith upon demand such amount distributed to such Bank, together with interest thereon, for each day from the date such amount is distributed to such Bank until the date such Bank repays such amount to Administrative Agent, at the Federal Funds Rate for the first five days after such date, and subsequent thereto at the Base Rate. A certificate of Administrative Agent submitted to any Bank with respect to any amounts owing by such Bank under this Section 2.6.6 shall be conclusive in the absence of manifest error.

2.6.7 Withholding Exemption Certificates. Administrative Agent on the Closing Date and each Bank upon becoming a Bank hereunder including any entity to which any Bank grants a participation, or otherwise transfers its interest in this Agreement, agree that they

will deliver to Borrower and Administrative Agent (and Administrative Agent agrees that it will deliver to Borrower) either (a) a statement that it is formed under the laws of the United States of America or a state thereof or (b) if it is not so formed, a letter in the form of Exhibit J-1 or Exhibit J-2, as appropriate, or other documentation reasonably acceptable to Borrower and Administrative Agent and two duly completed copies of United States Internal Revenue Service Form 1001 or 4224 or successor applicable form, as the case may be, certifying in each case that such Bank is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes. Each Bank which delivers to Borrower and Administrative Agent a Form 1001 or 4224 pursuant to the preceding sentence further undertakes to deliver to Borrower and Administrative Agent further copies of the said letter and Form 1001 or 4224, or successor applicable forms, or other manner of certification or procedure, as the case may be, on or before the date that any such letter or form expires or becomes obsolete or within a reasonable time after gaining knowledge of the occurrence of any event requiring a change in the most recent letter and forms previously delivered by it to Borrower, and such extensions or renewals thereof as may reasonably be requested by Borrower, certifying in the case of a Form 1001 or 4224 that such Bank is entitled to receive payments under this Agreement without deduction or withholding of any United States federal income taxes, unless in any such cases an event (including any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required which renders all such forms inapplicable or which would prevent a Bank from duly completing and delivering any such letter or form with respect to it and such Bank advises Borrower that it is not capable of receiving payments without any deduction or withholding of United States federal income tax, and in the case of Form W-8 or W-9, establishing an exemption from United States backup withholding tax. Borrower shall not be obligated, however, to pay any additional amounts in respect of United States Federal income tax pursuant to Section 2.6.4 (or make an indemnification payment pursuant to Section 2.6.4) to any Bank (including any entity to which any Bank sells, assigns, grants a participation in, or otherwise transfers its rights under this Agreement) if the obligation to pay such additional amounts (or such indemnification) would not have arisen but for a failure of such Bank to comply with its obligations under this Section 2.6.7.

## 2.7 Pro Rata Treatment.

2.7.1 Borrowings, Commitment Reductions, Etc. Except as otherwise provided herein, (a) each Borrowing and each reduction of the Total Loan Commitment, the Total Turbine Purchase Loan Commitment or the Total Letter of Credit Commitment shall be made or allocated among the Banks pro rata according to their respective Proportionate Shares of such Loans or Commitments, as the case may be, (b) each payment of principal of and interest on Loans shall be made or shared among the Banks holding such Loans pro rata according to the respective unpaid principal amounts of such Loans held by such Banks and (c) each payment of Commitment Fees and Letter of Credit Fees shall be shared among the Banks pro rata according to (i) their respective Proportionate Shares of the Commitments to which such fees apply and (ii) in the case of each Bank which becomes a Bank hereunder after the date hereof, the date upon which such Bank so became a Bank.

2.7.2 Sharing of Payments, Etc. If any Bank shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) on account of Loans owed to it, in excess of its ratable share of payments on account of such Loans obtained

by all Banks entitled to such payments, such Bank shall forthwith purchase from the other Banks such participation in the Loans, as the case may be, as shall be necessary to cause such purchasing Bank to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Bank, such purchase from such Bank shall be rescinded and each other Bank shall repay to the purchasing Bank the purchase price to the extent of such recovery together with an amount equal to such other Bank's ratable share (according to the proportion of (a) the amount of such other Bank's required repayment to (b) the total amount so recovered from the purchasing Bank) of any interest or other amount paid or payable by the purchasing Bank in respect of the total amount so recovered. Borrower agrees that any Bank so purchasing a participation from another Bank pursuant to this Section 2.7.2 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of setoff) with respect to such participation as fully as if such Bank were the direct creditor of Borrower in the amount of such participation.

## 2.8 Change of Circumstances.

2.8.1 Inability to Determine Rates. If, on or before the first day of any Interest Period for any LIBOR Loans, (a) Administrative Agent determines that the LIBO Rate for such Interest Period cannot be adequately and reasonably determined due to the unavailability of funds in or other circumstances affecting the London interbank market, or (b) Banks holding aggregate Proportionate Shares of 33-1/3% or more of the Total Loan Commitment shall advise Administrative Agent that (i) the rates of interest for such LIBOR Loans do not adequately and fairly reflect the cost to such Banks of making or maintaining such Loans or (ii) deposits in Dollars in the London interbank market are not available to such Banks (as conclusively certified by each such Bank in good faith in writing to Administrative Agent and to Borrower) in the ordinary course of business in sufficient amounts to make and/or maintain their LIBOR Loans, Administrative Agent shall immediately give notice of such condition to Borrower. After the giving of any such notice and until Administrative Agent shall otherwise notify Borrower that the circumstances giving rise to such condition no longer exist, Borrower's right to request the making of or conversion to, and the Banks' obligations to make or convert to LIBOR Loans shall be suspended. Any LIBOR Loans outstanding at the commencement of any such suspension shall be converted at the end of the then current Interest Period for such Loans into Base Rate Loans unless such suspension has then ended.

2.8.2 Illegality. If, after the date of this Agreement, the adoption of any Governmental Rule, any change in any Governmental Rule or the application or requirements thereof (whether such change occurs in accordance with the terms of such Governmental Rule as enacted, as a result of amendment, or otherwise), any change in the interpretation or administration of any Governmental Rule by any Governmental Authority, or compliance by any Bank or Borrower with any request or directive (whether or not having the force of law) of any Governmental Authority (a "Change of Law") shall make it unlawful or impossible for any Bank to make or maintain any LIBOR Loan, such Bank shall immediately notify Administrative Agent and Borrower of such Change of Law. Upon receipt of such notice, (a) Borrower's right to request the making of or conversion to, and the Bank's obligations to make or convert to, LIBOR Loans shall be suspended for so long as such condition shall exist, and (b) Borrower shall, at the request of such Bank, either (i) pursuant to Section 2.1.6, convert any then outstanding LIBOR Loans into Base Rate Loans at the end of the current Interest Periods for such Loans, or

(ii) immediately repay pursuant to Section 2.1.7 or convert LIBOR Loans of the affected Type into Base Rate Loans if such Bank shall notify Borrower that such Bank may not lawfully continue to fund and maintain such Loans. Any conversion or prepayment of LIBOR Loans made pursuant to the preceding sentence prior to the last day of an Interest Period for such Loans shall be deemed a prepayment thereof for purposes of Section 2.9.

2.8.3 Increased Costs. If, after the date of this Agreement, any Change of Law:

(a) Shall subject any Bank to any tax, duty or other charge with respect to any LIBOR Loan or Commitment, or shall change the basis of taxation of payments by Borrower to any Bank on such a Loan or with respect to any Commitment (except for Taxes, Other Taxes or changes in the rate of taxation on the overall net income of any Bank); or

(b) Shall impose, modify or hold applicable any reserve, special deposit or similar requirement (without duplication of any reserve requirement included within the applicable Interest Rate through the definition of "Reserve Requirement") against assets held by, deposits or other liabilities in or for the account of, advances or loans by, or any other acquisition of funds by any Bank for any LIBOR Loan; or

(c) Shall impose on any Bank any other condition directly related to any LIBOR Loan or Commitment;

and the effect of any of the foregoing is to increase the cost to such Bank of making, issuing, creating, renewing, participating in (subject to the limitations in Section 10.13) or maintaining any such LIBOR Loan or Commitment or to reduce any amount receivable by such Bank hereunder; then Borrower shall from time to time, upon demand by such Bank, pay to such Bank additional amounts sufficient to reimburse such Bank for such increased costs or to compensate such Bank for such reduced amounts. A certificate setting forth in reasonable detail the amount of such increased costs or reduced amounts and the basis for determination of such amount, submitted by such Bank to Borrower, shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.8.4 Capital Requirements. If any Bank determines that (a) any Change of Law after the date of this Agreement increases the amount of capital required or expected to be maintained by such Bank (or the Lending Office of such Bank) or any Person controlling such Bank (a "Capital Adequacy Requirement") and (b) the amount of capital maintained by such Bank or such Person which is attributable to or based upon the Loans, the Commitments or this Agreement must be increased as a result of such Capital Adequacy Requirement (taking into account such Bank's or such Person's policies with respect to capital adequacy), Borrower shall pay to Administrative Agent on behalf of such Bank or such Person, upon demand of Administrative Agent on behalf of such Bank or such Person, such amounts as such Bank or such Person shall reasonably determine are necessary to compensate such Bank or such Person for the increased costs to such Bank or such Person of such increased capital. A certificate of such Bank or such Person, setting forth in reasonable detail the computation of any such increased costs, delivered to Borrower by Administrative Agent on behalf of such Bank or such Person shall, in the absence of manifest error, be conclusive and binding on Borrower for purposes of this Agreement.

2.8.5 Notice; Participating Banks' Rights. Each Bank will notify Borrower of any event occurring after the date of this Agreement that will entitle such Bank to compensation pursuant to this Section 2.8, as promptly as practicable, and in no event later than 90 days after the principal officer of such Bank responsible for administering this Agreement obtains knowledge thereof; provided that any Bank's failure to notify Borrower within such 90 day period shall not relieve Borrower of its obligation under this Section 2.8.5 with respect to claims arising prior to the end of such period, but shall relieve Borrower of its obligations under this Section 2.8.5 with respect to the time between the end of such period and such time as Borrower receives notice from the indemnitee as provided herein. No Person purchasing from a Bank a participation in any Commitment (as opposed to an assignment) shall be entitled to any payment from or on behalf of Borrower pursuant to Section 2.8.3 or Section 2.8.4 which would be in excess of the applicable proportionate amount (based on the portion of the Commitment in which such Person is participating) which would then be payable to such Bank if such Bank had not sold a participation in that portion of the Commitment.

2.9 Funding Losses. If Borrower shall (a) repay or prepay any LIBOR Loans on any day other than the last day of an Interest Period for such Loans (whether an optional prepayment or a Mandatory Prepayment), (b) fail to borrow any LIBOR Loans in accordance with a Notice of Borrowing delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise), (c) fail to convert any Loans into LIBOR Loans in accordance with a Notice of Conversion of Loan Type delivered to Administrative Agent (whether as a result of the failure to satisfy any applicable conditions or otherwise), (d) fail to continue a LIBOR Loan in accordance with a Confirmation of Interest Period Selection delivered to Administrative Agent or (e) fail to make any prepayment in accordance with any notice of prepayment delivered to Administrative Agent; Borrower shall, upon demand by any Bank, reimburse such Bank for all costs and losses incurred by such Bank as a result of such repayment, prepayment or failure ("Liquidation Costs"). Borrower understands that such costs and losses may include losses incurred by a Bank as a result of funding and other contracts entered into by such Bank to fund LIBOR Loans. Each Bank demanding payment under this Section 2.9 shall deliver to Borrower a certificate setting forth in reasonable detail the basis for and the amount of costs and losses for which demand is made. Such a certificate so delivered to Borrower shall, in the absence of manifest error, be conclusive and binding as to the amount of such loss for purposes of this Agreement.

2.10 Alternate Office; Minimization of Costs.

2.10.1 To the extent reasonably possible, each Bank shall designate an alternative Lending Office with respect to its LIBOR Loans and otherwise take any reasonable actions to reduce any liability of Borrower to any Bank under Section 2.6.4, 2.8.3 or 2.8.4, or to avoid the unavailability of any Type of Loans under Section 2.8.2 so long as such Bank, in its sole discretion, does not determine that such designation is disadvantageous to such Bank.

2.10.2 If and with respect to each occasion that a Bank either makes a demand for compensation pursuant to Section 2.6.4, 2.6.7, 2.8.3 or 2.8.4 or is unable to fund LIBOR Loans pursuant to Section 2.8.2 or such Bank wrongfully fails to fund a Loan, Borrower may, upon at least five Banking Days' prior irrevocable written notice to each of such Bank and Administrative Agent, in whole permanently replace the Commitment of such Bank; provided

that Borrower shall replace such Commitment with the Commitment of a commercial bank reasonably satisfactory to the Lead Arrangers. Such replacement Bank shall upon the effective date of replacement purchase the Obligations owed to such replaced Bank for the aggregate amount thereof and shall thereupon for all purposes become a "Bank" hereunder. Such notice from Borrower shall specify an effective date for the replacement of such Bank's Commitment, which date shall not be later than the tenth day after the day such notice is given. On the effective date of any replacement of such Bank's Commitment pursuant to this Section 2.10.2, Borrower shall pay to Administrative Agent for the account of such Bank (a) any fees due to such Bank to the date of such replacement; (b) accrued interest on the principal amount of outstanding Loans held by such Bank to the date of such replacement, and (c) the amount or amounts requested by such Bank pursuant to each of Sections 2.6.4, 2.6.7, 2.8.3 and 2.8.4, as applicable. Borrower will remain liable to such replaced Bank for any Liquidation Costs that such Bank may sustain or incur as a consequence of repayment of such Bank's Loans (unless such Bank has defaulted on its obligation to fund a Loan hereunder). Upon the effective date of repayment of any Bank's Loans and termination of such Bank's Commitment pursuant to this Section 2.10.2, such Bank shall cease to be a Bank hereunder. No such termination of any such Bank's Commitment and the purchase of such Bank's Loans pursuant to this Section 2.10.2 shall affect (i) any liability or obligation of Borrower or any other Bank to such terminated Bank which accrued on or prior to the date of such termination or (ii) such terminated Bank's rights hereunder in respect of any such liability or obligation.

2.10.3 Any Bank may designate a Lending Office other than that set forth on Exhibit H and may assign all of its interests under the Credit Documents, and its Notes, to such Lending Office; provided that such designation and assignment do not at the time of such designation and assignment increase the reasonably foreseeable liability of Borrower under Sections 2.6.4, 2.8.3, or 2.8.4 or make an Interest Rate option unavailable pursuant to Section 2.8.2.

## 2.11 Extension of Loan Maturity Date.

2.11.1 Borrower may, not earlier than 730 days and not later than 365 days prior to the initial Date Certain, request Administrative Agent to request that the Banks agree to an extension of the initial Date Certain for an additional period not to exceed one year from the date of the initial Date Certain upon the terms and conditions of this Section 2.11.

2.11.2 Upon receipt of any such request from Borrower, Administrative Agent shall promptly notify each Bank of such request. Each Bank shall notify Administrative Agent not later than 45 days after receiving notice of the extension request from Administrative Agent if, in its sole discretion, it agrees to extend its Commitment (or any portion thereof) for such additional requested period. Each such notice from a Bank which agrees to extend such Commitment (each, a "Renewing Bank") shall specify (i) all or that portion of its Commitment which it is willing to extend and (ii) the amount of any additional Commitment it would be willing to assume (with respect to any Renewing Bank, an "Additional Commitment"). Any Bank which fails to deliver such notice to Administrative Agent shall be deemed to have declined to renew its Commitment for such additional requested period. Each Commitment (or portion thereof) which is not renewed is hereinafter referred to as a "Declined Commitment" and collectively, the "Declined Commitments." After receipt of such notices, Administrative Agent

shall allocate the Declined Commitments (if any) among each Renewing Bank pro rata according to the respective amounts of their Additional Commitments (provided that in no event shall any such Renewing Bank be allocated an amount in excess of its Additional Commitment). On the first Business Day after the 60th day following the notice issued by Administrative Agent to the Banks of the extension request, Administrative Agent shall advise Borrower in writing (a "Renewal Notice"), with a copy to each of the Banks, of the affirmative responses which it has received from the Renewing Banks and the respective amounts of the Commitments of each Renewing Bank.

2.11.3 Subject to the following sentence, if the aggregate amount of the Additional Commitments is less than 100% of the aggregate of the Declined Commitments then in effect, the initial Date Certain shall only be extended if,

- (i) on or before the initial Date Certain Borrower repays in accordance with Section 2.1.7 (and subject to Section 2.3.4) the Loans outstanding comprising Declined Commitments not being assumed pursuant to Section 2.11.4, if any, and
- (ii) the Available Construction Funds, after giving effect to such repayment, equal or exceed the remaining Project Costs of all Initial Projects and Funded Subsequent Projects. Notwithstanding the foregoing, if the aggregate amount of the Additional Commitments is less than 100% of the aggregate of the Declined Commitments, Borrower may replace any Bank to the extent of such Bank's Declined Commitment, with another commercial bank or banks reasonably satisfactory to the Lead Arrangers and the LC Bank (a "Replacement Bank"). Borrower shall notify Administrative Agent (who shall promptly forward such notice to the Banks), no later than 180 days prior to the initial Loan Maturity Date, whether it will prepay the Loans comprising the Declined Commitments in accordance with Section 2.1.7 and/or replace Banks to the extent of such Banks' Declined Commitments as described in the preceding sentences. Each Bank whose outstanding Loans have been repaid in full and who has been paid all other amounts due to it hereunder shall cease to be a Bank hereunder and shall cancel and return to Borrower any Notes held by such Bank.

2.11.4 If the aggregate amount of the Additional Commitments (including the Commitments provided by any Replacement Banks) is equal to or greater than 100% of the aggregate of the Commitments of all Banks then in effect, the following shall occur:

(a) the initial Date Certain shall be extended as requested by Borrower;

(b) Borrower shall repay any Loans (and all fees and other Obligations due in respect of such Loans) it has elected to repay pursuant to Section 2.11.3;

(c) the Banks (including the Replacement Banks, if any) shall enter into such assignment and assumption agreements reasonably acceptable to Administrative Agent as may be necessary to transfer any Banks' Declined Commitments to Banks (and Replacement Banks) extending Additional Commitments, such assignment and assumption agreements to become effective on the initial Date Certain (before giving effect to any extension thereof);

(d) on the initial Date Certain (prior to giving effect to any extension thereof) each Replacement Bank shall for all purposes become a "Bank" hereunder;

(e) Borrower shall, if applicable, execute and deliver to each Bank a new Note to reflect such Bank's new Commitment (after giving effect to such Bank's Additional Commitment or Declined Commitment) and each Bank receiving such new Note shall cancel and return to Borrower the pre-existing Note held by such Bank; and

(f) each Bank whose outstanding Loans have been repaid in full and who has been paid all other amounts due to it hereunder shall cease to be a Bank hereunder and shall cancel and return to Borrower any Notes held by such Bank.

### **ARTICLE 3. CONDITIONS PRECEDENT**

3.1 Conditions Precedent to the Closing Date. The occurrence of the Closing Date is subject to the prior satisfaction of each of the following conditions (unless waived in writing by Administrative Agent with the consent of all Banks):

3.1.1 Resolutions. Delivery to the Lead Arrangers of a copy of one or more resolutions or other authorizations of each of the Portfolio Entities (other than those with respect to the Delta Energy Center Project), the Member and Calpine, certified by the appropriate officers of each such entity as being in full force and effect on the Closing Date, authorizing, as applicable, the Borrowings herein provided for and the execution, delivery and performance of this Agreement and the other Credit Documents and any instruments or agreements required hereunder or thereunder to which such entity is a party.

3.1.2 Incumbency. Delivery to the Lead Arrangers of a certificate satisfactory in form and substance to the Lead Arrangers from each of the Portfolio Entities (other than those with respect to the Delta Energy Center Project), the Member and Calpine, signed by the appropriate authorized officer of each such entity and dated the Closing Date, as to the incumbency of the natural persons authorized to execute and deliver this Agreement and the other Credit Documents and any instruments or agreements required hereunder or thereunder to which such entity is a party.

3.1.3 Formation Documents. Delivery to the Lead Arrangers of (a) a copy of the Limited Liability Company Agreement, certified by an officer of Borrower or the secretary or an assistant secretary of the Member as being true, correct and complete on the Closing Date, and any related agreements or certificates filed in accordance with applicable state law, (b) copies of the articles of incorporation or certificate of incorporation or charter or other state certified constituent documents of each of the Portfolio Entities (other than those with respect to the Delta Energy Center Project), the Member and Calpine, certified by the secretary of state of the state of formation, and (c) copies of the Bylaws or other comparable constituent documents of each such Portfolio Entity, the Member and Calpine, certified by its secretary or an assistant secretary.

3.1.4 Good Standing Certificates. (a) With respect to each of the Project Owners (other than the Delta Energy Center Project Owner), delivery to the Lead Arrangers of certificates issued by the secretary of state of the state in which such Project Owner's Initial Project is located and, if other than such state, the state of formation of such Project Owner and

(b) with respect to each of the Portfolio Entities other than such Project Owners, the Member and Calpine, delivery to the Lead Arrangers of certificates issued by the secretary of state of the state of formation of such Persons, in each case certifying that such Person is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states.

3.1.5 Satisfactory Proceedings. All corporate, partnership and legal proceedings and all instruments in connection with the transactions contemplated by this Agreement shall be satisfactory in form and substance to the Lead Arrangers, and the Lead Arrangers shall have received all information and copies of all documents, including records of corporate or partnership or limited liability company proceedings and copies of any approval by any Governmental Authority required in connection with any transaction herein contemplated (with respect to the Initial Projects and Turbines), which the Lead Arrangers may reasonably have requested in connection herewith, such documents where appropriate to be certified by proper corporate or partnership officers or Governmental Authorities.

3.1.6 Credit Documents. Delivery to the Lead Arrangers of executed originals of each Credit Document (except for the Consents and financing statements recorded as fixture filings) relating to Collateral comprising the Initial Contribution and the Turbines assigned to the Initial Projects (as set forth on Exhibit G-3), the Project Completion Guaranty and the Turbine Purchase Guaranty. All actions shall have been taken to provide the Banks with a valid and perfected first priority Lien on the personal property Collateral attributable to the Initial Contribution and the Turbines assigned to the Initial Projects (as set forth on Exhibit G-3) (other than the Turbines assigned to the Delta Energy Center Project (as set forth on Exhibit G-3)), including, without limitation, the execution, delivery and filing of UCC-1 financing statements with appropriate secretaries of state and/or other filing offices and the delivery of the Pledged Equity Interests of each of the Portfolio Entities (other than with respect to the Delta Energy Center Project) in accordance with the Pledge Agreements (Pledged Equity Interests), and the delivery of the Portfolio Entity Notes pursuant to the Borrower Security Agreement, the Development Company Security Agreement and the CCFC II Equipment Finance Company Security Agreement. All the documents specified above shall be in form and substance satisfactory to the Lead Arrangers and shall have been duly authorized, executed and delivered by the parties thereto.

3.1.7 Certificates of Borrower. The Lead Arrangers shall have received a certificate, dated as of the Closing Date, signed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-1.

3.1.8 Legal Opinions. Delivery to the Lead Arrangers of legal opinions of counsel to the Portfolio Entities (other than those with respect to the Delta Energy Center Project) and their respective Affiliates that are party to any Credit Documents addressing such Credit Documents, in each case in form and substance satisfactory to the Lead Arrangers.

3.1.9 No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Bank to any material unreimbursed Tax or Other Tax.

3.1.10 Absence of Litigation. (a) No action, suit, proceeding or investigation shall have been instituted or threatened against any Portfolio Entity and (b) except for the applicability of the FPA solely by reason of a Project Owner being an Exempt Wholesale Generator, no order, judgment or decree shall have been issued or proposed to be issued by any Governmental Authority that, as a result of the construction, ownership, leasing or operation of the Initial Projects, the sale of electricity or steam therefrom or the entering into of any Operative Document or any transaction contemplated hereby or thereby, would cause or deem the Banks, any Portfolio Entity or any Affiliate of any of them to be subject to, or not exempted from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities.

3.1.11 Payment of Filing Fees. All amounts required to be paid to or deposited with the Lead Arrangers, and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.1, shall have been paid in full or, as approved by the Lead Arrangers, provided for.

3.1.12 Insurance. Insurance with respect to each Initial Project to which Initial Contributions are attributable complying with Exhibit K shall be in full force and effect and Administrative Agent on behalf of the Banks shall have received certificates of insurance, identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit K and describing the insurance obtained, each signed by the insurer or a broker authorized to bind the applicable insurer in form and substance satisfactory to the Lead Arrangers.

3.1.13 UCC Reports. The Lead Arrangers shall have received a UCC report of a date reasonably close to the Closing Date for each of the jurisdictions in which the UCC-1 financing statements are intended to be filed in respect of the Collateral attributable to the Initial Contribution or with respect to the Turbines assigned to the Initial Projects (as set forth on Exhibit G-3), showing that upon due filing (assuming such filing or recordation occurred on the date of such respective reports), the security interests created under the Collateral Documents with respect to such Collateral will be prior to all other financing statements, or other security documents wherein the security interest is perfected by filing in respect of such Collateral.

3.1.14 Project Budgets. Borrower shall have furnished to the Lead Arrangers budgets in substantially the form of Appendices G-4A through G-4M for all anticipated costs to be incurred in connection with the construction and start-up of each of the Initial Projects, including in such budgets all construction and non-construction costs, and including all interest, taxes and other carrying costs, non-allocated costs of Borrower or the relevant Project Owner, and such other information as the Lead Arrangers may require, together with a balanced statement of sources (including an allocation between Loan proceeds and Contributions) and uses of proceeds (and any other funds necessary to complete each of the Initial Projects), broken down as to separate construction phases and components, which budgets shall be satisfactory to the Lead Arrangers.

3.1.15 Project Schedules. Borrower shall have furnished to the Lead Arrangers a schedule of the scheduled Completion Dates for each Initial Project in substantially the form of Exhibit G-5.

3.1.16 Base Case Project Projections. Borrower shall have furnished to the Lead Arrangers the Base Case Project Projections of operating expenses and cash flow for the Initial Projects in substantially the form of Exhibit G-6 and in form and substance satisfactory to the Lead Arrangers. Such Base Case Project Projections shall show a minimum projected annual Four-Quarter Portfolio Interest Coverage Ratio of no less than [\*] to 1.0.

3.1.17 No Material Adverse Change. Since July 31, 2000, in the reasonable judgment of the Lead Arrangers, there shall not have occurred any change in the Project Budgets or Base Case Project Projections with respect to the Initial Projects, in the economics or feasibility of constructing and/or operating the Initial Projects or in the economics or feasibility of purchasing the Turbines assigned to the Initial Projects (as set forth on Exhibit G-3) which could reasonably be expected to have a Material Adverse Effect on Borrower.

3.1.18 Establishment of Accounts. The Accounts required under Article 7 shall have been established to the satisfaction of the Lead Arrangers.

3.1.19 Representations and Warranties. Each representation and warranty of the Member, Calpine and the Portfolio Entities under the Credit Documents shall be true and correct in all material respects.

3.1.20 Payment of Bank and Consultants Fees. Borrower shall have paid all outstanding amounts due and owing to (i) the Banks under any fee letters and (ii) the Banks' attorneys and consultants including, without limitation, the Independent Consultants, for all services rendered and billed prior to the Closing Date.

3.1.21 Certificate of Independent Engineer. Delivery to Administrative Agent on behalf of the Banks of the Independent Engineer's certificate with respect to the Initial Projects, in substantially the form of Exhibit F-5, with the Independent Engineer's report with respect to the Initial Projects attached thereto, confirming, in form and substance satisfactory to the Lead Arrangers, the feasibility of the Initial Projects.

3.1.22 Acquisition Closing. The Acquisitions shall have been (or shall contemporaneously with the Closing Date be) consummated.

3.1.23 Initial Contributions. Delivery to Administrative Agent on behalf of the Banks of documentation or other evidence, in each case in form and substance satisfactory to the Lead Arrangers, confirming that Calpine has made Contributions to pay Costs with respect to the Initial Projects and the Turbines assigned thereto (as set forth on Exhibit G-3) (other than Contributions to pay (a) Costs associated with the acquisition or lease of real property rights that are not subject to the lien of the Collateral Documents and (b) Costs with respect to the Delta Energy Center Project, the Carville Project, the Santa Rosa - Phase I Project, the Broad River - Phase II Project or the Corpus - Phase I Project and, in each case, the Turbines assigned thereto (as set forth on Exhibit G-3)) in an amount equal to [\*] prior to the Closing Date.

3.2 Conditions Precedent to the Initial Funding of the Initial Projects. Except as provided in Schedule 3.2, the obligation of the Banks to make the initial Construction Loans and/or issue the initial Letter of Credit with respect to a particular Initial Project is subject to the prior satisfaction of each of the following conditions:

3.2.1 Borrower Equity. Contributions required pursuant to Section 5.17.1 and 5.17.2 hereof shall have been funded and applied in accordance with Section 5.1.

3.2.2 Resolutions. Delivery to Administrative Agent on behalf of the Banks of (a) a copy of one or more resolutions or other authorizations of the relevant Project Owner, the relevant Equipment Finance Company (if any) and each of the Affiliated Major Project Participants and with respect to such Initial Project, certified by the appropriate officers of each such entity as being in full force and effect on the Funding Date, authorizing, as applicable, the execution, delivery and performance of the Operative Documents with respect to such Initial Project and any instruments or agreements required hereunder or thereunder to which such entity is a party, or (b) in so far as any of the materials delivered pursuant to Section 3.1.1 are sufficient (in the reasonable discretion of the Technical Committee) to satisfy the requirements set forth in this Section 3.2.2, Borrower shall deliver a certificate by the appropriate officers that the matters delivered under Section 3.1.1 remain in full force and effect as of the Funding Date.

3.2.3 Incumbency. Delivery to Administrative Agent on behalf of the Banks of (a) a certificate satisfactory in form and substance to the Technical Committee, from the relevant Project Owner, the relevant Equipment Finance Company (if any) and each of the Affiliated Major Project Participants with respect to such Initial Project, signed by the appropriate authorized officer of each such entity and dated the Funding Date, as to the incumbency of the natural persons authorized to execute and deliver the Operative Documents with respect to such Initial Project and any instruments or agreements required hereunder or thereunder to which such entity is a party, or (b) in so far as any of the materials delivered pursuant to Section 3.1.2 are sufficient (in the reasonable discretion of the Technical Committee) to satisfy the requirements set forth in this Section 3.2.3, Borrower shall deliver a certificate by the appropriate officers that the matters delivered under Section 3.1.2 remain in full force and effect as of the Funding Date.

3.2.4 Formation Documents. Delivery to Administrative Agent on behalf of the Banks of (a) copies of the articles of incorporation or certificate of incorporation or charter or other state certified constituent documents of the relevant Project Owner, the relevant Equipment Finance Company (if any) and each other Major Project Participant with respect to such Initial Project, certified, if requested by the Technical Committee, by the secretary of state of the state of formation, except, with respect to any Major Project Participant other than such Project Owner or such Equipment Finance Company, where such Major Project Participant is not the type of entity for which such state certified constituent documents are reasonably available, and (b) copies of the Bylaws or other comparable constituent documents of the relevant Project Owner, the relevant Equipment Finance Company (if any) and the Affiliated Major Project Participants with respect to such Initial Project, certified by its secretary or an assistant secretary, or (c) in so far as any of the materials delivered pursuant to Section 3.1.3 are sufficient (in the reasonable discretion of the Technical Committee) to satisfy the requirements set forth in this Section 3.2.4 (a) or (b), Borrower shall deliver a certificate by the appropriate officers that the matters delivered under Section 3.1.3 remain in full force and effect as of the Funding Date.

3.2.5 Good Standing Certificates. For the relevant Project Owner, the relevant Equipment Finance Company (if any) and each other Major Project Participant with respect to such Initial Project, delivery to Administrative Agent on behalf of the Banks of certificates issued by the secretary of state of the state where such Initial Project is located and, if other than

such state, the state of formation of such Major Project Participant certifying that such Major Project Participant is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states, except, with respect to any Major Project Participant other than such Project Owner and such Equipment Finance Company, where such Major Project Participant is not required to qualify to do business in such state in order to perform its obligations under any Project Document with respect to such Initial Project to which it is a party or where such Major Project Participant is not the type of entity for which a good standing certificates is available.

3.2.6 Satisfactory Proceedings. All corporate, partnership and legal proceedings and all instruments in connection with the transactions contemplated by this Agreement with respect to such Initial Project shall be satisfactory in form and substance to the Technical Committee, and Administrative Agent on behalf of the Banks shall have received all information and copies of all documents, including records of corporate or partnership proceedings and copies of any approval by any Governmental Authority required in connection with any transaction herein contemplated (with respect to such Initial Project), which the Technical Committee may reasonably have requested in connection herewith, such documents where appropriate to be certified by proper corporate or partnership officers or Governmental Authorities.

3.2.7 Operative Documents.

(a) Delivery to Administrative Agent on behalf of the Banks of executed originals of:

(i) Amendments, supplements or modifications to each of the Collateral Documents with respect to such Initial Project and, if not previously delivered to Administrative Agent, the Deed of Trust with respect to such Initial Project (or additional Collateral Documents (including, if applicable, an Equipment Finance Company Security Agreement executed by a relevant Equipment Finance Company in favor of Administrative Agent if reasonably requested by the Technical Committee) considered necessary by the Technical Committee to ensure that all rights and assets related to such Initial Project, including all real property and personal property comprising such Initial Project, have been pledged to Administrative Agent and the Banks; provided, however, that if one or more Projects have previously achieved Operation, such Liens, to the extent not previously created pursuant to Sections 3.1, 5.16 or 5.24 or otherwise in accordance with this Agreement prior to such Projects achieving Operation, shall not secure outstanding Loans attributable to Projects that have achieved Operation.

(ii) Consents to assignment in substantially the form of Exhibit E-1 or otherwise in form and substance reasonably satisfactory to the Technical Committee from the counterparties to each Major Project Document (Major Gas Supply Contracts, Major Power Purchase Agreements and Major Gas Transportation Agreements only to the extent then in existence), electric transmission and interconnection agreements and material water supply agreements in respect of such Initial Project delivered pursuant to Section 3.2.7(d).

(iii) Affiliated Subordination Agreements substantially in the form of Exhibit D-8 or otherwise in form and substance reasonably satisfactory to the Technical Committee (or, if applicable, amendments to existing Affiliated Subordination Agreements) executed by each Affiliate of Calpine (other than the relevant Project Owner and Equipment Finance Company, if any) entering into Project Documents with respect to such Initial Project considered necessary by the Technical Committee to subordinate certain O&M Costs that the relevant Project Owner may incur pursuant to such Project Documents to the Obligations. Such O&M Costs shall only include amounts payable to such Affiliate which do not represent reimbursement of costs payable to third parties not Affiliates of Calpine and shall be subordinated to the Obligations to the extent satisfactory to the Technical Committee.

(b) Subject to the proviso to Section 3.2.7(a)(i), all actions shall have been taken to provide the Banks with a valid and perfected first priority Lien on the Collateral in respect of such Initial Project (except as otherwise approved by the Technical Committee, including all personal property comprising such Initial Project) including, without limitation, to the extent necessary, the filing of UCC-1, UCC-2 or UCC-3 financing statements, as applicable, with respect to such Collateral with the Secretary of State and/or other appropriate filing office in the state in which such Initial Project is located, in the state of formation of the relevant Project Owner and Equipment Finance Company, if any, or the state in which such Project Owner's and Equipment Finance Company's, if any, principal place of business is located and the execution, delivery and recordation of the Deed of Trust and fixture filings with respect to such Initial Project.

(c) Delivery to Administrative Agent on behalf of the Banks of a certified list of and true and correct copies of each Project Document with respect to such Initial Project then in effect, and, in each case, any supplements or amendments thereto and all of which Project Documents shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect on the Funding Date pursuant to the certificates delivered as provided in the this Section 3.2, which certificates shall state that neither the relevant Project Owner nor, to Borrower's knowledge, any other party to any such Project Document is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, and that all conditions precedent to the performance of the parties under such Project Documents then required to have been performed have been satisfied.

(d) All the Major Project Documents (other than Major Gas Supply Contracts (other than Gas Supply Contracts with Affiliates of Borrower) and Major Power Purchase Agreements), electric transmission and interconnection agreements and material water supply agreements with respect to such Initial Project shall be in form and substance reasonably satisfactory to the Technical Committee and shall have been duly authorized, executed and delivered by the parties thereto.

(e) Delivery to Administrative Agent of (i) all shared use agreements and/or joint ownership agreements reasonably requested by the Technical Committee evidencing the relevant Project Owner's interests, rights and obligations with respect to any shared facilities incorporated into or used with respect to such Initial Project and (ii) all intercreditor agreements and/or non-disturbance agreements reasonably requested by the Technical Committee establishing the relative rights and remedies between Administrative Agent on behalf of the

Banks and any other Persons with interests in any such shared facilities or other properties incorporated into or used with respect to such Initial Project, in each case in form and substance satisfactory to the Technical Committee.

(f) In the event one or more Equipment Leases are associated with such Initial Project, the equipment leasing structure implemented pursuant to such Equipment Lease(s) shall not, in the Technical Committee's reasonable opinion, affect in any adverse manner (i) such Initial Project's Project Revenues available for payments under Waterfall Levels 2, 3 and 4 or (ii) the Lien imposed by the Collateral Documents in favor of Administrative Agent on the Collateral with respect to such Initial Project, in each case as compared to such Initial Project assuming the equipment held by the associated Equipment Finance Company and leased to the relevant Project Owner pursuant to such Equipment Lease(s) (and the Project Documents related thereto) were held directly by such Project Owner.

3.2.8 Certificate of Borrower. Administrative Agent on behalf of the Banks shall have received a certificate, dated as of the Funding Date, signed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-2.

3.2.9 Legal Opinions. Without duplication of any legal opinions of counsel delivered to Administrative Agent pursuant to Section 3.1.8, delivery to Administrative Agent on behalf of the Banks of legal opinions of counsel to the relevant Portfolio Entities, Affiliates of Calpine that are party to Operative Documents relating to such Initial Project, each Major Project Participant designated by the Technical Committee that is a party to a Major Project Document delivered pursuant to Section 3.2.7(d), and each counterparty designated by the Technical Committee to a material water supply agreement delivered pursuant to Section 3.2.7(d) with respect to such Initial Project, in each case in form and substance satisfactory to the Technical Committee.

3.2.10 Certificate of Insurance Consultant. Delivery to Administrative Agent on behalf of the Banks of the Insurance Consultant's certificate with respect to such Initial Project, in substantially the form of Exhibit F-4, with the Insurance Consultant's report with respect to such Initial Project, confirming the adequacy of the insurance described on Exhibit K or otherwise in form and substance satisfactory to the Technical Committee, attached thereto.

3.2.11 Insurance. Insurance with respect to such Initial Project complying with Exhibit K (as the same may be modified to include such Initial Project) shall be in full force and effect and Administrative Agent on behalf of the Banks shall have received (a) a certificate from Borrower's insurance broker(s), dated as of the Funding Date and identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit K, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with Exhibit K, and (b) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer), in form and substance satisfactory to the Technical Committee.

3.2.12 Certificate of the Independent Engineer. Delivery to Administrative Agent on behalf of the Banks of the Independent Engineer's certificate with respect to such Initial Project, in substantially the form of Exhibit F-6, with the Independent Engineer's report with respect to such Initial Project attached thereto, confirming, in form and substance satisfactory to (a) in the case of the Projects One Through Four, the Required Banks, and (b) in the case of all other Initial Projects, the Technical Committee, that the revenue assumptions approved by the Power Marketing Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to Section 3.2.15 and fuel price assumptions approved by the Fuel Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to Section 3.2.14 have been properly incorporated into the Base Case Project Projections and that the Project Schedule with respect to such Initial Project is consistent with the applicable Project Budget, and the Required Banks or the Technical Committee, as the case may be (as determined pursuant to clauses (a) and (b) above), shall be satisfied that the projected O&M Costs and the projected performance (including output, heat rate, environmental and Permit compliance, and availability, individually or taken as a whole) of such Initial Project as reflected in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.2.24 hereof and the design and other technical aspects of such Initial Project are reasonable and achievable in a manner consistent with the applicable Project Budget and Project Schedule.

3.2.13 Reports of the Environmental Consultant. Delivery to Administrative Agent on behalf of the Banks of (a) Borrower's Environmental Consultant's Phase I reports with respect to such Initial Project along with the corresponding reliance letter from such Environmental Consultant, confirming that no Hazardous Substances were found in, on or under the Site of such Initial Project or (b) if Hazardous Substances were found in, on or under such real property pursuant to such Phase I environmental report or such report otherwise indicates that a Phase II environmental review is warranted, (i) a Phase II environmental report with respect to such real property along with a corresponding reliance letter from Environmental Consultant, confirming, in form and substance satisfactory to Administrative Agent, either (A) that no Hazardous Substances were found in, on or under such real property or (B) matters otherwise satisfactory to the Technical Committee or (ii) an environmental indemnity agreement in form and substance satisfactory to the Technical Committee pursuant to which an indemnitor satisfactory to Administrative Agent indemnifies the Portfolio Entities and the Banks from any and all damages or other liabilities relating to or arising from Hazardous Substances then in, on or under such real property or otherwise caused by or attributable to such indemnitor.

3.2.14 Certificate of the Fuel Consultant. Delivery to Administrative Agent on behalf of the Banks of the Fuel Consultant's certificate with respect to such Initial Project, in substantially the form of Exhibit F-8, with the Fuel Consultant's report with respect to such Initial Project attached thereto, confirming, in form and substance satisfactory to the Technical Committee that there is sufficient fuel available to such Initial Project to operate such Project in the manner contemplated by, and in accordance with the fuel price assumptions incorporated in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.2.24 and that the Fuel Plan delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.2.17 for such Initial Project constitutes a reasonable plan for the supply and transportation of fuel for such Initial Project under existing

and expected market conditions affecting such Initial Project and consistent with the intended operation thereof.

3.2.15 Certificate of Power Marketing Consultant. Delivery to Administrative Agent on behalf of the Banks of a Power Marketing Consultant's certificate with respect to such Initial Project, in substantially the form of Exhibit F-9, with a Power Marketing Consultant's report with respect to such Initial Project attached thereto, confirming, in form and substance satisfactory to the Technical Committee, that the revenue assumptions incorporated in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.2.24 are reasonable in light of existing and expected market conditions affecting such Initial Project.

3.2.16 Power Marketing Plan. Delivery to Administrative Agent on behalf of the Banks of a plan with respect to power marketing setting forth Borrower's good faith assessment of the projected sales of power with respect to such Initial Project, which plan shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of Exhibit G-9 and otherwise satisfactory in form and substance to the Technical Committee and the Power Marketing Consultant.

3.2.17 Fuel Plan. Delivery to Administrative Agent on behalf of the Banks of a plan with respect to fuel setting forth Borrower's good faith assessment of such Initial Project's projected fuel consumption needs and fuel supply and transportation strategy, which plan shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of Exhibit G-10 and otherwise satisfactory in form and substance to the Technical Committee and the Fuel Consultant.

3.2.18 Schedule of Applicable Permits and Applicable Third Party Permits. Delivery to Administrative Agent of the schedule(s) of Permits required to construct, own and operate such Initial Project or required to be obtained by any Person that is party to any Project Document with respect to such Initial Project in order to perform its obligations thereunder (a "Permit Schedule") satisfactory in form and substance to the Technical Committee, together with (i) copies of each Applicable Permit and Applicable Third Party Permit listed on Parts I(A) and I(B) of such Permit Schedule, each satisfactory in form and substance to the Technical Committee, and (ii) legal opinions of counsel to the Portfolio Entities with respect to the matters described in the next two sentences in form and substance satisfactory to the Technical Committee. The relevant Project Owner (or such other Person responsible for constructing and operating such Initial Project) shall have duly obtained or been assigned, and there shall be in full force and effect in the relevant Project Owner's (or such other Person responsible for constructing and operating such Initial Project) name, and not subject to any current legal proceeding or to any unsatisfied condition that could reasonably be expected to allow material modification or revocation of, and all applicable appeal periods shall have expired with respect to, the Applicable Permits for such Initial Project set forth on Parts I(A) and I(B) of such Permit Schedule, constituting in the Technical Committee's reasonable opinion all of the Applicable Permits for such Initial Project as of the Funding Date. Each Major Project Participant with respect to which responsibility for an Applicable Third Party Permit is indicated in Part I(B) of such Permit Schedule shall have duly obtained or been assigned such Applicable Third Party Permit and there shall be in full force and effect in such Person's name, and not subject to any

current legal proceeding or to any unsatisfied condition that could reasonably be expected to allow material modification or revocation of, and all applicable appeal periods shall have expired with respect to, each Applicable Third Party Permit for such Project set forth on Part I(B) of such Project Schedule, constituting in the Technical Committee's reasonable opinion all of the Applicable Third Party Permits for such Initial Project as of the Funding Date. Part II(A) of such Permit Schedule shall list all other Permits required by the relevant Project Owner or other Person responsible for constructing and operating such Initial Project to construct, own and operate such Initial Project as contemplated by the Operative Documents. Part II(B) of such Permit Schedule shall list all other material Permits required by any other Major Project Participant with respect to such Initial Project to perform its obligations under the Operative Documents with respect to such Initial Project to which it is a party. The Permits listed in Parts II(A) and II(B) of such Permit Schedule shall either (a) in the Technical Committee's reasonable opinion, be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay prior to the time the relevant Project Owner or the applicable other Major Project Participant, as applicable, requires such Permits, or (b) there shall exist alternative solutions (the expected cost of which is reflected in the applicable Project Budget) reasonably satisfactory to the Independent Engineer which would eliminate the need for such Permit. Except as disclosed in such Permit Schedule, the Permits listed in Parts I(A) and I(B) of such Permit Schedule shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to have a Material Adverse Effect on such Initial Project or result in such Initial Project being operated in a manner not substantially as assumed in the Base Cost Project Projections.

3.2.19 No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Bank to any material unreimbursed Tax or Other Tax.

3.2.20 Absence of Litigation. (a) No action, suit, proceeding or investigation shall have been instituted or threatened against any Portfolio Entity in respect of such Initial Project which could reasonably be expected to have a Material Adverse Effect on Borrower or such Initial Project, and (b) except for the applicability of the FPA solely by reason of the relevant Project Owner being an Exempt Wholesale Generator, no order, judgment or decree shall have been issued or proposed to be issued by any Governmental Authority that, as a result of the construction, ownership, leasing or operation of such Initial Project, the sale of electricity or steam therefrom or the entering into of any Operative Document with respect to such Initial Project or any transaction contemplated hereby or thereby, would cause or deem the Banks, any Portfolio Entity or any Affiliate of any of them to be subject to, or not exempted from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities.

3.2.21 Payment of Filing Fees. All amounts required to be paid to or deposited with the Banks (including the Activation Fee with respect to a Substituted Initial Project) in respect of such Initial Project, and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.2, shall have been paid in full or, as approved by the Technical Committee, provided for.

3.2.22 Financial Statements. Administrative Agent on behalf of the Banks shall have received the most recent annual financial statements (audited if available) or Form 10-K and most recent quarterly financial statements or Form 10-Q from Borrower, the relevant Project Owner and the relevant Equipment Finance Company, if any, and, in the case of the first Initial Project to become a Funded Project, each of the other Portfolio Entities (other than those with respect to the Delta Energy Center Project, such financial statements to be provided on or before the Funding Date of such Project) and, to the extent reasonably obtainable, each other Major Project Participant with respect to such Initial Project (or their respective parent entities), together (in the case of such Project Owner, such Equipment Finance Company and the Affiliated Major Project Participants with respect to such Initial Project and, in the case of the first Initial Project to become a Funded Project, each of the other Portfolio Entities (other than those with respect to the Delta Energy Center Project, such financial statements to be provided on or before the Funding Date of such Project)) with certificates from the appropriate Responsible Officer thereof, stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements or the balance sheet, as the case may be, provided to Administrative Agent on behalf of the Banks.

3.2.23 UCC Reports. Administrative Agent on behalf of the Banks shall have received a UCC report of a date reasonably close to the Funding Date for each of the jurisdictions in which any UCC-1 financing statements or amendments thereto are intended to be filed in respect of the Collateral with respect to such Initial Project, showing that upon due filing (assuming such filing or recordation occurred on the date of such respective reports), the security interests created under the Collateral Documents with respect to such Initial Project will be prior to all other financing statements or other security documents wherein the security interest is perfected by filing in respect of such Collateral.

3.2.24 Base Case Project Projections. Borrower shall have furnished to Administrative Agent on behalf of the Banks the combined Base Case Project Projections of operating expenses and cash flow for such Initial Project and all other Funded Projects showing, for each year in such projections, a projected annual Four-Quarter Portfolio Interest Coverage Ratio equal to or exceeding 90% of the projected annual Four-Quarter Portfolio Interest Coverage Ratio reflected in the Base Case Project Projections delivered with respect to such Projects pursuant to Section 3.1.16 and, if applicable, Section 3.3.27 (which ratio shall be supported by the projections set forth in the Independent Consultant's reports delivered pursuant to this Section 3.2 and, if applicable, Section 3.3 with respect to such Projects) in substantially the form (including the duration thereof) of those projections delivered pursuant to Section 3.1.16 and otherwise in form and substance satisfactory to the Technical Committee.

3.2.25 Project Schedules; Project Budgets. Borrower shall have furnished to Administrative Agent (a) a detailed project schedule for such Initial Project, which project schedule shall be in form and substance satisfactory to the Technical Committee and the Independent Engineer, and (b) a Project Budget for such Initial Project, updated from the applicable budget submitted for such Project pursuant to Section 3.1.14, and otherwise in form and substance reasonably satisfactory to the Technical Committee.

3.2.26 No Material Adverse Change. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date, and, with respect to such Initial Project, no event or circumstance having a Material Adverse Effect with respect to such Initial Project shall have occurred.

3.2.27 Real Estate Rights; A.L.T.A. Surveys. The Technical Committee shall (a) be satisfied that the relevant Project Owner (or other Person who holds direct ownership interests in such Initial Project) shall have obtained all real estate rights necessary for construction and operation of such Initial Project other than (i) such rights as can be obtained through eminent domain proceedings or (ii) rights, the procurement of which, in the Technical Committee's reasonable judgment, is not subject to the discretion of any third party, and in the case of either clause (i) or (ii) above, the Technical Committee shall be satisfied that any rights which have not been obtained can be obtained without material difficulty or delay by the time they are needed, and

(b) have received A.L.T.A. surveys of the Site and, unless not required by the Technical Committee, the Easements with respect to such Initial Project in existence on the Funding Date, satisfactory in form and substance to the Technical Committee and the Title Insurer, reasonably current and certified to the Technical Committee by a licensed surveyor satisfactory to the Technical Committee, showing (i) as to such Site, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto and showing the perimeter within which all foundations are or are to be located; (ii) as to such Easements in existence on the Funding Date, the exact location and dimensions thereof, including the location of all means of access thereto, and all improvements or other encroachments in or on such Easements in existence on the Funding Date; (iii) the existing utility facilities servicing such Initial Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (iv) that such existing improvements do not encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects; (v) whether such Site or any portion thereof is located in a special earthquake or flood hazard zone; and (vi) that there are no other matters that could reasonably be expected to be disclosed by a survey constituting a defect in title other than Permitted Encumbrances with respect to such Initial Project; provided, however, that the matters described in clauses (ii) and (v) of this subsection (b) may be shown by separate maps, surveys or other information reasonably satisfactory to the Technical Committee.

3.2.28 Title Policies. Borrower shall have delivered to Administrative Agent on behalf of the Banks a lender's A.L.T.A. policy of title insurance (with, in the case of Easements with respect to which A.L.T.A. surveys were not required by the Technical Committee pursuant to Section 3.2.27, appropriate survey exceptions), together with such endorsements as are required by the Technical Committee (without a mechanics' or materialmen's exception included in such title policy, except where applicable Governmental Rules prevent the deletion of such exception), or commitment to issue such policy, dated as of the Funding Date (x) in an amount equal to 50% of the aggregate amount of Project Costs set forth in the Project Budget for such Initial Project (or such other amount as is reasonably acceptable to the Technical Committee) and (y) with such reinsurance as is satisfactory to the Technical Committee, issued by the Title Insurer in form and substance satisfactory to the Technical Committee, insuring (or agreeing to insure) that:

(a) the relevant Project Owner has a good, marketable and insurable fee or leasehold title to or right to control, occupy and use the Site and the Easements with respect to such Initial Project, free and clear of liens, encumbrances or other exceptions to title except Permitted Liens described in clause (a), (b) or (e) of the definition thereof, those permitted pursuant to this Section 3.2.28 and those satisfactory to the Technical Committee and specified on such policy; and

(b) the Deed of Trust with respect to such Initial Project is (or will be when recorded) a valid first lien on the Mortgaged Property with respect to such Initial Project, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than those encumbrances permitted pursuant to Section 3.2.28(a).

3.2.29 Regulatory Status. Such Initial Project shall (a) have complied with the requirements of 18 C.F.R. Section 292.207 required to be complied with as of the Funding Date and delivered to Administrative Agent, in form and substance satisfactory to the Technical Committee, either (i) a certificate of FERC certifying such Initial Project as a Qualifying Facility, or (ii) documentation evidencing the self-certification of such Initial Project as a Qualifying Facility and a legal opinion of counsel to the Portfolio Entities with respect to the effectiveness of such documentation to qualify such Initial Project as a Qualifying Facility or (b) be or be capable of becoming an Eligible Facility, and Administrative Agent shall have received a legal opinion of counsel to the Portfolio Entities in form and substance satisfactory to the Technical Committee to the effect that there exists no reasonable basis for FERC to deny an application filed by the Project Owner of such Initial Project pursuant to Section 5.12 for Exempt Wholesale Generator status.

3.2.30 Notice to Proceed. The Prime Contractor with respect to such Initial Project shall have been given an unconditional notice to proceed or otherwise been unconditionally directed to begin performance under the Prime Construction Contract to which it is a party on or prior to the Funding Date.

3.2.31 Representations and Warranties. Each representation and warranty of Borrower, the Portfolio Entities with respect to such Initial Project, the Member, Calpine and the Non-Affiliated Parents with respect to such Initial Project, if any, and under the Credit Documents and each representation and warranty of Borrower, the relevant Project Owner and the relevant Equipment Finance Company, if any, under the other Operative Documents, in each case with respect to itself or such Initial Project, shall be true and correct in all material respects as if made on the Funding Date, unless such representation or warranty expressly relates solely to another time.

3.2.32 Utilities. Administrative Agent on behalf of the Banks has received evidence acceptable to the Technical Committee that all necessary gas and electrical interconnections and utility services are either contracted for, or will be readily available on reasonable economic terms, at such Initial Project.

3.2.33 Calpine Compliance. No "event of default" (as defined therein) under any agreement or instrument documenting or evidencing any of Calpine's Debt obligations that are greater than \$10,000,000 shall have occurred and be continuing.

3.2.34 Calpine Guaranties. Calpine shall have executed (a) an acknowledgement, in form and substance satisfactory to the Technical Committee, that such Initial Project shall be included with the obligations undertaken pursuant to the Project Completion Guaranty and (b) (i) in the case of each Person party to a Project Document that is directly or indirectly more than 50% owned by Calpine (other than the relevant Project Owner and Equipment Finance Company, if any), an Affiliated Party Agreement Guaranty in respect of each Project Document (guarantying 100% of such Person's obligations under each such Project Document) entered into between the relevant Project Owner and such Person for such Initial Project or (ii) in the case of each Person party to a Project Document that is directly or indirectly 50% owned by Calpine (other than the relevant Project Owner and Equipment Finance Company, if any), an Affiliated Party Agreement Guaranty in respect of each Project Document (guarantying at least Calpine's percentage ownership interest of such Person's obligations under each such Project Document) entered into between the relevant Project Owner and such Person for such Initial Project; provided, in the case of clause (b)(ii) of this Section 3.2.34, Borrower shall also deliver to Administrative Agent a guaranty agreement in favor of the relevant Project Owner in respect of each such Project Document, executed by a guarantor satisfactory to the Technical Committee and in form and substance satisfactory to the Technical Committee, guarantying those obligations of such Person under each such Project Document not otherwise addressed in the relevant Affiliated Party Agreement Guaranty delivered pursuant to such clause.

3.2.35 Updated Exhibits. Borrower shall have delivered to Administrative Agent a supplement to Exhibit K reflecting any additional or revised insurance policies or coverages required by the Insurance Consultant to account for such Initial Project, in each case reasonably satisfactory to the Technical Committee.

3.2.36 Calpine Corporation Credit Rating. Calpine shall be rated at least Ba2 by Moody's and BB by S&P.

3.2.37 Delta Energy Center Project Requirements. In the event such Initial Project is the Delta Energy Center Project, delivery to Administrative Agent on behalf of the Banks, without duplication of any of the requirements set forth in this Section 3.2, of the items set forth in Sections 3.1.1, 3.1.2, 3.1.3, 3.1.4, 3.1.6 and 3.1.8 with respect to the Portfolio Entities and the Non-Affiliated Parent related to the Delta Energy Center Project.

3.3 Conditions Precedent to the Initial Funding of the Subsequent Projects. Subject to Section 3.3.41, the obligation of the Banks to make the initial Construction Loans with respect to a particular Subsequent Project is subject to the prior satisfaction of each of the following conditions:

3.3.1 Borrower Equity. Contributions required pursuant to Section 5.17.1 and 5.17.2 hereof shall have been funded and applied in accordance with Section 5.1.

3.3.2 Joint Venture Projects. In the case of a Subsequent Project that is only partially owned by the relevant Project Owner, (a) Administrative Agent on behalf of the Banks shall have received all joint venture, joint tenancy, joint operating or other documents relating to the joint ownership, operation or governance of such Subsequent Project (collectively, the "Joint Venture Agreement"), in form and substance satisfactory to the Technical Committee, including

provisions (i) requiring all parties to the Joint Venture Agreement (the "Joint Venturers") to fund their respective obligations in connection with the development, construction and operation of such Subsequent Project, providing reasonable remedies for a Joint Venturer's failure to fund, and permitting the relevant Project Owner to fund such obligations if any of the Joint Venturers fail to do so, (ii) permitting the relevant Project Owner to grant a Lien on its interest in such Subsequent Project in favor of the Banks pursuant to this Agreement, and (iii) prohibiting any of the other Joint Venturers from granting a Lien on or otherwise encumbering the relevant Project Owner's interest in such Subsequent Project and (b) if required by applicable law, such Joint Venture Agreement or the relative rights of the Joint Venturers in such Subsequent Project (or a memorandum thereof) shall have been recorded or filed, as applicable, in the appropriate public records in order to give third parties notice of such Joint Venture Agreement.

3.3.3 Resolutions. Delivery to Administrative Agent on behalf of the Banks of a copy of one or more resolutions or other authorizations of the relevant Project Owner, the relevant Equipment Finance Company (if any) and all other Portfolio Entities with respect to such Subsequent Project and each Affiliated Major Project Participant with respect to such Subsequent Project, certified by the appropriate officers of each such entity as being in full force and effect on the Funding Date, authorizing, as applicable, the execution, delivery and performance of the Operative Documents with respect to such Subsequent Project and any instruments or agreements required hereunder or thereunder to which such entity is a party.

3.3.4 Incumbency. Delivery to Administrative Agent on behalf of the Banks of a certificate satisfactory in form and substance to the Technical Committee, from the relevant Project Owner, the relevant Equipment Finance Company (if any) and all other Portfolio Entities with respect to such Subsequent Project and each Affiliated Major Project Participant with respect to such Subsequent Project, signed by the appropriate authorized officer of each such entity and dated the Funding Date, as to the incumbency of the natural persons authorized to execute and deliver the Operative Documents with respect to such Subsequent Project and any instruments or agreements required hereunder or thereunder to which such entity is a party.

3.3.5 Formation Documents. Delivery to Administrative Agent on behalf of the Banks of (a) copies of the articles of incorporation or certificate of incorporation or charter or other state certified constituent documents of the relevant Project Owner, the relevant Equipment Finance Company (if any) and all other Portfolio Entities with respect to such Subsequent Project, each other Major Project Participant with respect to such Subsequent Project and each Non-Affiliated Parent with respect to such Subsequent Project, if any, certified, if requested by the Technical Committee, by the secretary of state of the state of formation, except, with respect to any Major Project Participant other than such Project Owner or such Equipment Finance Company or other Portfolio Entities, where such Major Project Participant is not the type of entity for which such state certified constituent documents are reasonably available, and (b) copies of the Bylaws or other comparable constituent documents of the relevant Project Owner, the relevant Equipment Finance Company (if any) and all other Portfolio Entities with respect to such Subsequent Project and each Affiliated Major Project Participant with respect to such Subsequent Project, certified by its secretary or an assistant secretary.

3.3.6 Good Standing Certificates. (a) For the relevant Project Owner, the relevant Equipment Finance Company (if any) and each other Major Project Participant with

respect to such Subsequent Project, delivery to Administrative Agent on behalf of the Banks of certificates issued by the secretary of state of the state where such Subsequent Project is located and, if other than such state, the state of formation of such Major Project Participant, and (b) with respect to each Portfolio Entity with respect to such Subsequent Project (other than the relevant Project Owner and Equipment Finance Company, if any) and each Non-Affiliated Parent with respect to such Subsequent Project, if any, delivery to the Lead Arrangers of certificates issued by the secretary of state of the state of formation of such Persons, in each case certifying that such Person is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such states, except, with respect to any Major Project Participant other than such Project Owner, such Equipment Finance Company or other Portfolio Entities, where such Major Project Participant is not required to qualify to do business in such state in order to perform its obligations under any Project Document with respect to such Subsequent Project to which it is a party or where such Major Project Participant is not the type of entity for which a good standing certificate is available.

3.3.7 Satisfactory Proceedings. All corporate, partnership and legal proceedings and all instruments in connection with the transactions contemplated by this Agreement with respect to such Subsequent Project shall be satisfactory in form and substance to the Technical Committee, and Administrative Agent on behalf of the Banks shall have received all information and copies of all documents, including records of corporate or partnership proceedings and copies of any approval by any Governmental Authority required in connection with any transaction herein contemplated (with respect to such Subsequent Project), which the Technical Committee may reasonably have requested in connection herewith, such documents where appropriate to be certified by proper corporate or partnership officers or Governmental Authorities.

3.3.8 Operative Documents.

(a) Delivery to Administrative Agent on behalf of the Banks of executed originals of:

(i) Amendments, supplements or modifications to each of the Collateral Documents with respect to such Subsequent Project (or additional Collateral Documents if reasonably requested by the Technical Committee, including a Project Owner Guaranty and a Project/Turbine Owner Security Agreement executed by the Project Owner with respect to such Subsequent Project, an Equipment Finance Company Security Agreement executed by the Equipment Finance Company with respect to such Subsequent Project, if applicable, and Pledge Agreements (Pledged Equity Interests) executed by each Portfolio Entity with respect to such Subsequent Project (other than the relevant Project Owner and Equipment Finance Company, if any) and the Non-Affiliated Parents with respect to such Subsequent Project, if any) considered necessary by the Technical Committee to ensure that all rights and assets related to such Subsequent Project, including all real property and personal property comprising such Subsequent Project and all rights of the relevant Project Owner under any Joint Venture Agreement relating to such Subsequent Project, have been pledged to Administrative Agent and the Banks; provided, however, as set forth in the relevant Project/Turbine Owner Security Agreement, Equipment Finance Company Security Agreement, Pledge Agreement(s) (Pledged Equity Interests) and Deed of Trust, the Lien on the Collateral comprising such

Subsequent Project and the ownership interests in the relevant Portfolio Entities shall not secure those Obligations relating to or arising from Projects that have achieved Operation prior to the Funding Date.

(ii) Consents to assignment in substantially the form of Exhibit E-1 or otherwise in form and substance reasonably satisfactory to the Technical Committee from the counterparties to each Major Project Document (Major Gas Supply Contracts, Major Power Purchase Agreements and Major Gas Transportation Agreements only to the extent then in existence), electric transmission and interconnection agreements and material water supply agreements in respect of such Subsequent Project delivered pursuant to Section 3.3.8(d).

(iii) Affiliated Subordination Agreements substantially in the form of Exhibit D-8 or otherwise in form and substance reasonably satisfactory to the Technical Committee (or, if applicable, amendments to existing Affiliated Subordination Agreements) executed by each Affiliate of Calpine (other than the relevant Project Owner and Equipment Finance Company, if any) entering into Project Documents with respect to such Subsequent Project considered necessary by the Technical Committee to subordinate certain O&M Costs that the relevant Project Owner may incur pursuant to such Project Documents to the Obligations. Such O&M Costs shall only include amounts payable to such Affiliate which do not represent reimbursement of costs payable to third parties not Affiliates of Calpine and shall be subordinated to the Obligations to the same extent as O&M Costs are subordinated to the Obligations in the corresponding documents furnished by Borrower pursuant to Section 3.2.8 or otherwise to the extent satisfactory to the Technical Committee.

(b) Borrower shall have delivered to Administrative Agent the federal employer number and all other information requested by Administrative Agent with respect to the Portfolio Entities and the Non-Affiliated Parents, if any, with respect to such Subsequent Project and all actions shall have been taken to provide the Banks with a valid and perfected first priority Lien on the Collateral in respect of such Subsequent Project (except as otherwise approved by the Technical Committee, including all personal property comprising such Subsequent Project) including, without limitation, to the extent necessary, the execution, delivery and recordation of the Deed of Trust and fixture filings with respect to such Subsequent Project in the appropriate locations, the filing of UCC-1, UCC-2 or UCC-3 financing statements, as applicable, with respect to such Collateral with the Secretary of State and/or other appropriate filing office in the states in which such Subsequent Project is located, the states of formation of the relevant Portfolio Entities or Non-Affiliated Parents or the states in which such Portfolio Entities' or Non-Affiliated Parents' principal places of business are located, the delivery of the Pledged Equity Interests of the Portfolio Entities with respect to such Subsequent Project in accordance with the relevant Pledge Agreements (Pledged Equity Interests) and the delivery of a Portfolio Entity Note executed by the relevant Project Owner and Equipment Finance Company, if any.

(c) Delivery to Administrative Agent on behalf of the Banks of a certified list of, and true and correct copies of, each Project Document with respect to such Subsequent Project then in effect, and, in each case, any supplements or amendments thereto, and all of which Project Documents shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect on the Funding Date pursuant to the certificates

delivered as provided in this Section 3.3, which certificates shall state that neither the relevant Project Owner nor, to Borrower's knowledge, any other party to any such Project Document is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, and that all conditions precedent to the performance of the parties under such Project Documents then required to have been performed have been satisfied.

(d) All the Major Project Documents (other than Major Gas Supply Contracts (other than Gas Supply Contracts with Affiliates of Borrower) and Major Power Purchase Agreements), electric transmission and interconnection agreements and material water supply agreements with respect to such Subsequent Project shall be substantially similar to the corresponding documents furnished by Borrower pursuant to Section 3.2.7 (to the extent there are such corresponding documents) with counterparties reasonably acceptable to the Technical Committee and conforming changes to address the specifics of such Subsequent Project or otherwise in form and substance reasonably satisfactory to the Technical Committee, shall have been duly authorized, executed and delivered by the parties thereto.

(e) Delivery to Administrative Agent of (i) all shared use agreements and/or joint ownership agreements reasonably requested by the Technical Committee evidencing the relevant Project Owner's interests, rights and obligations with respect to any shared facilities incorporated into or used with respect to such Subsequent Project, (ii) all intercreditor agreements and/or non-disturbance agreements reasonably requested by the Technical Committee establishing the relative rights and remedies between Administrative Agent on behalf of the Banks and any other Persons with interests in any such shared facilities or other properties incorporated into or used with respect to such Subsequent Project and (iii) in the case of a Subsequent Project where the relevant Project Owner is directly or indirectly partially owned by Borrower, all joint venture, joint operating or other documents relating to the joint ownership or joint governance of such Project Owner between the Portfolio Entities and the Non-Affiliated Parents with respect to such Subsequent Project, in each case in form and substance satisfactory to the Technical Committee.

(f) In the event one or more Equipment Leases are associated with such Subsequent Project, the equipment leasing structure implemented pursuant to such Equipment Lease(s) shall not, in the Technical Committee's reasonable opinion, affect in any adverse manner (i) such Subsequent Project's Project Revenues available for payments under Waterfall Levels 2, 3 and 4 or (ii) the Lien imposed by the Collateral Documents in favor of Administrative Agent on the Collateral with respect to such Subsequent Project, in each case as compared to such Subsequent Project assuming the equipment held by the associated Equipment Finance Company and leased to the relevant Project Owner pursuant to such Equipment Lease(s) (and the Project Documents related thereto) were held directly by such Project Owner.

3.3.9 Certificate of Borrower. Administrative Agent on behalf of the Banks shall have received a certificate, dated as of the Funding Date, signed by a Responsible Officer of Borrower, in substantially the form of Exhibit F-2.

3.3.10 Legal Opinions. Delivery to Administrative Agent on behalf of the Banks of legal opinions of counsel to the relevant Portfolio Entities, Affiliates of Calpine that are party to Operative Documents relating to such Subsequent Project, the Non-Affiliated Parents with

respect to such Subsequent Project, if any, and each Major Project Participant designated by the Technical Committee that is a party to a Major Project Document delivered pursuant to Section 3.3.8(d) and each counterparty designated by the Technical Committee to a material water supply agreement delivered pursuant to Section 3.3.8(d) with respect to such Subsequent Project, substantially similar to the corresponding opinions furnished by Borrower pursuant to Section 3.1.8 or 3.2.9, as the case may be, with conforming changes to address the specifics of such Subsequent Project or otherwise in form and substance satisfactory to the Technical Committee.

3.3.11 Certificate of Insurance Consultant. Delivery to Administrative Agent on behalf of the Banks of the Insurance Consultant's certificate with respect to such Project, in substantially the form of Exhibit F-4, with the Insurance Consultant's report with respect to such Subsequent Project, confirming the adequacy of the insurance described on Exhibit K or otherwise in form and substance satisfactory to the Technical Committee, attached thereto.

3.3.12 Insurance. Insurance with respect to such Subsequent Project complying with Exhibit K (as the same may be modified to include such Subsequent Project) shall be in full force and effect and Administrative Agent on behalf of the Banks shall have received (a) a certificate from Borrower's insurance broker(s), dated as of the Funding Date and identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit K, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with Exhibit K, and (b) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer), in form and substance satisfactory to the Technical Committee.

3.3.13 Certificate of the Independent Engineer. Delivery to Administrative Agent on behalf of the Banks of the Independent Engineer's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-6, with the Independent Engineer's report with respect to such Subsequent Project attached thereto, confirming, in form and substance satisfactory to the Technical Committee, that the revenue assumptions approved by the Power Marketing Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to Section 3.3.16 and fuel price assumptions approved by the Fuel Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to Section 3.3.15 have been properly incorporated into the Base Case Project Projections and that the Project Schedule with respect to such Subsequent Project is consistent with the applicable Project Budget, and the Technical Committee shall be satisfied that the projected O&M Costs and the projected performance (including output, heat rate, environmental and Permit compliance, and availability, individually or taken as a whole) of such Subsequent Project as reflected in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.3.27 hereof and the design and other technical aspects of, such Subsequent Project, are reasonable and achievable in a manner consistent with the applicable Project Budget and Project Schedule.

3.3.14 Reports of the Environmental Consultant. Delivery to Administrative Agent on behalf of the Banks of (a) Borrower's Environmental Consultant's Phase I reports with

respect to such Subsequent Project, along with the corresponding reliance letters from such Environmental Consultant, confirming that no Hazardous Substances were found in, on or under the Site of such Subsequent Project or (b) if Hazardous Substances were found in, on or under such real property pursuant to such Phase I environmental report, or such report otherwise indicates that a Phase II environmental review is warranted, (i) a Phase II environmental report with respect to such real property along with a corresponding reliance letter from Environmental Consultant, confirming in form and substance satisfactory to Administrative Agent, either (A) that no Hazardous Substances were found in, on or under such real property or (B) matters otherwise satisfactory to the Technical Committee or (ii) an environmental indemnity agreement in form and substance satisfactory to the Technical Committee pursuant to which an indemnitor satisfactory to Administrative Agent indemnifies the Portfolio Entities and the Banks from any and all damages or other liabilities relating to or arising from Hazardous Substances then in, on or under such real property or otherwise caused by or attributable to such indemnitor.

3.3.15 Certificate of the Fuel Consultant. Delivery to Administrative Agent on behalf of the Banks of the Fuel Consultant's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-8, with the Fuel Consultant's report with respect to such Subsequent Project attached thereto, confirming, in form and substance satisfactory to the Technical Committee that there is sufficient fuel available to such Subsequent Project to operate such Subsequent Project in the manner contemplated by, and in accordance with the fuel price assumptions incorporated in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.3.27 and that the Fuel Plan delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.3.18 for such Subsequent Project constitutes a reasonable plan for the supply and transportation of fuel for such Project under existing and expected market conditions affecting such Subsequent Project and consistent with the intended operation thereof.

3.3.16 Certificate of Power Marketing Consultant. Delivery to Administrative Agent on behalf of the Banks of a Power Marketing Consultant's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-9, with a Power Marketing Consultant's report with respect to such Subsequent Project attached thereto, confirming, in form and substance satisfactory to the Technical Committee, that the revenue assumptions incorporated in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.3.27 are reasonable in light of existing and expected market conditions affecting such Subsequent Project.

3.3.17 Power Marketing Plan. Delivery to Administrative Agent on behalf of the Banks of a plan with respect to power marketing setting forth Borrower's good faith assessment of the projected sales of power with respect to such Subsequent Project, which plan shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of the Power Marketing Plans furnished by Borrower pursuant to Section 3.2.16 and with such additional changes satisfactory in form and substance to the Technical Committee as may be appropriate under the circumstances.

3.3.18 Fuel Plan. Delivery to Administrative Agent on behalf of the Banks of a plan with respect to fuel setting forth Borrower's good faith assessment of such Subsequent Project's projected fuel consumption needs and fuel supply and transportation strategy, which

plan shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of the Fuel Plans delivered furnished by Borrower pursuant to Section 3.2.17 and with such additional changes satisfactory in form and substance to the Technical Committee and the Fuel Consultant as may be appropriate under the circumstances.

3.3.19 Schedule of Applicable Permits and Applicable Third Party Permits. Delivery to Administrative Agent of the Permit Schedule with respect to such Subsequent Project, substantially similar to the Permit Schedules furnished by Borrower pursuant to Section 3.2.18 with conforming changes to address the specifics of such Subsequent Project and otherwise satisfactory in form and substance to the Technical Committee, together with (i) copies of each Applicable Permit and Applicable Third Party Permit listed on Parts I(A) and I(B) of such Permit Schedule, each satisfactory in form and substance to the Technical Committee, and (ii) legal opinions of counsel to the Portfolio Entities with respect to the matters described in the next two sentences, substantially similar to the corresponding opinions furnished by Borrower pursuant to Section 3.2.18 with conforming changes to address the specifics of such Subsequent Project or otherwise in form and substance satisfactory to the Technical Committee. The relevant Project Owner (or such other Person responsible for constructing and operating such Subsequent Project) shall have duly obtained or been assigned, either by itself or jointly with its Joint Venturers (if applicable), and there shall be in full force and effect in the relevant Project Owner's (or such other Person responsible for constructing and operating such Subsequent Project) name, either by itself or jointly with its Joint Venturers (if applicable), and not subject to any current legal proceeding or to any unsatisfied condition that could reasonably be expected to allow material modification or revocation of, and all applicable appeal periods shall have expired with respect to, the Applicable Permits for such Subsequent Project set forth on Parts I(A) and I(B) of such Permit Schedule, constituting in the Technical Committee's reasonable opinion all of the Applicable Permits for such Subsequent Project as of the Funding Date. Each Major Project Participant with respect to which responsibility for an Applicable Third Party Permit is indicated in Part I(B) of such Permit Schedule shall have duly obtained or been assigned such Applicable Third Party Permit and there shall be in full force and effect in such Person's name, and not subject to any current legal proceeding or to any unsatisfied condition that could reasonably be expected to allow material modification or revocation of, and all applicable appeal periods shall have expired with respect to, each Applicable Third Party Permit for such Project set forth on Part I(B) of such Permit Schedule, constituting in the Technical Committee's reasonable opinion all of the Applicable Third Party Permits for such Subsequent Project as of the Funding Date. Part II(A) of such Permit Schedule shall list all other Permits required by the relevant Project Owner (or such Project Owner and its Joint Venturers, if applicable) or other Person responsible for constructing and operating such Subsequent Project to construct, own and operate such Subsequent Project as contemplated by the Operative Documents. Part II(B) of such Project Schedule shall list all other material Permits required by any other Major Project Participant with respect to such Subsequent Project to perform its obligations under the Operative Documents with respect to such Subsequent Project to which it is a party. The Permits listed in Parts II(A) and II(B) of such Permit Schedule shall either (a) in the Technical Committee's reasonable opinion, be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay prior to the time the relevant Project Owner (or such Project Owner and its Joint Venturers, if applicable) or the applicable other Major Project Participant, as applicable, requires such Permits, or (b) there shall exist alternative solutions (the expected cost of which is reflected in the applicable Project Budget) reasonably

satisfactory to the Independent Engineer which would eliminate the need for such Permit(s). Except as disclosed in such Permit Schedule, the Permits listed in Parts I(A) and I(B) of such Permit Schedule shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to have a Material Adverse Effect on such Subsequent Project or result in such Subsequent Project being operated in a manner not substantially as assumed in the Base Cost Project Projections.

3.3.20 No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Bank to any material unreimbursed Tax or Other Tax.

3.3.21 Absence of Litigation. (a) No action, suit, proceeding or investigation shall have been instituted or threatened against any Portfolio Entity in respect of such Subsequent Project which could reasonably be expected to have a Material Adverse Effect on Borrower or such Subsequent Project, and

(b) except for the applicability of the FPA solely by reason of the relevant Project Owner being an Exempt Wholesale Generator, no order, judgment or decree shall have been issued or proposed to be issued by any Governmental Authority that, as a result of the construction, ownership, leasing or operation of such Subsequent Project, the sale of electricity or steam therefrom or the entering into of any Operative Document with respect to such Subsequent Project or any transaction contemplated hereby or thereby, would cause or deem the Banks, any Portfolio Entity or any Affiliate of any of them to be subject to, or not exempted from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities.

3.3.22 Payment of Filing Fees. All amounts required to be paid to or deposited with the Banks (including the Activation Fee) in respect of such Subsequent Project, and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.3, shall have been paid in full or, as approved by the Technical Committee, provided for.

3.3.23 Financial Statements. Administrative Agent on behalf of the Banks shall have received the most recent annual financial statements (audited if available) or Form 10-K and most recent quarterly financial statements or Form 10-Q from Borrower and each of the relevant Portfolio Entities and, to the extent reasonably obtainable, Non-Affiliated Parents with respect to such Subsequent Project and, to the extent reasonably obtainable, each other Major Project Participant with respect to such Subsequent Project (or their respective parent entities), together (in the case of such Portfolio Entities and the Affiliated Major Project Participants with respect to such Subsequent Project) with certificates from the appropriate Responsible Officer thereof, stating that no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Person has occurred from those set forth in the most recent financial statements or the balance sheet, as the case may be, provided to Administrative Agent on behalf of the Banks.

3.3.24 UCC Reports. Administrative Agent on behalf of the Banks shall have received a UCC report of a date reasonably close to the Funding Date for each of the jurisdictions in which any UCC-1 financing statements or amendments thereto are intended to be

filed in respect of the Collateral with respect to such Subsequent Project, showing that upon due filing (assuming such filing or recordation occurred on the date of such respective reports), the security interests created under the Collateral Documents with respect to such Subsequent Project will be prior to all other financing statements or other security documents wherein the security interest is perfected by filing in respect of such Collateral.

3.3.25 Project Budgets. Borrower shall have furnished Administrative Agent on behalf of the Banks a budget for such Subsequent Project and, if applicable, a revised budget for Borrower in substantially the form of the Project Budgets delivered pursuant to Section 3.1.14 but with such changes as are required to address the specifics of such Subsequent Project for all anticipated costs to be incurred in connection with the construction and start-up of such Subsequent Project, including in such budgets all construction and non-construction costs, and including all interest, taxes and other carrying costs, and such other information as the Technical Committee may require, together with a balanced statement of sources (including an allocation between Construction Loan proceeds and Contributions) and uses of proceeds (and any other funds necessary to complete such Subsequent Project), broken down as to separate construction phases and components, which project budgets shall be in form and substance satisfactory to the Technical Committee.

3.3.26 Project Schedule. Borrower shall have furnished Administrative Agent a project schedule with respect to such Subsequent Project in substantially the form of the Project Schedules delivered pursuant to Section 3.2.25 but with such changes as are required to address the specifics of such Subsequent Project and showing a guaranteed completion date for such Subsequent Project that is on or before the Loan Maturity Date and which is otherwise in form and substance satisfactory to the Technical Committee and the Independent Engineer.

3.3.27 Base Case Project Projections. Borrower shall have furnished to Administrative Agent on behalf of the Banks the combined Base Case Project Projections of operating expenses and cash flow for all Funded Initial Projects and Funded Subsequent Projects (including such Subsequent Project) showing, for each year in such projections, a projected annual Four-Quarter Portfolio Interest Coverage Ratio equal to or exceeding [\*] to 1.00 (which ratio shall be supported by the projections set forth in the Independent Consultant's reports delivered pursuant to Section 3.2 and this Section 3.3 with respect to such Projects) in substantially the form (including the duration thereof) of those projections delivered pursuant to Section 3.1.16 and otherwise in form and substance satisfactory to the Technical Committee.

3.3.28 No Material Adverse Change. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date, and, with respect to such Subsequent Project, no event or circumstance having a Material Adverse Effect with respect to such Subsequent Project shall have occurred.

3.3.29 Real Estate Rights; A.L.T.A. Surveys. Administrative Agent on behalf of the Banks shall (a) be satisfied that the relevant Project Owner (or other Person who holds direct ownership interests in such Subsequent Project) shall have obtained all real estate rights necessary for construction and operation of such Subsequent Project other than (i) such rights as can be obtained through eminent domain proceedings or (ii) rights, the procurement of which, in the Technical Committee's reasonable judgment, is not subject to the discretion of any third

party, and in the case of either clause (i) or (ii) above, the Technical Committee shall be satisfied that any rights which have not been obtained can be obtained without material difficulty or delay by the time they are needed, and

(b) have received A.L.T.A. surveys of the Site and, unless not required by the Technical Committee, the Easements with respect to such Subsequent Project in existence on the Funding Date, satisfactory in form and substance to the Technical Committee and the Title Insurer, reasonably current and certified to the Technical Committee by a licensed surveyor satisfactory to the Technical Committee, showing (i) as to such Site, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto and showing the perimeter within which all foundations are or are to be located; (ii) as to such Easements in existence on the Funding Date, the exact location and dimensions thereof, including the location of all means of access thereto, and all improvements or other encroachments in or on such Easements in existence on the Funding Date; (iii) the existing utility facilities servicing such Subsequent Project (including water, electricity, gas, telephone, sanitary sewer and storm water distribution and detention facilities); (iv) that such existing improvements do not encroach or interfere with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects; (v) whether such Site or any portion thereof is located in a special earthquake or flood hazard zone; and (vi) that there are no other matters that could reasonably be expected to be disclosed by a survey constituting a defect in title other than Permitted Encumbrances with respect to such Subsequent Project; provided, however, that the matters described in clauses (ii) and (v) of this subsection (b) may be shown by separate maps, surveys or other information reasonably satisfactory to the Technical Committee.

3.3.30 Title Policies. Borrower shall have delivered to Administrative Agent on behalf of the Banks a lender's A.L.T.A. policy of title insurance (with, in the case of Easements with respect to which A.L.T.A. surveys were not required by the Technical Committee pursuant to Section 3.3.29, appropriate survey exceptions), together with such endorsements as are required by the Technical Committee (without a mechanics' or materialmen's exception included in such title policy, except where applicable Governmental Rules prevent the deletion of such exception), or commitment to issue such policy, dated as of the Funding Date (x) in an amount equal to 50% of the aggregate amount of Project Costs set forth in the Project Budget for such Subsequent Project (or such other amount as is reasonably acceptable to the Technical Committee) and (y) with such reinsurance as is satisfactory to the Technical Committee, issued by the Title Insurer in form and substance satisfactory to the Technical Committee, insuring (or agreeing to insure) that:

(a) the relevant Project Owner has a good, marketable and insurable fee or leasehold title to or right to control, occupy and use the Site and the Easements with respect to such Subsequent Project, free and clear of liens, encumbrances or other exceptions to title except Permitted Liens described in clause (a), (b) or (e) of the definition thereof, those otherwise permitted pursuant to this Section 3.3.30 and those satisfactory to the Technical Committee and specified on such policy; and

(b) the Deed of Trust with respect to such Subsequent Project is (or will be when recorded) a valid first lien on the Mortgaged Property with respect to such Subsequent Project, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than those encumbrances permitted pursuant to Section 3.3.30(a).

3.3.31 Regulatory Status. Such Subsequent Project shall (a) have complied with the requirements of 18 C.F.R. Section 292.207 required to be complied with as of the Funding Date and delivered to Administrative Agent on behalf of the Banks, in form and substance satisfactory to the Technical Committee, either (i) a certificate of FERC certifying such Subsequent Project as a Qualifying Facility, or (ii) documentation evidencing the self-certification of such Subsequent Project as a Qualifying Facility and a legal opinion of counsel to the Portfolio Entities with respect to the effectiveness of such documentation to qualify such Subsequent Project as a Qualifying Facility or (b) be or be capable of becoming an Eligible Facility, and (x) if the relevant Project Owner has previously filed an application with FERC for a determination that such Project Owner is an Exempt Wholesale Generator, Borrower shall have delivered to the Technical Committee a copy of an additional or supplemental application regarding Exempt Wholesale Generator with respect to such Subsequent Project filed by such Project Owner with FERC and (y) the Technical Committee shall have received a legal opinion of counsel to the Portfolio Entities in form and substance satisfactory to the Technical Committee to the effect that (i) if FERC has previously determined that such Project Owner is an Exempt Wholesale Generator, such Subsequent Project will not adversely impact such Project Owner's status as an Exempt Wholesale Generator or (ii) if FERC has not yet determined that such Project Owner is an Exempt Wholesale Generator, there exists no reasonable basis for FERC to deny an application filed by such Project Owner pursuant to Section 5.12 for Exempt Wholesale Generator status.

3.3.32 Notice to Proceed. The Prime Contractor with respect to such Subsequent Project shall have been given an unconditional notice to proceed or otherwise been unconditionally directed to begin performance under the Prime Construction Contract to which it is a party, on or prior to the Funding Date.

3.3.33 Representations and Warranties. Each representation and warranty of Borrower, the Portfolio Entities with respect to such Subsequent Project, the Member, Calpine and the Non-Affiliated Parents with respect to such Subsequent Project, if any, under the Credit Documents and each representation and warranty of Borrower, the relevant Project Owner and the relevant Equipment Finance Company, if any, under the other Operative Documents, in each case with respect to itself or such Subsequent Project, shall be true and correct in all material respects as if made on the Funding Date, unless such representation or warranty expressly relates solely to another time.

3.3.34 Utilities. Administrative Agent on behalf of the Banks has received evidence acceptable to the Technical Committee that all necessary gas and electrical interconnections and utility services are either contracted for, or will be readily available on reasonable economic terms, at such Subsequent Project.

3.3.35 Calpine Compliance. No "event of default" (as defined therein) that are greater than \$10,000,000 under any agreement or instrument documenting or evidencing any of Calpine's Debt obligations shall have occurred and be continuing.

3.3.36 Calpine Guaranties. Calpine shall have executed (a) an acknowledgement, in form and substance satisfactory to the Technical Committee, that such Subsequent Project shall be included with the obligations undertaken pursuant to the Project Completion Guaranty

and (b) (i) in the case of each Person party to a Project Document that is directly or indirectly more than 50% owned by Calpine (other than the relevant Project Owner and Equipment Finance Company, if any), an Affiliated Party Agreement Guaranty in respect of each Project Document (guarantying 100% of such Person's obligations under each such Project Document) entered into between the relevant Project Owner and such Person for such Subsequent Project or (ii) in the case of each Person party to a Project Document that is directly or indirectly 50% owned by Calpine (other than the relevant Project Owner and Equipment Finance Company, if any), an Affiliated Party Agreement Guaranty in respect of each Project Document (guarantying at least Calpine's percentage ownership interest of such Person's obligations under each such Project Document) entered into between the relevant Project Owner and such Person for such Subsequent Project; provided, in the case of clause (b)(ii) of this Section 3.3.36, Borrower shall also deliver to Administrative Agent a guaranty agreement in favor of the relevant Project Owner in respect of each such Project Document, executed by a guarantor satisfactory to the Technical Committee and in form and substance satisfactory to the Technical Committee, guarantying those obligations of such Person under each such Project Document not otherwise addressed in the Affiliated Party Agreement Guaranty delivered pursuant to such clause.

3.3.37 Updated Exhibits. Borrower shall have delivered to Administrative Agent supplements to (a) Exhibit G-8 (Hazardous Substances) referencing the environmental reports in respect of such Subsequent Project that were delivered to Administrative Agent on behalf of the Banks pursuant to

Section 3.3.14, (b) Exhibit D-6 reflecting the filings and recordings required to be made to perfect security interests in the Collateral in respect of such Subsequent Project, and (c) Exhibit K reflecting any additional or revised insurance policies or coverages required by the Insurance Consultant to account for such Subsequent Project, in each case reasonably satisfactory to the Technical Committee.

3.3.38 Diversification Requirements. Such Subsequent Project satisfies the Diversification Requirements.

3.3.39 Calpine Corporation Credit Rating. Calpine shall be rated at least Ba2 by Moody's and BB by S&P.

3.3.40 Initial Projects Satisfaction of Conditions Precedent to Initial Funding. Each Initial Project shall be a Funded Project; provided, however, one Subsequent Project shall be permitted to become a Funded Project prior to the time all Initial Projects have become Funded Projects so long as (a) at least six Initial Projects have become Funded Projects prior to the Funding Date with respect to such Subsequent Project, (b) Borrower owns 100% of the equity interests of the Project Owner with respect to such Subsequent Project and (c) the Project Owner with respect to such Subsequent Project owns 100% of such Subsequent Project.

3.3.41 Modified Conditions Precedent to Initial Funding. Notwithstanding anything to the contrary contained in this Section 3.3, the obligation of the Banks to make the initial Construction Loans with respect to a particular Subsequent Project at any time when at least 12 Projects are Funded Projects and at least five Projects have achieved Commercial Operation, each of such Projects having become Funded Projects pursuant to either Section 3.2 or

3.3 (other than this Section 3.3.41), shall be subject only to the prior satisfaction of those conditions set forth in Section 3.4 and Schedule 3.3.41.

3.4 Conditions Precedent to Each Construction Credit Event. The obligation of the Banks to make each Construction Loan (including the initial Construction Loans for each Initial Project and each Subsequent Project) (a "Construction Credit Event"), is subject to the prior satisfaction of each of the following conditions:

3.4.1 Monthly Drawdown Frequency. Construction Loans shall be made no more frequently than two times per month.

3.4.2 Notice of Construction Borrowing. Borrower shall have delivered a Notice of Construction Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1.

3.4.3 Construction Drawdown Certificate and Engineer's Certificate. (i) At least 8 Banking Days prior to each Construction Credit Event, Borrower shall have provided Administrative Agent with a certificate, dated the date of the proposed occurrence of such Construction Credit Event and signed by Borrower, substantially in the form of Exhibit C-6, in respect of each Project for which a disbursement of funds are being requested and (ii) at least four Banking Days prior to each Construction Credit Event, the Independent Engineer shall have provided Administrative Agent with a certificate of the Independent Engineer, substantially in the form of Exhibit C-7. Such certificates shall certify, among other things, that (A) the aggregate amount of Project Costs for each Project (not including financing fees and interest expenses allocated to such Project but not reflected in such Project's Project Budget delivered pursuant to Section 3.1 or 3.3, as the case may be, and other expenses not allocable to a particular Project) for which the disbursement of funds is being requested is not projected to exceed 110% of the anticipated aggregate amount of Project Costs for such Project as set forth in such Project's Project Budget delivered pursuant to Section 3.1 or 3.3, as the case may be, and (B) the aggregate amount of Project Costs for all Initial Projects and Funded Subsequent Projects then under construction is not projected to exceed 105% of the anticipated aggregate amount of Project Costs for all such Projects as set forth in the respective Project Budgets delivered pursuant to Section 3.1 or 3.3, as the case may be; provided, however, that if the condition described in clause (A) above is not satisfied with respect to a particular Project for which funds are being requested but (x) the Independent Engineer confirms that the cost overruns with respect to such Project are not reasonably likely to exceed a specific amount and (y) the condition described in clause (B) is satisfied and will continue to be satisfied after giving effect to any further anticipated overruns with respect to the Project experiencing such overruns, then the Banks will not unreasonably withhold their consent to waive the condition described in clause (A) above.

3.4.4 Amount. Construction Loans shall be in such amounts as shall ensure that uncommitted funds remaining in the Construction Account (other than those in Turbine Purchase Sub-Accounts) shall be disbursed to the greatest extent possible, given the requirements of Section 2.1.1 (b)(ii).

3.4.5 Title Policy Endorsement. Borrower shall provide, or Administrative Agent shall be adequately assured that the Title Insurer is committed at the time of each Construction Credit Event to issue to Administrative Agent a date-down endorsement of the relevant Title Policies, if any, to the date of such Construction Credit Event, insuring or

otherwise establishing to the satisfaction of Administrative Agent the continuing first priority of the relevant Deeds of Trust (subject only to relevant Permitted Encumbrances and Permitted Liens described in clause (a), (b) or (c) of the definition thereof) and otherwise in form and substance reasonably satisfactory to Administrative Agent.

3.4.6 Lien Releases. If requested by Administrative Agent and subject to Borrower's right to contest liens as described in the definition of "Permitted Liens," Borrower shall have delivered to Administrative Agent duly executed acknowledgments of payments and releases of mechanics' and materialmen's liens, in form satisfactory to Administrative Agent, from each relevant Major Contractor and Major Subcontractors thereof for all work, services and materials, including equipment and fixtures of all kinds, done, previously performed or furnished for the construction of the relevant Project, and in respect of which Borrower has requested payment; provided, however, that such releases may be conditioned upon receipt of payment with respect to work, services and materials to be paid for with the proceeds of the requested Construction Loan or other Borrowing pursuant to this Section 3.4.

3.4.7 Applicable Permits. Except as disclosed in the Permit Schedule applicable to the relevant Project, if any, all Applicable Permits and Applicable Third Party Permits (as of the date of the Construction Credit Event) with respect to the construction and, if applicable, operation of the relevant Project required to have been obtained by the relevant Project Owner (or such Project Owner and its Joint Venturers, if applicable) or any other applicable Major Project Participant by the date of such Construction Credit Event from any Governmental Authority shall have been issued and be in full force and effect and not subject to current legal proceedings or to any unsatisfied conditions that could reasonably be expected to allow material modification or revocation, and all applicable appeal periods with respect thereto shall have expired. With respect to any Permits not yet obtained and, if the relevant Project has an associated Permit Schedule, listed in Part II(A) or II(B) of the applicable Permit Schedule, either (a) in the Technical Committee's reasonable opinion, such Permit will be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay prior to the time the relevant Project Owner (or such Project Owner and its Joint Venturers, if applicable) or the applicable other Major Project Participant, as applicable, requires such Permit, or (b) there shall exist alternate solutions (the expected cost of which is reflected in the applicable Project Budget) reasonably satisfactory to the Independent Engineer which would eliminate the need for such Permit. Except as disclosed in the applicable Permit Schedule, if any, such Permits which have been obtained by the relevant Project Owner (or such Project Owner and its Joint Venturers, if applicable) or any applicable Major Project Participant shall not be subject to any restriction, condition, limitation or other provision that could reasonably be expected to have a Material Adverse Effect with respect to Borrower or such Project.

3.4.8 Equity Contributions. Borrower shall be in compliance with Section 5.17.

3.4.9 Additional Documentation. With respect to Additional Major Project Documents and Applicable Permits with respect to the relevant Project entered into or obtained, transferred or required (whether because of the status of the construction or operation of the relevant Project or otherwise) since the date of the most recent Construction Credit Event, in furtherance of, among other things, the Lien on such Project and related Collateral granted on the Closing Date or the relevant Funding Date, as the case may be, there shall be redelivery of such

matters as are described in Sections 3.2.2 through 3.2.5 and 3.2.7 or Sections 3.3.3 through 3.3.6 and 3.3.8, as the case may be, to the extent applicable to such Additional Project Documents or Applicable Permits and, if reasonably requested by Administrative Agent, Sections 3.2.9 and 3.2.22 or Sections 3.3.10 and 3.3.23, as the case may be, from the counterparty to such Additional Project Document.

3.4.10 Acceptable Work; No Liens. All work that has been done on the relevant Project shall have been done in a good and workmanlike manner and in accordance with the Construction Contracts and Prudent Utility Practices and there shall not have been filed with or served upon any Portfolio Entity with respect to such Project or any part thereof notice of any Lien, claim of Lien or attachment upon or claim affecting the right to receive payment of any of the monies payable to any of the Persons named on such request which has not been released by payment or bonding or otherwise or which will not be released with the payment of such obligation out of such Construction Loan or other Borrowing pursuant to this Section 3.4, other than Permitted Liens.

3.4.11 Casualty. If at the time of any Credit Event, any Project for which a disbursement of funds is being requested shall have been materially injured or damaged by flood, fire or other casualty, Administrative Agent shall have received insurance proceeds or money or other assurances sufficient in the reasonable judgment of Administrative Agent and the Independent Engineer to assure restoration and Completion of such Project prior to the Loan Maturity Date and each of the conditions set forth in Section 7.5.3 has been satisfied.

3.4.12 Absence of Litigation. No action, suit, proceeding or investigation shall have been instituted against any Portfolio Entity or the relevant Project which could reasonably be expected to have a Material Adverse Effect on Borrower or the Project with respect to which a Construction Loan is being requested, except as approved by Administrative Agent with the consent of the Required Banks.

3.4.13 Insurance. Insurance complying with the requirements of Section 5.18 shall be in effect, and upon the request of Administrative Agent evidence thereof shall be provided to Administrative Agent.

3.4.14 Available Construction Funds. After taking into consideration the Construction Loans being requested, Available Construction Funds shall not be less than the aggregate unpaid amount of Project Costs required to cause the Completion Date of all Initial Projects and Funded Subsequent Projects that have not achieved Completion to occur in accordance with all Legal Requirements and the Construction Contracts prior to the guaranteed completion date with respect to each such Project set therefor in such Project's Project Schedule and to pay or provide for all anticipated non-construction Project Costs as to each such Project, all as set forth in the Project Budgets.

3.4.15 Representations and Warranties. Each representation and warranty of the Member, Calpine and the Non-Affiliated Parents with respect to the Project for which Construction Loans are being requested, if any, under the Credit Documents and each representation and warranty of the Portfolio Entities under the Operative Documents, in each case with respect to itself or a Project for which Construction Loans are being requested, shall be

true and correct in all material respects as if made on such date, unless such representation or warranty expressly relates solely to another time.

3.4.16 No Event of Default or Inchoate Default. No Event of Default or Inchoate Default, no Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default in respect of the Project for which funds are being requested and, to the extent Section 3.9(b) does not otherwise permit Borrowings, no other Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing or will result from such Construction Credit Event.

3.4.17 Operative Documents, Applicable Permits and Applicable Third Party Permits in Effect. Each Credit Document, Major Project Document (other than Major Gas Supply Contracts, Major Power Purchase Agreements and Major Gas Transportation Agreements not then in existence), electric transmission and interconnection agreement, material water supply agreement, Additional Major Project Document, Applicable Permit (except as provided in Section 3.4.7) and Applicable Third Party Permit (except as provided in Section 3.4.7) related to the Project for which Construction Loans are then being requested remains in full force and effect in accordance with its terms and no material defaults have occurred thereunder.

3.4.18 No Material Adverse Effect. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date (except as is no longer continuing), and no event or circumstance having a Material Adverse Effect with respect to the Project for which a disbursement of funds is being requested has occurred since the Closing Date (except as is no longer continuing).

3.4.19 Third Party Funding. For Projects which are not wholly-owned by the relevant Project Owner, each Person (other than such Project Owner) who has an ownership interest in such Project, has funded its pro rata share of all Project Costs incurred through such date to such Project or any other Person (including such Project Owner) has funded such costs on such Person's behalf.

3.4.20 Debt to Capitalization Ratio. Borrower's Debt to Capitalization Ratio shall be no more than the Maximum Debt to Capitalization Ratio.

3.4.21 Interest Coverage Ratio. From and after the first day of the second calendar quarter following the Final Completion of the first Project to achieve Final Completion, Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall (a) until such time as the fourth Project achieves Final Completion, equal the lesser of (i) [\*] to 1.00 or (ii) 90% of the projected annual Four-Quarter Portfolio Interest Coverage Ratio for such period reflected in the Base Case Project Projections delivered with respect to the relevant Projects pursuant to Section 3.1 or 3.3, as the case may be, and (b) thereafter, equal or exceed [\*] to 1.00.

3.4.22 Funded Projects. In the event such Construction Credit Event occurs after the second anniversary of the Closing Date, all Initial Projects shall be Funded Projects.

3.5 Conditions Precedent to the Initial Funding of the Turbines. The obligation of the Banks to make the initial Turbine Purchase Loans with respect to a particular Turbine is subject to the prior satisfaction of each of the following conditions:

3.5.1 Borrower Equity. Contributions required pursuant to Section 5.17.1 and 5.17.2 hereof shall have been funded and applied in accordance with Section 5.1.

3.5.2 Resolutions. Delivery to Administrative Agent on behalf of the Banks of (a) a copy of one or more resolutions or other authorizations of the Turbine Owner which owns such Turbine and any Intermediate Parent with respect to such Turbine Owner, certified by the appropriate officers of each such entity as being in full force and effect on the Turbine Funding Date, authorizing the execution, delivery and performance of the Turbine Purchase Contract and any other Operative Documents with respect to the purchase of such Turbine, and any instruments or agreements required hereunder or thereunder to which such entity is a party, or (b) in so far as any of the materials delivered pursuant to Section 3.1.1 are sufficient (in the reasonable discretion of the Technical Committee) to satisfy the requirements set forth in this Section 3.5.2, Borrower shall deliver a certificate by the appropriate officers that the matters delivered under Section 3.1.1 remain in full force and effect as of the Turbine Funding Date.

3.5.3 Incumbency. Delivery to Administrative Agent on behalf of the Banks of (a) a certificate satisfactory in form and substance to the Technical Committee, from the Turbine Owner which owns such Turbine and any Intermediate Parent with respect to such Turbine Owner, signed by the appropriate authorized officer of each such entity and dated the Turbine Funding Date, as to the incumbency of the natural persons authorized to execute and deliver the Turbine Purchase Contract and any other Operative Documents with respect to such Turbine, as applicable, and any instruments or agreements required hereunder or thereunder to which such entity is a party, or (b) in so far as any of the materials delivered pursuant to Section 3.1.2 are sufficient (in the reasonable discretion of the Technical Committee) to satisfy the requirements set forth in this Section 3.5.3, Borrower shall deliver a certificate by the appropriate officers that the matters delivered under Section 3.1.2 remain in full force and effect as of the Turbine Funding Date.

3.5.4 Formation Documents. Delivery to Administrative Agent on behalf of the Banks of (a) copies of the articles of incorporation or certificate of incorporation or charter or other state certified constituent documents of the Turbine Owner which owns such Turbine, any Intermediate Parent with respect to such Turbine Owner and the Turbine Purchase Contractor with respect to such Turbine, certified, if requested by the Technical Committee, by the secretary of state of the state of formation, and (b) (i) copies of the Bylaws or other comparable constituent documents of such Turbine Owner and other Portfolio Entities, certified by its secretary or an assistant secretary, or (ii) in so far as any of the materials delivered pursuant to Section 3.1.3 are sufficient (in the reasonable discretion of the Technical Committee) to satisfy the requirements set forth in this Section 3.5.4(b)(i), Borrower shall deliver a certificate by the appropriate officers that the matters delivered under Section 3.1.3 remain in full force and effect as of the Turbine Funding Date.

3.5.5 Good Standing Certificates. For the Turbine Owner which owns such Turbine, any Intermediate Parent with respect to such Turbine Owner and the Turbine Purchase

Contractor with respect to such Turbine, delivery to Administrative Agent on behalf of the Banks of certificates issued by the secretary of state of the state of formation of such entity certifying that such entity is in good standing and is qualified to do business in, and has paid all franchise taxes or similar taxes due to, such state.

3.5.6 Satisfactory Proceedings. All corporate, partnership and legal proceedings and all instruments in connection with the transactions contemplated by this Agreement with respect to such Turbine shall be satisfactory in form and substance to the Technical Committee, and Administrative Agent on behalf of the Banks shall have received all information and copies of all documents, including records of corporate or partnership proceedings and copies of any approval by any Governmental Authority required in connection with any transaction herein contemplated (with respect to such Turbine), which the Technical Committee may reasonably have requested in connection herewith, such documents where appropriate to be certified by proper corporate or partnership officers or Governmental Authorities.

3.5.7 Operative Documents.

(a) Delivery to Administrative Agent on behalf of the Banks of executed originals of:

(i) Amendments, supplements or modifications to each of the Collateral Documents with respect to such Turbine (or additional Collateral Documents if reasonably requested by the Technical Committee, including, if not previously delivered pursuant to Section 3.1, a Project/Turbine Owner Security Agreement executed by the Turbine Owner with respect to such Turbine and Pledge Agreements (Pledged Equity Interests) executed by each Portfolio Entity with respect to such Turbine (other than the relevant Turbine Owner)) considered necessary by the Technical Committee to ensure that all rights and assets related to such Turbine under the relevant Turbine Purchase Contract have been pledged to Administrative Agent and the Banks; provided, however, as set forth in the relevant Project/Turbine Owner Security Agreement and Pledge Agreements (Pledged Equity Interests), the Lien on the Collateral comprising such Turbine and the ownership interests in the relevant Portfolio Entities shall not secure those Obligations relating to or arising from Projects that have achieved Operation prior to the Turbine Funding Date.

(ii) A Consent to assignment in substantially the form of Exhibit E-1 or otherwise in form and substance reasonably satisfactory to the Technical Committee from the relevant Turbine Purchase Contractor and, if a guaranty or other credit support document executed by Persons other than Calpine with respect to such Turbine exists as of the expected Funding Date for such Turbine, from such guarantors or other credit support providers, as applicable.

(b) Unless previously delivered pursuant to Section 3.1, Borrower shall have delivered to Administrative Agent the federal employer number and all other information requested by Administrative Agent with respect to the Turbine Owner and any Intermediate Parent with respect to such Turbine Owner, and all actions shall have been taken to provide the Banks with a valid and perfected first priority Lien on the Collateral with respect to the relevant Turbine Owner's interest in such Turbine and the relevant Turbine Purchase Contract including,

without limitation, to the extent necessary, the execution, delivery and filing of UCC-1, UCC-2 or UCC-3 financing statements, as applicable, with respect to such Collateral with the Secretary of State and/or other appropriate filing office in the states of formation of the relevant Turbine Owner or other Portfolio Entity or the states in which such Turbine Owner's or other Portfolio Entities' principal places of business are located, the delivery of the Pledged Equity Interests of the Portfolio Entities with respect to such Turbine in accordance with the relevant Pledge Agreements (Pledged Equity Interests) and the delivery of a Portfolio Entity Note executed by such Turbine Owner).

(c) Delivery to Administrative Agent on behalf of the Banks of true and correct copies of the Turbine Purchase Contract and, if any guaranty or other credit support document executed by Persons other than Calpine with respect to such Turbine exists as of the expected Funding Date for such Turbine, delivery of all such guaranty agreements or other credit support documents, and any supplements or amendments thereto and which Turbine Purchase Contract shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect on the Turbine Funding Date pursuant to the certificates delivered as provided in this Section 3.5, which certificates shall state that neither such Turbine Owner nor, to Borrower's knowledge, the relevant Turbine Purchase Contractor is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, and that all conditions precedent to the performance of the parties under such Turbine Purchase Contract then required to have been performed have been satisfied.

(d) The relevant Turbine Purchase Contract shall be in form and substance reasonably satisfactory to the Technical Committee and shall have been duly authorized, executed and delivered by the parties thereto. The counterparty to the relevant Turbine Contract (other than the applicable Project Owner) shall be a Turbine Purchase Contractor. All guaranty agreements and other credit support documents delivered pursuant to Section 3.5.7(c) shall be in form and substance satisfactory to the Technical Committee and shall have been duly authorized, executed and delivered by the Party thereto.

3.5.8 Certificate of Borrower. Administrative Agent on behalf of the Banks shall have received a certificate, dated as of the Turbine Funding Date, signed by a Responsible Officer of the Borrower, certifying that such Turbine has been assigned to a Project, is owned by a Turbine Owner, such Turbine's Turbine Delivery Date and otherwise in substantially the form of Exhibit F-3.

3.5.9 Legal Opinions. Unless previously delivered pursuant to Section 3.1, delivery to Administrative Agent on behalf of the Banks of legal opinions of counsel to the Turbine Owner which owns such Turbine, any Intermediate Parent with respect to such Turbine Owner and, to the extent required by the Technical Committee, the relevant Turbine Purchase Contractor and all other Persons party to a guaranty agreement or credit support document delivered pursuant to Section 3.5.7(c), in each case in form and substance satisfactory to the Technical Committee.

3.5.10 Insurance. Insurance with respect to such Turbine complying with Exhibit K (as the same may be modified to include such Turbine) shall be in full force and effect and Administrative Agent on behalf of the Banks shall have received (a) a certificate from

Borrower's insurance broker(s), dated as of the Turbine Funding Date and identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit K, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with Exhibit K, and (b) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer), in form and substance satisfactory to the Technical Committee.

3.5.11 Certificate of the Independent Engineer. Delivery to Administrative Agent on behalf of the Banks of the Independent Engineer's certificate with respect to such Turbine, in substantially the form of Exhibit F-7, with the Independent Engineer's report with respect to such Turbine, confirming, in form and substance satisfactory to the Technical Committee, that the technology and size of such Turbine is appropriate for the Project to which it has been assigned.

3.5.12 No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Bank to any material unreimbursed Tax or Other Tax.

3.5.13 Absence of Litigation. No action, suit, proceeding or investigation shall have been instituted or threatened against the Turbine Owner or any Intermediate Parent with respect to such Turbine Owner which could reasonably be expected to have a Material Adverse Effect on Borrower.

3.5.14 Payment of Filing Fees. All amounts required to be paid to or deposited with the Banks in respect of such Turbine, and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Section 3.5, shall have been paid in full or, as approved by the Technical Committee, provided for.

3.5.15 Financial Statements. Administrative Agent on behalf of the Banks shall have received the most recent annual financial statements (audited if available) or Form 10-K and most recent quarterly financial statements or Form 10-Q from the Turbine Purchase Contractor with respect to such Turbine (or its respective parent entity).

3.5.16 UCC Reports. Administrative Agent on behalf of the Banks shall have received a UCC report of a date reasonably close to the Turbine Funding Date for each of the jurisdictions in which any UCC-1 financing statements or amendments thereto are intended to be filed in respect of such Turbine, showing that upon due filing (assuming such filing or recordation occurred on the date of such respective reports), the security interests created under the Collateral Documents with respect to such Turbine will be prior to all other financing statements or other security documents wherein the security interest is perfected by filing in respect of such Turbine.

3.5.17 No Material Adverse Change. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date.

3.5.18 Representations and Warranties. Each representation and warranty of the Member, Calpine and the Portfolio Entities with respect to such Turbine under the Credit Documents and each representation and warranty of Borrower and the Turbine Owner which owns such Turbine under the Operative Documents, in each case with respect to itself and such Turbine, shall be true and correct in all material respects as if made on such date, unless such representation or warranty expressly relates solely to another time.

3.5.19 Calpine Compliance. No "event of default" (as defined therein) under any agreement or instrument documenting or evidencing any of Calpine's Debt obligations that are greater than \$10,000,000 shall have occurred and be continuing.

3.5.20 Calpine Guaranties. Calpine shall have executed an acknowledgment, in form and substance satisfactory to the Technical Committee, that such Turbine shall be included with the obligations undertaken pursuant to the Turbine Purchase Guaranty.

3.5.21 Calpine Corporation Credit Rating. Calpine shall be rated at least Ba2 by Moody's and BB by S&P.

3.6 Conditions Precedent to Each Turbine Purchase Credit Event. The obligation of the Banks to make each Turbine Purchase Loan (including the initial Turbine Purchase Loans for each Turbine) (a "Turbine Purchase Credit Event"), is subject to the prior satisfaction of each of the following conditions:

3.6.1 Monthly Drawdown Frequency. Turbine Purchase Loans shall be made no more frequently than two times per month.

3.6.2 Notice of Turbine Purchase Borrowing. Borrower shall have delivered a Notice of Turbine Purchase Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1.

3.6.3 Turbine Purchase Drawdown Certificate and Engineer's Certificate.

(i) At least 8 Banking Days prior to each Turbine Purchase Credit Event, Borrower shall have provided Administrative Agent with a certificate, dated the date of the proposed occurrence of such Turbine Purchase Credit Event and signed by Borrower, substantially in the form of Exhibit C-8, in respect of each Turbine for which a disbursement of funds are being requested and (ii) at least four Banking Days prior to each Turbine Purchase Credit Event, the Independent Engineer shall have provided Administrative Agent with a certificate of the Independent Engineer, substantially in the form of Exhibit C-9. Such certificates shall certify that the payments to the Turbine Purchase Contractor with respect to the relevant Turbine (including payments made from and after October 1, 2000) for which Turbine Loans are being requested have been made.

3.6.4 Amount. Turbine Purchase Loans may include reimbursement of Turbine Costs paid by Borrower or an Affiliate of Borrower on or after October 1, 2000 and shall be in such amounts as shall ensure that uncommitted funds remaining in the Turbine Purchase Sub-

Account shall be disbursed to the greatest extent possible, given the requirements of Section 2.1.2(b)(ii).

3.6.5 Equity Contributions. Borrower shall be in compliance with Section 5.17.

3.6.6 Insurance. Insurance complying with the requirements of Section 5.18 with respect to such Turbine shall be in effect, and upon the request of Administrative Agent evidence thereof shall be provided to Administrative Agent.

3.6.7 Available Construction Funds. After taking into consideration the Turbine Purchase Loans being requested, Available Construction Funds shall not be less than the aggregate unpaid amount of Project Costs required to cause the Completion Date of all Initial Projects and Funded Subsequent Projects that have not achieved Completion to occur in accordance with all Legal Requirements and the Construction Contracts prior to the guaranteed completion date with respect to each such Project set therefor in such Project's Project Schedule and to pay or provide for all anticipated non-construction Project Costs as to each such Project, all as set forth in the Project Budgets.

3.6.8 Representations and Warranties. Each representation and warranty of the Member, Calpine and the Portfolio Entities with respect to such Turbine under the Credit Documents and each representation and warranty of the Turbine Owner which owns such Turbine under the Operative Documents, in each case with respect to itself and a Turbine for which Turbine Purchase Loans are being requested, shall be true and correct in all material respects as if made on such date, unless such representation or warranty expressly relates solely to another time.

3.6.9 No Event of Default or Inchoate Default. No Event of Default or Inchoate Default has occurred and is continuing or will result from such Turbine Purchase Credit Event.

3.6.10 Credit Documents and Turbine Purchase Contract in Effect. Each Credit Document and the Turbine Purchase Contract related to the Turbine for which Turbine Purchase Loans are then being requested remains in full force and effect in accordance with its terms and no material defaults have occurred thereunder.

3.6.11 No Material Adverse Effect. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date (except as is no longer continuing).

3.6.12 Debt to Capitalization Ratio. Borrowers' Debt to Capitalization Ratio shall be no more than the Maximum Debt to Capitalization Ratio.

3.6.13 Funded Projects.

(a) In the event such Turbine Purchase Credit Event occurs after the first anniversary of the Closing Date, at least ten Initial Projects shall be Funded Projects.

(b) In the event such Turbine Purchase Credit Event occurs after the second anniversary of the Closing Date, at least two Subsequent Projects and all Initial Projects shall be Funded Projects.

3.7 Conditions Precedent to Final Completion. Final Completion with respect to a Project shall not occur until the following conditions shall have been satisfied:

3.7.1 Notice of Completion. Delivery to Administrative Agent, in form and substance satisfactory to Administrative Agent, of evidence that all work with respect to such Project requiring inspection by municipal and other Governmental Authorities having jurisdiction has been duly inspected and approved by such authorities, that the relevant Project Owner (or other Person that directly owns such Project) has duly recorded a notice of completion for such Project, that all parties performing such work have been or will be paid for such work, and that no mechanics' and/or materialmen's liens or application therefor have been filed and all applicable filing periods for any such mechanics' and/or materialmen's liens have expired; provided, however, that in the event Borrower delivers to Administrative Agent either (i) a policy of title insurance or endorsement thereto, in form and substance satisfactory to Administrative Agent, insuring against loss arising by reason of any mechanics' or materialmen's lien gaining priority over the relevant Deed of Trust (except where applicable Governmental Rules prevent the insurance against such a loss) or (ii) a bond, in form and substance satisfactory to Administrative Agent, in the amount of all payments owed to any contractor, subcontractor or any other person as to whom the filing periods for mechanics' and materialmen's liens have not expired, and covering the relevant Project Owner's liability to such contractors, subcontractors or other persons, Administrative Agent shall waive the applicable filing periods referred to herein.

3.7.2 Completion. Completion with respect to such Project shall have occurred and Administrative Agent shall have received a certification by Construction Manager for such Project and by Borrower and the Independent Engineer to such effect.

3.7.3 Annual Budget. Administrative Agent shall have received the Annual Operating Budget with respect to such Project as required under Section 5.15.2 for the calendar year containing the date of Final Completion. In the event that such Annual Operating Budget does not, in Administrative Agent's opinion, properly reflect the operation of such Project during such calendar year as a result of the actual date of Final Completion being different from the date anticipated therefor and set forth in such Annual Operating Budget, Administrative Agent shall have received an amendment to such Annual Operating Budget properly reflecting the actual date of Final Completion.

3.7.4 Insurance. Insurance complying with the requirements of Section 5.18 shall be in effect, and upon the request of Administrative Agent, evidence thereof shall be provided to Administrative Agent.

3.7.5 Applicable Permits and Applicable Third Party Permits. The relevant Project Owner shall have obtained or caused to be obtained and delivered to Administrative Agent all Applicable Permits with respect to such Project, satisfactory in form and substance to Administrative Agent, together with copies of each such Applicable Permit and a certificate of

an authorized officer of Borrower certifying that all such Applicable Permits have been obtained. Each Major Project Participant with respect to such Project shall have obtained or caused to be obtained all Applicable Third Party Permits applicable to such Person with respect to such Project, satisfactory in form and substance to Borrower and Administrative Agent, and Borrower shall have delivered or cause to be delivered to Administrative Agent copies or other evidence of each such Applicable Third Party Permit and a certificate of an authorized officer of Borrower certifying that all such Applicable Third Party Permits have been obtained. All such Applicable Permits and Applicable Third Party Permits shall be in full force and effect, not subject to any then current legal proceeding or to any unsatisfied condition that could reasonably be expected to allow material modification or revocation, and all applicable appeal periods with respect thereto shall have expired.

3.7.6 Real Estate Rights; A.L.T.A. Surveys. Administrative Agent shall have received as-built A.L.T.A. surveys of the Site and the Easements with respect to such Project (or such other documentation acceptable to Administrative Agent), reasonably satisfactory in form and substance to Administrative Agent and the Title Insurer, certified to Administrative Agent as to completeness and accuracy as of not more than four weeks prior to Final Completion by a licensed surveyor reasonably satisfactory to Administrative Agent, showing (a) as to such Site, the exact location and dimensions thereof, including the location of all means of access thereto and all easements relating thereto and showing the perimeter within which all foundations are located; (b) as to such Easements, the exact location and dimensions thereof, including the location of all means of access thereto, and all improvements or other encroachments in or on such Easements; (c) the location and dimensions of all improvements, fences or encroachments located in or on such Site or such Easements; (d) that the location of such Project does not encroach on or interfere with adjacent property or existing easements or other rights (whether on, above or below ground), and that there are no gaps, gores, projections, protrusions or other survey defects; (e) whether such Site or any portion thereof is located in a special earthquake or flood hazard zone; and (f) that there are no other matters that could reasonably be expected to be disclosed by a survey constituting a defect in title other than relevant Permitted Encumbrances; provided, however, that the matters described in clauses (b) and (e) may be shown by separate maps, surveys or other information reasonably satisfactory to Administrative Agent.

3.7.7 Title Policy. Administrative Agent shall have received (a) a lender's A.L.T.A. policy of title insurance, together with such endorsements as are reasonably required by Administrative Agent and are obtainable in the state where such Project is located at reasonable costs, in the amount of an aggregate principal amount reasonably satisfactory to Administrative Agent, not to exceed the amount of the Title Policies delivered pursuant to Section 3.2.28, 3.3.30 or 3.3.41, as applicable, with respect to such Project, issued by the Title Insurer, in form and substance and with such reinsurance as is reasonably satisfactory to Administrative Agent, and insuring Administrative Agent as to all matters described in Section 3.2.28, 3.3.30 or 3.3.41, as the case may be, the continued first priority of the Lien on the relevant Mortgaged Property evidenced by the relevant Deed of Trust (without a mechanics' and materialmen's exception included in such title policy, except where applicable Governmental Rules prevent the deletion of such exception) and as to such other matters as Administrative Agent may reasonably request, and containing only relevant Permitted Encumbrances, such Permitted Liens (other than Permitted Liens described in clauses (a) and (b) of the definition thereof) as are junior and subordinate to the relevant Deed of Trust and any other exceptions relating to the boundaries of

the relevant Site, encroachments and matters disclosed or discoverable by a survey or inspection as are acceptable to Administrative Agent in its sole discretion or (b) an endorsement to the A.L.T.A. Policy delivered to Administrative Agent pursuant to Section 3.2.27, 3.3.29 or 3.3.41, as the case may be, reasonably satisfactory to Administrative Agent reflecting the items referred to above.

3.7.8 Operating Plans. Borrower shall have provided to Administrative Agent a plan setting forth such Project's procedures for operating the Project, fuel procurement and power marketing in form and substance reasonably satisfactory to Administrative Agent.

3.7.9 Affiliated Party Deeds of Trust. Borrower shall have delivered to Administrative Agent either (a) a deed of trust in form and substance satisfactory to Administrative Agent executed by each Affiliate of Calpine (other than the relevant Project Owner) that is party to an agreement with respect to such Project and owns or otherwise holds an interest in any real property related to the operation of such Project, if any, in favor of such Project Owner and securing either (i) in the case such agreement is entered into between such Affiliate and such Project Owner, such Affiliate's obligations to such Project Owner under such agreement or (ii) in the case such agreement is entered into between such Affiliate and a Person other than such Project Owner, such Affiliate's obligations to such Project Owner under a guaranty executed by such Affiliate in favor of such Project Owner evidencing such Affiliate's guaranty (for the benefit of such Project Owner) of its obligations to the relevant Person under such agreement (such guaranty to be delivered to Administrative Agent concurrently with the delivery of such deed of trust and in form and substance satisfactory to Administrative Agent) or (b) in the case such agreement is entered into between such Affiliate and a Person other than such Project Owner, such documents, agreements and other instruments in form and substance satisfactory to Administrative Agent (other than those specified in clause (a)(ii) above) pursuant to which such Affiliate's ownership interests in such real property are pledged to such Project Owner (whether by collateral assignment or otherwise) as security for such Person's obligations to such Project Owner under a Project Document related to such agreement and, in each such case, such amendments, supplements or modifications to each of the Collateral Documents with respect to such Project (or additional Collateral Documents if reasonably requested by Administrative Agent) considered necessary by Administrative Agent to ensure that all of such Project Owner's rights under such deed of trust, guaranty and/or other documentation, as the case may be, are subject to the Lien of the Collateral Documents.

3.7.10 Equipment Maintenance Agreements. In the event an Equipment Finance Company has entered into any maintenance or other service agreements associated with or related to any equipment leased or to be leased by such Equipment Finance Company to the Project Owner with respect to such Project, if reasonably requested by the Technical Committee such agreements shall be assigned or otherwise transferred by such Equipment Finance Company to such Project Owner and any related Consents shall be amended accordingly.

3.8 Conditions Precedent to the Issuance of Letters of Credit. The obligation of the LC Bank to issue, extend or increase the Stated Amount of any Letter of Credit (an "LC Action") is subject to the prior satisfaction of each of the following conditions:

3.8.1 Representations and Warranties. Each representation and warranty of the Member, Calpine and the Non-Affiliated Parents with respect to the Project for which Construction Loans are being requested, if any, under the Credit Documents and each representation and warranty of the Portfolio Entities under the Operative Documents, in each case with respect to itself and the Project for which the issuance, extension or increase in Stated Amount of a Letter of Credit is being requested, shall be true and correct in all material respects as if made on such date, unless such representation or warranty expressly relates solely to another time.

3.8.2 No Event of Default or Inchoate Default. No Event of Default or Inchoate Default has occurred and is continuing or will result from such LC Action and no Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default in respect of the Project for which the issuance, extension or increase in Stated Amount of a Letter of Credit is requested has occurred and is continuing or will result from such LC Action.

3.8.3 Operative Documents, Applicable Permits and Applicable Third Party Permits in Effect. Each Credit Document, Project Document, Additional Project Document, Applicable Permit and Applicable Third Party Permit related to the Project for which Letters of Credit are then being requested remains in full force and effect in accordance with its terms and no material defaults have occurred thereunder.

3.8.4 No Material Adverse Effect. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date (except as is no longer continuing) and no event or circumstance having a Material Adverse Effect with respect to the Project in respect of which the LC Bank is being requested to issue, extend or increase the stated Amount of a Letter of Credit has occurred since the Closing Date (except as is no longer continuing).

3.8.5 Interest Coverage Ratio. From and after the first day of the second calendar quarter following Final Completion of the first Project to achieve Final Completion, Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall (a) to and including such time as the fourth Project achieves Final Completion, equal the lesser of (i) [\*] to 1.00 or (ii) 90% of the projected annual Four-Quarter Portfolio Interest Coverage Ratio reflected in the Base Case Project Projections delivered with respect to the relevant Projects pursuant to Section 3.1 or 3.3, as the case may be, and (b) thereafter, equal or exceed [\*] to 1.00.

3.8.6 Project Satisfaction of Conditions Precedent to Initial Funding. The Project in respect of which the LC Bank is being requested to issue, extend or increase the stated Amount of a Letter of Credit shall be a Funded Project.

3.8.7 Debt to Capitalization Ratio. Borrower's Debt to Capitalization Ratio shall be no more than the Maximum Debt to Capitalization Ratio.

3.8.8 Funded Projects. In the event such LC Action occurs after the second anniversary of the Closing Date, each Initial Project shall be a Funded Project.

### 3.9 Failure of Conditions Precedent to be Satisfied for a Particular Project.

(a) In the event that Borrower requests a Borrowing with respect to more than one Project, and the applicable conditions set forth in this Article 3 for such Borrowing have not been satisfied for one or more of such Projects, then such Borrowing shall be permitted to occur for the Projects in respect of which all applicable conditions have been satisfied, unless (i) the failure of any condition to be satisfied with respect to any Project has the effect of causing an Event of Default or Inchoate Default to occur under this Agreement, in which case the requested Borrowing shall not be permitted to occur until such time as the Event of Default or Inchoate Default has been cured and the applicable conditions have been satisfied, or (ii) a Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing with respect to any Project, as the case may be, in which case the provisions of Section 3.9(b) shall apply.

(b) In the event that a Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing with respect to a given Project but the conditions to the requested Borrowing in respect of a different Project are otherwise satisfied, then:

(i) In the event that (A) the Four-Quarter Portfolio Interest Coverage Ratio yields a minimum projected ratio of no less than [\*] to 1.00 through the same term of the Base Case Project Projections delivered pursuant to Sections 3.1 and, if applicable, 3.3, and (B) the Debt to Capitalization Ratio yields maximum projected ratios that are no higher than the Maximum Debt to Capitalization Ratio at any time through the Loan Maturity Date, then Borrower shall be permitted to obtain the requested Borrowing for a Project with respect to which no Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing and which otherwise satisfied the required conditions of this Article 3.

(ii) In the event that (A) the Four-Quarter Portfolio Interest Coverage Ratio yields a minimum projected ratio of less than [\*] to 1.00 through the same term of the Base Case Project Projections delivered pursuant to Sections 3.1 and, if applicable, 3.3, or (B) the Debt to Capitalization Ratio yields maximum projected ratios that are higher than the Maximum Debt to Capitalization Ratio at any time through the Loan Maturity Date, then Borrower shall not be permitted to obtain the requested Borrowing with respect to any Project unless and until such time as (x) the Four-Quarter Portfolio Interest Coverage Ratio and the Debt to Capitalization Ratio meet the thresholds specified above or (y) the Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default, is no longer continuing and, in each case, the applicable conditions in this Article 3 have been satisfied.

### 3.10 Funding of Equity.

(a) Notwithstanding any other provision of this Agreement to the contrary, Borrower shall have the right to, at any time, make a Contribution into the Construction Account or any sub-account therein and have such funds applied to the payments of Costs in accordance with Section 7.1.2 so long as (i) at least 10 Banking Days prior to the requested disbursement of funds from the Construction Account, Borrower shall have provided Administrative Agent with a certificate, dated the date of the proposed disbursement and signed by Borrower, substantially in the form of Exhibit C-6 or C-8, as the case may be, in respect of the Project or Turbine for which the disbursement is being requested and (ii) at least 4 Banking Days prior to the date of the requested disbursement of funds from the Construction Account, the Independent Engineer shall have provided Administrative Agent with

a certificate, substantially in the form of Exhibit C-7 or C-9, as the case may be, relating to such disbursement; provided, however, that in the case of a Project (rather than a Turbine) such certificates need not certify as to whether the amount of Project Costs incurred by the Project for which the disbursement is being requested are in excess of the amounts set forth in the corresponding Project Budget, and the funds deposited by Borrower into the Construction Account with respect to Projects shall be released regardless of whether or not the requested disbursement is in excess of the amounts set forth in the corresponding Project Budget; provided, further, that until the funding of the initial Loans with respect to a given Project or Turbine, funds deposited by Borrower into the Construction Account with respect to such Project or Turbine shall be released notwithstanding failure to satisfy the conditions set forth in

(i) Sections 3.2, 3.3, 3.4.5, 3.4.7, 3.4.8, 3.4.9, 3.4.11, 3.4.12, 3.4.14, 3.4.15, 3.4.17, 3.4.18 (as it relates to such Project), 3.4.19, 3.4.20 and 3.4.22 with respect to such Project, or (ii) Sections 3.5, 3.6.5, 3.6.7, 3.6.8, 3.6.10, 3.6.11 (as it relates to such Turbine), and 3.6.12 (with respect to such Turbine).

(b) In the event that Borrower makes a Contribution with respect to a Project as contemplated in paragraph (a) above or otherwise with respect to a Project which is in excess of the Base Equity and Additional Borrower Equity which Borrower is required to contribute or cause to be contributed under this Agreement, then Borrower shall, at any time (i) except as set forth in the last sentence of this Section 3.10(b), after all Initial Projects have become Funded Projects, (ii) prior to the Completion of the Project for which such funds were contributed, (iii) when no Non-Fundamental Project Default, Non-Fundamental Project Inchoate Default, Event of Default or Inchoate Default has occurred and is continuing, (iv) so long as Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the end of the most recent calendar quarter equaled or exceeded [\*] to 1.00, and (v) so long as Borrower's Debt to Capitalization Ratio as of the end of the most recent calendar quarter were no higher than the Applicable Debt to Capitalization Ratio then in effect, obtain reimbursement of or repayment of, as the case may be, such Contributions described in paragraph (a) above through Loans by satisfying the conditions set forth in Section 3.4 with respect to such Project; provided, however, that the difference between (x) the aggregate amount of Contributions by Borrower to the Funded Projects less (y) the sum of the amount of the requested reimbursement or repayment, as the case may be, plus the aggregate amount of all prior reimbursements and repayments shall be no less than (z) [\*] plus the Contributions required pursuant to Section 5.17.1. Notwithstanding clause (i) of this Section 3.10(b) but so long as the other conditions set forth in this

Section 3.10(b) are satisfied (including without limitation the satisfaction of the conditions set forth in Section 3.4), on the Funding Date for the Los Medanos Energy Center Project, Borrower shall be entitled to obtain reimbursement for (x) any Project Costs with respect to the Los Medanos Energy Center Project paid by Calpine from September 1, 2000 through the Funding Date for such Project, and (y) the amount of any and all fees and costs paid to the Lead Arrangers, the Arrangers, Administrative Agent, LC Bank or the Banks by or on behalf of Borrower on the Closing Date.

3.11 No Approval of Work. Neither the making of any Loan nor the issuance of any Letter of Credit hereunder shall be deemed an approval or acceptance by Administrative Agent or the Banks of any work, labor, supplies, materials or equipment furnished or supplied with respect to any of the Projects or Turbines.

3.12 Waiver of Funding; Adjustment of Drawdown Requests. Subject to Section 10.9, notwithstanding the foregoing, the Required Banks, without waiving any of the Banks' rights hereunder, shall have the right to effect a Construction Credit Event, Turbine Purchase Credit Event or LC Action hereunder without full compliance by Borrower with the conditions described in this Article 3. In the event Administrative Agent determines that an item or items listed in a Drawdown Certificate as a Cost is not properly included in such Drawdown Certificate, Administrative Agent, in consultation with the Independent Engineer, may in its reasonable discretion cause to be made a Loan or Loans in the amount requested in such Drawdown Certificate less the amount of such item or items or may reduce the amount of Loans made pursuant to any subsequent Drawdown Certificate. In the event that Borrower prevails in any dispute as to whether such Costs were properly included in such Drawdown Certificate, Loans in the amount requested but not initially made shall forthwith be made.

3.13 Ability of Technical Committee to Defer Satisfaction of Conditions Precedent to Initial Funding for Projects Five Through Twelve. The Technical Committee (and not the Required Banks), without deferring any of the Banks' other rights hereunder, or waiving any of the Banks' rights hereunder, shall have the ability to defer Borrower's required satisfaction of any condition precedent set forth in Sections 3.2 or 3.3, as the case may be, and to effect a Construction Credit Event under Sections 3.2 or 3.3, as the case may be, with respect to any of Projects Five Through Twelve without satisfaction by Borrower of the condition(s) so deferred; provided that (a) in the reasonable opinion of the Technical Committee, the deferral of Borrower's satisfaction of such condition(s) precedent is not reasonably likely to have a Material Adverse Effect on Borrower, (b) if such deferred condition(s) precedent is not satisfied or waived by the Required Banks by the earlier of (i) one year after the Funding Date with respect to the applicable Project and (ii) the scheduled Completion Date of such Project (as set forth in such Project's Project Schedule), then Borrower's ability to borrow Construction Loans with respect to such Project shall be suspended until such condition has been satisfied or waived by the Required Banks and (c) if such condition is not satisfied or waived by the Required Banks by the scheduled Completion Date of such Project (as set forth in such Project's Project Schedule), Borrower shall calculate Borrower's Debt to Capitalization Ratio and promptly make or cause to be made Contributions so that Borrower's Debt to Capitalization Ratio does not exceed the Applicable Debt to Capitalization Ratio then in effect; provided, however, Borrower may, at its option, prepay all Loans attributable to such Project (with amounts other than amounts in any Account or otherwise constituting Collateral), in which event Administrative Agent thereafter shall execute and deliver to Borrower such documents and instruments, including UCC-3 termination statements, as reasonably may be necessary to release the Liens granted to the Banks in the relevant Project and/or equity interests with respect to the relevant Portfolio Entities with respect to such Project (including the Lien on cash flows from such Project).

**ARTICLE 4.**  
**REPRESENTATIONS AND WARRANTIES**

Borrower makes the following representations and warranties to and in favor of the Lead Arrangers, Administrative Agent, LC Bank and the other Banks as of the Closing Date and as of the date of each Construction Credit Event, Turbine Purchase Credit Event and LC Action, in each case to the extent set forth in Article 3. All of these representations and warranties shall survive the Closing Date, the issuance of any Letters of Credit and the making of the Loans:

4.1 Organization.

4.1.1 Borrower is a limited liability company duly constituted, validly existing and in good standing under the laws of the State of Delaware and is duly qualified, authorized to do business and in good standing in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary. Borrower has all requisite power and authority to own or hold under lease and operate the property it purports to own or hold under lease and to carry on its business as now being conducted and as now proposed to be conducted. On the Closing Date, Member is the sole member of Borrower.

4.1.2 Member (a) is a corporation duly organized and validly existing in good standing under the laws of the State of Delaware with all requisite corporate power and authority under the laws of the State of Delaware to enter into the Limited Liability Company Agreement and, as the sole member of the Borrower, to perform its obligations thereunder and to consummate the transactions contemplated thereby, (b) is duly qualified, authorized to do business and in good standing in each other jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary, (c) has the corporate power (i) to carry on its business as now being conducted and as proposed to be conducted by it, (ii) to execute, deliver and perform each Operative Document to which it is a party, in its individual capacity, and (iii) to take all action as may be necessary to consummate the transactions contemplated thereunder and (d) has the power and authority under the Limited Liability Company Agreement to execute and deliver, on behalf of Borrower, each Operative Document to which Borrower is a party.

4.1.3 Each of the Portfolio Entities (other than Borrower and the Corporate Portfolio Entities) with respect to the Initial Projects and Funded Subsequent Projects is a limited partnership or limited liability company, as the case may be, and each of the Corporate Portfolio Entities is a corporation, in each case duly organized, validly existing and in good standing under the laws of the State of Delaware (except for Freestone Power Generation, LP and Calpine Power Equipment LP, such Portfolio Entities being validly existing and in good standing under the laws of the State of Texas) and is duly qualified, authorized to do business and in good standing in the states where the character of its properties or the nature of its activities makes such qualification necessary including, in respect to a Project Owner and an Equipment Finance Company party to an Equipment Lease, the state where the respective Project is located. Each such Portfolio Entity has all requisite partnership, company or corporate, as the case may be, power and authority to own or hold under lease and operate the property it purports to own or hold under lease and to carry on its business as now being conducted and as now proposed to be

conducted and to execute, deliver and perform each Operative Document to which it is a party. Each such Portfolio Entity is directly or indirectly a wholly-owned Subsidiary of Borrower, except in the case of Project Owners with respect to Subsequent Projects where such Project Owners are at least directly or indirectly 50% owned by Borrower and the Delta Energy Center Project Owner.

4.2 Authorization; No Conflict. Each Portfolio Entity has duly authorized, executed and delivered, or has been properly assigned, each Operative Document to which such Portfolio Entity is a party and neither such Portfolio Entity's execution and delivery thereof nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (a) does or will contravene the constituent documents or any other Legal Requirement applicable to or binding on such Portfolio Entity or any of its properties, (b) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its properties under, any agreement or instrument to which such Portfolio Entity is a party or by which it or any of its properties may be bound or affected or (c) does or will require the consent or approval of any Person which has not already been obtained.

4.3 Enforceability. Each of the Operative Documents to which each Portfolio Entity is a party is a legal, valid and binding obligation of such Portfolio Entity enforceable against such Portfolio Entity in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights or by the effect of general equitable principles. None of the Operative Documents to which a Portfolio Entity is a party has been amended or modified except in accordance with this Agreement.

4.4 Compliance with Law. There are no violations by any Portfolio Entity, the Member or, to Borrower's knowledge, Calpine, of any Legal Requirement which could reasonably be expected to have a Material Adverse Effect on Borrower or any Initial Project or Funded Subsequent Project. Except as otherwise have been delivered to Administrative Agent, no notices of violation of any Legal Requirement relating to any Initial Project or Funded Subsequent Project or related Site or any Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine have been issued, entered or received by any Portfolio Entity, the Member or, to Borrower's knowledge, Calpine.

4.5 Business, Debt, Contracts, Joint Ventures Etc.

4.5.1 Neither the Member nor any Portfolio Entity has conducted any business other than the business contemplated by the Operative Documents, has any outstanding Debt or other material liabilities other than pursuant to or allowed by the Operative Documents. None of such Persons is party to or bound by any material contract other than the Operative Documents to which it is a party.

4.5.2 No Portfolio Entity is (a) a general partner or a limited partner in any general or limited partnership or a member in any limited liability company or (b) a joint venturer in any joint venture, except, (i) Borrower, (ii) Intermediate Parents, (iii) in the case of Project Owners with respect to Subsequent Projects where either (A) such Project Owners are at

least directly or indirectly 50% owned by Borrower or (B) such Subsequent Projects are at least 50% owned by the respective Project Owners, or (iv) the Delta Energy Center Project Owner.

4.5.3 Neither any Portfolio Entity nor the Member has any subsidiaries other than Portfolio Entities.

4.5.4 No Portfolio Entity has any properties or assets other than as permitted by the Credit Documents.

4.6 Adverse Change.

4.6.1 With respect to each Initial Project and Funded Subsequent Project, to the best of Borrower's knowledge, there has occurred no material adverse change in the Project Budget, Project Schedule (with respect to the Initial Projects, if delivered) or Base Case Project Projections, in the economics or feasibility of constructing and/or operating such Project, or in the financial condition, business or property of any Major Project Participant, or any other event or circumstance which is reasonably likely to have a Material Adverse Effect on Borrower or such Project (a) as of the Closing Date, since July 31, 2000 and (b) after the Closing Date, except as disclosed to Administrative Agent in writing at the time the representation in this Section 4.6 is being made, since such Project's Funding Date).

4.6.2 With respect to each Funded Turbine, to the best of Borrower's knowledge, there has occurred no material adverse change in the economics or feasibility of procuring or owning such Turbine, or in the financial condition, business or property of the Turbine Purchase Contractor with respect to such Turbine, or any other event or circumstance which is reasonably likely to have a Material Adverse Effect on Borrower, except as disclosed to Administrative Agent in writing at the time the representation in this Section 4.6 is being made, since such Turbine's Turbine Funding Date.

4.7 Investment Company Act, Etc. Neither any Portfolio Entity nor the Member is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and neither any Portfolio Entity nor the Member is or has been determined by the Securities and Exchange Commission or any other Governmental Authority to be subject to, or not exempt from, regulation under PUHCA or the FPA (other than as provided by PURPA or as an Exempt Wholesale Generator).

4.8 ERISA. Either (a) there are no ERISA Plans for any Portfolio Entity or any member of the Controlled Group or (b) each Portfolio Entity and each member of the Controlled Group have fulfilled their obligations (if any) under the minimum funding standards of ERISA and the Code for each ERISA Plan, each ERISA Plan is in compliance in all material respects with the currently applicable provisions of ERISA and the Code and neither any Portfolio Entity nor any Controlled Group member has incurred any liability to the PBGC or any ERISA Plan under Title IV of ERISA (other than liability for premiums due in the ordinary course). None of any Portfolio Entity's assets constitute assets of an employee benefit plan within the meaning of 29 CFR Section 2510.3-101.

4.9 Permits. With respect to each Funded Project in the case of Sections 4.9.1 and 4.9.2, and with respect to each Turbine assigned to any Initial Project (as set forth on Exhibit G-3) and each Funded Turbine in the case of Section 4.9.3:

4.9.1 There are no Permits under existing law as such Project is designed that are or will become Applicable Permits other than the Applicable Permits described in the applicable Permit Schedule. Except as disclosed therein, each Applicable Permit listed in Part I(A) of the applicable Permit Schedule is in full force and effect and is not subject to any current legal proceeding or to any unsatisfied condition that could reasonably be expected to have a Material Adverse Effect on Borrower or such Project, and all applicable appeal periods with respect thereto have expired. Each Permit listed in Part II(A) of the applicable Permit Schedule is either (a) timely obtainable at a cost consistent with the applicable Project Budget prior to the time the applicable Project Owner requires such Permit and is of a type that is routinely granted upon application and that would not normally be obtained before contemplated by Borrower or the relevant Project Owner or (b) able to be eliminated as an Applicable Permit through the implementation of alternative solutions at a cost consistent with the applicable Project Budget. No fact or circumstance exists, to Borrower's knowledge, which indicates that any Permit identified in Part II(A) of the applicable Permit Schedule shall not be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay by the relevant Project Owner before it becomes an Applicable Permit. Each Project Owner with respect to an Initial Project or Funded Subsequent Project is in compliance in all material respects with all Applicable Permits.

4.9.2 There are no Permits under existing law as such Project is designed that are or will become Applicable Third Party Permits other than the Applicable Third Party Permits described in the applicable Permit Schedule (other than those, the failure of which to obtain could not reasonably be expected to have a Material Adverse Effect on Borrower or such Project). Except as disclosed therein, each Applicable Third Party Permit listed in Part I(B) of the applicable Permit Schedule is in full force and effect and is not subject to current legal proceeding or to any unsatisfied condition that could reasonably be expected to have a Material Adverse Effect on Borrower or such Project, and all applicable appeal periods with respect thereto have expired. No fact or circumstance exists, to Borrower's knowledge, which indicates that any Permit identified in Part II(B) of the applicable Permit Schedule shall not be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay by the applicable Major Project Participant before it becomes an Applicable Third Party Permit. To the best knowledge of Borrower, each Major Project Participant is in compliance in all material respects with its respective Applicable Third Party Permits, each other Major Project Participant possesses all licenses, franchises, patents, copyrights, trademarks and trade names, or rights thereto necessary to perform its duties under the Operative Documents to which it is a party, and such Person is not in violation of any valid rights of others with respect to any of the foregoing which could reasonably be expected to have a Material Adverse Effect on Borrower or such Project.

4.9.3 To the best knowledge of Borrower, each Turbine Purchase Contractor possesses all licenses, franchises, patents, copyrights, trademarks and trade names, or rights thereto necessary to perform its duties under the Turbine Purchase Contract to which it is a party, and such Turbine Purchase Contractor is not in violation of any valid rights of others with

respect to any of the foregoing which could reasonably be expected to have a Material Adverse Effect on Borrower.

4.10 Qualifying Facility/Exempt Wholesale Generator. Each Initial Project and Funded Subsequent Project, upon Completion of such Project, will be a Qualifying Facility or an Eligible Facility and, from and after the commencement of commercial operations of each Project that is an Eligible Facility, the respective Project Owner will be an Exempt Wholesale Generator.

4.11 Hazardous Substance.

4.11.1 Except as set forth in Exhibit G-8: (a) neither any Portfolio Entity nor the Member nor Calpine (the "Subject Companies"), with respect to the Sites, Improvements or other Mortgaged Properties owned or leased by a Portfolio Entity, is or has in the past been in violation of any Hazardous Substance Law which violation could reasonably be expected to result in a material liability to any of the Subject Companies or their respective properties and assets or in an inability of any Portfolio Entity to perform its obligations under the Operative Documents; (b) none of the Subject Companies nor, to the best knowledge of the Member and Borrower, any third party has used, released, discharged, generated, manufactured, produced, stored, or disposed of in, on, under, or about the Sites, Improvements or other Mortgaged Properties owned or leased by any Portfolio Entity, or transported thereto or therefrom, any Hazardous Substances that could reasonably be expected to subject the Banks to liability or the Subject Companies to liability, under any Hazardous Substance Law; (c) there are no underground tanks, whether operative or temporarily or permanently closed, located on the Sites, Improvements or other Mortgaged Properties owned or leased by any Portfolio Entity; (d) there are no Hazardous Substances used, stored or present at, on or, to the best knowledge of the Member and Borrower, near the Sites, Improvements or other Mortgaged Properties owned or leased by any Portfolio Entity, except in compliance with Hazardous Substance Laws and other Legal Requirements or as disclosed in the Environmental Reports; and (e) to the best knowledge of the Member and Borrower, there neither is nor has been any condition, circumstance, action, activity or event that could reasonably be expected to be a material violation by the Subject Companies of any Hazardous Substance Law, or to result in liability to the Banks or material liability to the Subject Companies under any Hazardous Substance Law.

4.11.2 Except as set forth on Exhibit G-7 or Exhibit G-8, there is no pending or, to the best knowledge of Borrower, threatened, action or proceeding by any Governmental Authority (including, without limitation, the U.S. Environmental Protection Agency) or any non-governmental third party with respect to the presence or Release of Hazardous Substances in, on, from or to the Sites, Improvements or other Mortgaged Properties owned or leased by any Portfolio Entity.

4.11.3 Neither the Member nor Borrower nor Calpine has knowledge of any past or existing violations of any Hazardous Substances Laws by any Person relating in any way to the Sites, Improvements or other Mortgaged Properties owned or leased by any Portfolio Entity.

4.12 Litigation. Except as set forth on Exhibit G-7 there are no pending or, to the best knowledge of Borrower, threatened actions or proceedings of any kind, including actions or

proceedings of or before any Governmental Authority, to which any Portfolio Entity, the Member, Calpine, or, to the best knowledge of Borrower, any other Major Project Participant, Turbine Purchase Contractor or Project is a party or is subject, or by which any of them or any of their properties or a Project or Turbine are bound, which if adversely determined to or against any Portfolio Entity, any other Major Project Participant or a Project or Turbine could reasonably be expected to have a Material Adverse Effect on any Initial Project, Funded Subsequent Project or Borrower.

4.13 Labor Disputes and Acts of God. Neither the business nor the properties of any Portfolio Entity, the Member, Calpine, or, to the best knowledge of Borrower, any other Major Project Participant or Turbine Purchase Contractor are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy, or other casualty (whether or not covered by insurance), which could reasonably be expected to have a Material Adverse Effect on any Initial Project, Funded Subsequent Project or Borrower.

4.14 Project Documents and Turbine Purchase Contracts.

4.14.1 Copies of all of the Project Documents and Turbine Purchase Contracts in effect with respect to the Funded Projects and the Funded Turbines, as the case may be, as of such date have been delivered to Administrative Agent by Borrower. Except as has been previously disclosed in writing to Administrative Agent, as of the date of delivery of such Project Documents or Turbine Purchase Contracts none of such Project Documents or Turbine Purchase Contracts has been amended, modified or terminated.

4.14.2 To Borrower's knowledge, the representations and warranties of the Major Project Participants contained in the Operative Documents relating to the Initial Projects, the Funded Subsequent Projects, the Turbines assigned to Initial Projects (as set forth on Exhibit G-3) and the Funded Turbines, as the case may be, other than this Agreement are true and correct.

4.15 Disclosure. Neither this Agreement nor any certificate or other documentation furnished to Administrative Agent, or to any consultant submitting a report to Administrative Agent, by or, to the knowledge of Borrower, on behalf of any Portfolio Entity in connection with the transactions contemplated by this Agreement, the other Project Documents or Turbine Purchase Contracts or the design, description, testing or operation of a Project or a Turbine, contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading under the circumstances in which they were made at the time such statements are made. As of the Closing Date, there is no fact known to Borrower which has had or could reasonably be expected to have a Material Adverse Effect on Borrower, any Initial Project, or any Funded Subsequent Project which has not been set forth in this Agreement or in the other documents, certificates and written statements furnished to Administrative Agent and/or the Independent Engineer, by or on behalf of Borrower in connection with the transactions contemplated hereby. The documentation furnished to Administrative Agent and to the Independent Engineer taken as a whole, including without limitation written updated or supplemented information, is true and correct in all material

respects and all such documentation does not omit to state any fact which would have a Material Adverse Effect on Borrower, any Initial Project or any Funded Subsequent Project.

4.16 Private Offering by Borrower. Assuming that the Banks are acquiring the Notes for investment purposes only, and not for purposes of resale or distribution thereof except for assignments or participations as provided in Sections 10.13 and 10.14, no registration of the Notes under the Securities Act of 1933, as amended, or under the securities laws of the State of New York, or any other state in which a Project is located is required in connection with the offering, issuance and sale of the Notes hereunder. Neither Borrower nor anyone acting on its behalf has taken, or will take, any action which would subject the issuance or sale of the Notes to Section 5 of the Securities Act of 1933, as amended.

4.17 Taxes. The Member and each Portfolio Entity has filed all federal, state and local tax returns that it is required to file, has paid all taxes it is required to pay to the extent due (other than those taxes that it is contesting in good faith and by appropriate proceedings, with adequate, segregated reserves or other security reasonably acceptable to Administrative Agent established for such taxes) and, to the extent such taxes are not due, has established reserves that are adequate for the payment thereof and are required by GAAP. For federal income tax purposes, each Portfolio Entity other than the Corporate Portfolio Entities is a partnership or a limited liability company and not an association taxed as a corporation.

4.18 Governmental Regulation. Except to the extent that the FPA is applicable solely by reason of a Portfolio Entity being an Exempt Wholesale Generator or the owner of a Qualifying Facility, none of any Portfolio Entity, the Member, Administrative Agent, or the Banks, nor any Affiliate of any of them will, solely as a result of the construction, ownership, leasing or operation of any Project or any Turbine, the sale of electricity therefrom or the entering into any Operative Document or any transaction contemplated hereby or thereby, be subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities. No Portfolio Entity is subject to regulation under any Governmental Rule as to securities, rates or financial or organizational matters that would preclude any Loans, or the incurrence by any Portfolio Entity of any of the Obligations or the execution, delivery and performance by any Portfolio Entity of the Operative Documents. No Portfolio Entity will be deemed by any Governmental Authority having jurisdiction to be subject to financial, organizational or rate regulation as an "electric utility," "electric corporation," "electrical company," "public utility," "public utility holding company" or any similar entity under any existing law, rule or regulation of any Governmental Authority.

4.19 Regulation U, Etc. No Portfolio Entity is engaged principally, or as one of its principal activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (as defined in Regulations T, U or X of the Federal Reserve Board), and no part of the proceeds of the Loans or the Project Revenues will be used by a Portfolio Entity to purchase or carry any such margin stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock.

4.20 Project Budgets; Projections. Borrower has prepared the Project Budgets and the Base Case Project Projections and is responsible for developing the assumptions on which the

Project Budget and the Base Case Project Projections are based; and the Project Budgets and the Base Case Project Projections for the Initial Projects and the Funded Subsequent Projects (a) are based on reasonable assumptions as to all legal and factual matters material to the estimates set forth therein, (b) as of the date delivered are consistent with the provisions of the Project Documents and (c) indicate that the estimated Project Costs with respect to such Project will not exceed funds available (including Committed Equity Funds) to pay Project Costs with respect to such Project. In the reasonable opinion of Borrower, as of the date delivered the textual material accompanying the Base Case Project Projections for the Initial Projects and the Funded Subsequent Projects discloses all information reasonably necessary for an understanding of the Base Case Project Projections, and does not contain any material misstatements or omit any information which, in conjunction with other information given, would be necessary to make such information not materially misleading.

4.21 Financial Statements. The financial statements of the Portfolio Entities, Calpine, the Member and any Affiliated Major Project Participants delivered pursuant to Sections 3.2.22, 3.3.23, 3.5.15 and 5.5 are true, complete and correct and fairly present the financial condition of each such Person as of the date thereof. Such financial statements have been prepared in accordance with GAAP. Neither the Portfolio Entities, the Member, Calpine or such Affiliated Major Project Participants has any material liabilities, direct or contingent, except as has been disclosed in such financial statements.

4.22 Existing Defaults. No Portfolio Entity is in default under any material term of any Operative Document relating to the Initial Projects, the Funded Subsequent Projects, the Turbines assigned to Initial Projects (as set forth on Exhibit G-3) or the Funded Turbines or any agreement relating to any obligation of any Portfolio Entity for or with respect to borrowed money, and to the best of Borrower's knowledge, no other party to any Project Document or Turbine Purchase Contract is in default thereunder.

4.23 No Default. No Event of Default, Inchoate Default, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred or is existing.

4.24 Offices, Location of Collateral.

4.24.1 The chief executive office or chief place of business (as such term is used in Article 9 of the Uniform Commercial Code as in effect in each state where the Projects are located and the State of New York from time to time) of Borrower and each Portfolio Entity set forth in Schedule 4.24. Borrower's federal employer identification number is 77-0555128 and each of the other Portfolio Entities' federal employer numbers are set forth in Schedule 4.24 or as otherwise delivered to Administrative Agent in connection with the satisfaction of the requirements for initial funding of Construction Loans or Turbine Purchase Loans under Section 3.2, 3.3 or 3.5, as the case may be:

4.24.2 With respect to each Project, all of the tangible Collateral (other than the Accounts and general intangibles), including the Mortgaged Properties is, or when installed pursuant to the Project Documents will be, located on the Site or the Easements or at the address set forth in Section 4.24.1.

4.24.3 The location of each Portfolio Entity's books of accounts and records is set forth in Schedule 4.24.

#### 4.25 Title and Liens.

(a) With respect to the properties and assets attributable to the Initial Contribution, the Portfolio Entities with respect to such properties and assets has good, and with respect to real property, marketable and insurable title to such properties and assets, in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens.

(b) With respect to each Funded Project (other than Funded Subsequent Projects in which the relevant Project Owner holds a partial undivided ownership interest), the Project Owner and the Equipment Finance Company (with respect to any equipment subject to an Equipment Lease) with respect to such Project have good, and with respect to real property, marketable and insurable title to such Project, and all of the Collateral relating to such Project, and good, marketable and insurable title to, or as applicable, a leasehold estate in, the Site and the Easements relating to such Project in existence as of the date this representation is made (except that title to certain of the Easements which are licenses may not be insurable), in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens. With respect to each Funded Turbine, such Turbine is wholly-owned by a Turbine Owner and such Turbine Owner has good title to such Turbine, free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens.

(c) With respect to each Funded Subsequent Project in which the relevant Project Owner (subject to the last sentence of clause (b) above) holds a partial undivided ownership interest, such Project Owner has good, and with respect to real property, marketable and insurable title to the applicable undivided portion of such Project, and all of the Collateral relating to such Project, and good, and with respect to real property, marketable and insurable title to, or as applicable, a leasehold estate in, the applicable undivided portion of the Site and the Easements relating to such Project in existence as of the date this representation is made (except that title to certain of the Easements which are licenses may not be insurable), in each case free and clear of all Liens, encumbrances or other exceptions to title other than Permitted Liens.

(d) Subject to clause (c) above, (i) each Project Owner owns 100% of its respective Project, (ii) each Project Owner holds title to only one Project, (iii) each Funded Turbine is 100% owned by a Turbine Owner that is a directly or indirectly wholly-owned Subsidiary of Borrower (or, with the consent of the Required Banks, if the relevant Project Owner is a partially-owned Subsidiary of Borrower, a partially-owned Subsidiary of Borrower), and (iv) all equipment leased to a Funded Project pursuant to an Equipment Lease is 100% owned by an Equipment Finance Company that is a directly or indirectly wholly-owned Subsidiary of Borrower (or, with the consent of the Required Banks, if the relevant Project Owner is a partially-owned Subsidiary of Borrower, a partially-owned Subsidiary of Borrower).

(e) The Lien of the Collateral Documents constitutes a valid lien on all Collateral comprising the Initial Contribution. The Lien of the Collateral Documents constitutes a first priority perfected security interest in all the personal property relating to the Initial

Contribution, subject to no Liens except Permitted Liens described in clauses (a), (b) and (e) of the definition thereof.

(f) The Lien of the Collateral Documents (to the extent then existing) constitutes a valid lien on all Collateral relating to the Funded Projects (including any equipment leased to a Project Owner pursuant to an Equipment Lease) and relevant Turbine Owners' interest in the Funded Turbines. The Lien of the Collateral Documents (to the extent then existing) constitutes a valid and subsisting first priority Lien of record on all the Mortgaged Properties relating to the Initial Projects and the Funded Subsequent Projects described in the Deeds of Trust and, a first priority perfected security interest in all the personal property relating to the Funded Projects and the Funded Turbines described in the Collateral Documents, subject to no Liens except Permitted Encumbrances and Permitted Liens described in clauses (a), (b) and (c) of the definition thereof; provided, however, as set forth in the Project/Turbine Owner Security Agreements, the Lien on the Collateral comprising each Project or Turbine shall not secure those Obligations relating to or arising from Projects that have achieved Operation prior to the relevant Funding Date or Turbine Funding Date, as the case may be.

4.26 Trademarks. Each Portfolio Entity owns or has the right to use all patents, trademarks, service marks, trade names, copyrights, licenses and other rights, which are necessary for the operation of its business. Nothing has come to the attention of Borrower to the effect that (a) any material product, process, method, substance, part or other material presently contemplated to be sold by or employed by any Portfolio Entity in connection with its business will infringe any patent, trademark, service mark, trade name, copyright, license or other right owned by any other Person, (b) there is pending or threatened any claim or litigation against or affecting any Portfolio Entity contesting its right to sell or use any such product, process, method, substance, part or other material or (c) there is, or there is pending or proposed, any patent, invention, device, application or principle or any statute, law, rule, regulation, standard or code relating to the use of technology or intellectual property by any Portfolio Entity which could reasonably have a Material Adverse Effect on Borrower or a Project.

4.27 Collateral. The security interests granted to Administrative Agent pursuant to the Collateral Documents in the Collateral related to the Initial Contribution, the Funded Projects (including equipment leased to a Project Owner pursuant to an Equipment Lease) and the Funded Turbines (a) constitute as to personal property included in the Collateral and, with respect to subsequently acquired personal property included in the Collateral, will constitute, a perfected security interest under the UCC to the extent a security interest can be perfected by filing or, in the case of the Accounts, the Portfolio Entity Notes and the Pledged Equity Interests (the Pledged Equity Interests being "certificated securities" as defined in Article 8 of the UCC), by possession by or on behalf of the secured party and (b) are, and, with respect to such subsequently acquired personal property, will be, as to Collateral related to the Initial Contribution, the Funded Projects (including equipment leased to a Project Owner pursuant to an Equipment Lease) and the Funded Turbines perfected under the UCC as aforesaid, superior and prior to the rights of all third Persons now existing or hereafter arising whether by way of mortgage, lien, security interests, encumbrance, assignment or otherwise; provided, however, as set forth in the Collateral Documents, the Lien on the Collateral comprising each Project (including equipment leased to a Project Owner pursuant to an Equipment Lease) or Turbine shall not secure those Obligations relating to or arising from Projects that have achieved

Operation prior to the relevant Funding Date or Turbine Funding Date, as the case may be. Except to the extent possession of portions of such Collateral is required for perfection, all such action as is necessary has been taken to establish and perfect Administrative Agent's rights in and to such Collateral to the extent Administrative Agent's security interest can be perfected by filing, including any recording, filing, registration, giving of notice or other similar action. No filing, recordation, re-filing or re-recording other than those listed on Exhibit D-6 hereto is necessary to perfect and maintain the perfection of the interest, title or Liens of the Collateral Documents related to the Initial Contribution, the Funded Projects (including equipment leased to a Project Owner pursuant to an Equipment Lease) and the Funded Turbines, and all such filings or recordings will have been made to the extent Administrative Agent's security interest can be perfected by filing. Each Portfolio Entity has properly delivered or caused to be delivered to Administrative Agent all such Collateral that requires perfection of the Lien and security interest described above by possession.

#### 4.28 Sufficiency of Project Documents.

4.28.1 With respect to each Initial Project and Funded Subsequent Project, other than those that can be reasonably expected to be commercially available when and as required, the services to be performed, the materials to be supplied and the real property interests, the Easements and other rights granted or to be granted pursuant to the Project Documents in effect as of such date:

(a) comprise all of the property interests necessary to secure any right material to the acquisition, leasing, development, construction, installation, completion, operation and maintenance of such Project in accordance with all Legal Requirements and in accordance with the Project Schedule, all without reference to any proprietary information not owned by the relevant Project Owner;

(b) are sufficient to enable such Project to be located, constructed and operated on its respective Site and the Easements, respectively; and

(c) provide adequate ingress and egress from the Site for such Project for any reasonable purpose in connection with the construction and operation of such Project.

4.28.2 With respect to each Initial Project and Funded Subsequent Project, there are no services, materials or rights required for the construction or operation of such Project in accordance with the Construction Contracts and the Base Case Project Projections, respectively, other than those that can reasonably be expected to be commercially available at the Site for such Project on commercially reasonable terms consistent with the Project Budget and the Base Case Project Projections, respectively.

4.29 Utilities. With respect to each Initial Project and Funded Subsequent Project, all gas and electrical interconnection and utility services necessary for the construction and the operation of such Project for its intended purposes are available at such Project or will be so available as and when required upon commercially reasonable terms consistent with the Project Budget, Project Schedule and the Base Case Project Projections.

4.30 Roads/Transmission Line. With respect to each Initial Project and Funded Subsequent Project, other than those that can be reasonably expected to be commercially available when and as required:

4.30.1 All roads necessary for the construction and full utilization of such Project for its intended purposes have either been completed or the necessary rights of way therefor have been acquired.

4.30.2 All necessary easements, rights of way, licenses, agreements and other rights for the construction, interconnection and utilization of the interconnection facilities have been acquired.

4.31 Proper Subdivision. With respect to each Initial Project and Funded Subsequent Project, at such time as a Project Owner obtains any title or leasehold interests therein, the Site for such Project has been properly subdivided or entitled to exception therefrom, and for all purposes such Site may be mortgaged, conveyed and otherwise dealt with as separate legal lots or parcels.

4.32 Flood Zone Disclosure. With respect to each Initial Project and Funded Subsequent Project, none of the Collateral in respect of such Project includes improved real property that is or will be located in an area that has been identified by the Director of the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, as amended.

4.33 Acquisition of Real Property. No Portfolio Entity has acquired or leased any real property or other interest in real property (excluding the acquisition (but not the exercise) of any options to acquire any such interests in real property) except as otherwise permitted pursuant to Section 6.23.

## **ARTICLE 5. COVENANTS OF BORROWER**

Borrower covenants and agrees that so long as this Agreement is in effect, it will, and will cause each other Portfolio Entity to:

5.1 Use of Proceeds and Revenues.

5.1.1 Proceeds. Unless otherwise applied by Administrative Agent pursuant to this Agreement, deposit the proceeds of the Loans advanced for each Project or Turbine, as the case may be, the Additional Borrower Equity and the other Contributions made pursuant to Section 3.10(a) in the relevant Construction Sub-Account, and except to the extent permitted in Section 3.10(b),

(a) hold such proceeds as a trust fund for the payment of Costs of such Project or Turbine, as the case may be, and (b) use them solely to pay Costs of such Project or Turbine, as the case may be. Notwithstanding anything to the contrary contained in this Agreement, Turbine Purchase Loans shall only be used to pay Turbine Costs associated with Turbines assigned to Unfunded Projects (as set forth on Exhibit G-3).

5.1.2 Revenues. With respect to each Initial Project and Funded Subsequent Project, unless otherwise applied by Administrative Agent pursuant to Articles 7 and 8, (a) deposit all Project Revenues received or due any Portfolio Entity other than Insurance Proceeds, Eminent Domain Proceeds and damage payments described in Section 7.7 received prior to Completion of such Project in the relevant Construction Sub-Account for application toward Project Costs and otherwise for application as set forth in Section 7.1, (b) deposit all Project Revenues received or due any Portfolio Entity other than Insurance Proceeds, Eminent Domain Proceeds and damage payments described in Section 7.7 received after Completion of such Project in the Revenue Account for application solely for the purposes and in the order and manner provided in Section 7.2, and (c) deposit all Insurance Proceeds, Eminent Domain Proceeds and damage payments described in Section 7.7 received at any time in the Loss Proceeds Account for application solely for the purposes, and in the order and manner, provided in Section 7.5. With respect to each Turbine assigned to an Initial Project (as set forth on Exhibit G-3) and Funded Turbine, unless otherwise applied by Administrative Agent pursuant to Articles 7 and 8, deposit all Insurance Proceeds and damage payments described in Section 7.7 received at any time in the Loss Proceeds Account for application solely for the purposes, and in the order and manner, provided in Section 7.5.

## 5.2 Payment.

5.2.1 Credit Documents. Pay all sums due under this Agreement and the other Credit Documents according to the terms hereof and thereof.

5.2.2 Project Documents and Turbine Purchase Contracts. With respect to each Initial Project, Funded Project (including equipment leased to a Project Owner pursuant to an Equipment Lease), Turbine assigned to an Initial Project (as set forth on Exhibit G-3) and Funded Turbine, pay all obligations due under the Project Documents and Turbine Purchase Contracts, howsoever arising, as and when due and payable, except (a) such as may be contested in good faith or as to which a bona fide dispute may exist, provided that Administrative Agent is satisfied in its reasonable discretion that non-payment of such obligation pending the resolution of such contest or dispute will not in any way endanger or have a Material Adverse Effect on such Project, the Banks' Liens in the Collateral, any Portfolio Entity or that provision is made to the satisfaction of Administrative Agent in its reasonable discretion for the posting of security (other than the Collateral) for or the bonding of such obligations or the prompt payment thereof in the event that such obligation is payable and (b) each Portfolio Entity's trade payables which shall be paid in the ordinary course of business.

5.3 Warranty of Title. Maintain (a) with respect to properties and assets attributable to the Initial Contribution, good and, with respect to real property, marketable and insurable title to such properties and assets, (b) with respect to each Funded Project, good, marketable and insurable leasehold or fee title, as the case may be, to the Site and related Easements (or the applicable undivided portion thereof), subject only to Permitted Liens, (c) with respect to each Funded Project (including equipment leased to a Project Owner pursuant to an Equipment Lease) and Funded Turbine, good title to such Project (including equipment leased to a Project Owner pursuant to an Equipment Lease), Turbine or the related Turbine Purchase Contract, as applicable, and (d) good, and with respect to real property, marketable and insurable title to all of

its other respective properties and assets (other than properties and assets disposed of in the ordinary course of business).

5.4 Notices. Promptly, upon acquiring notice or giving notice, as the case may be, or obtaining knowledge thereof, give written notice (with copies of any such underlying notices) to Administrative Agent of:

5.4.1 Any litigation pending or, to the knowledge of any Portfolio Entity, threatened against any Portfolio Entity and involving claims against any Portfolio Entity or any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine in excess of \$2,000,000 in the aggregate per calendar year or involving any injunctive, declaratory or other equitable relief, such notice to include, if requested by Administrative Agent, copies of all papers filed in such litigation and to be given monthly if any such papers have been filed since the last notice given;

5.4.2 Any dispute or disputes which may exist between any Portfolio Entity and any Governmental Authority and which involve (a) claims against any Portfolio Entity which exceed \$2,000,000 individually or \$10,000,000 in the aggregate per calendar year, (b) injunctive or declaratory relief, (c) revocation, modification, failure to renew or the like of any Applicable Permit or Applicable Third Party Permit relating to an Initial Project or a Funded Subsequent Project or imposition of additional material conditions with respect thereto, or (d) any Liens relating to an Initial Project, a Funded Subsequent Project or a Turbine for taxes due but not paid;

5.4.3 Any Event of Default, Inchoate Default, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default;

5.4.4 Any casualty, damage or loss, whether or not insured, through fire, theft, other hazard or casualty, or any act or omission of any Portfolio Entity, its employees, agents, contractors, consultants or representatives, or of any other Person if such casualty, damage or loss affects any Portfolio Entity or any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine, in excess of \$500,000 for any one casualty or loss or \$5,000,000 in the aggregate in any policy period;

5.4.5 Any cancellation or material change in the terms, coverage or amounts of any insurance described in Exhibit K;

5.4.6 Any matter which has had, or, in any Portfolio Entity's reasonable judgment, could reasonably be expected to have, a Material Adverse Effect on Borrower or any Initial Project or Funded Subsequent Project, including any PUC or FERC proceedings affecting any Initial Project or Funded Subsequent Project which if adversely determined, reasonably could be expected to have a Material Adverse Effect on such Project;

5.4.7 Any act by any Portfolio Entity to become a surety, guarantor, endorser or accommodation endorser for a third party other than endorsement of negotiable instruments for collection purposes;

5.4.8 Any intentional withholding of compensation to any Contractor, any Turbine Purchase Contractor, any engineer or Operator or any other Person under any Major Construction Contract, any O&M Agreement, any Power Marketing Agreement or any other construction or operating contract relating to any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine, other than retention provided by the express terms of any such contracts;

5.4.9 Any termination or material default or notice thereof (including any notice of default) under any Project Document relating to an Initial Project or a Funded Subsequent Project or under any Turbine Purchase Contract relating to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine;

5.4.10 Any events of force majeure or change orders under any Major Construction Contract or other Project Documents relating to any Initial Project or Funded Subsequent Project or under any Turbine Purchase Contract relating to any Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine and, to the extent requested by Administrative Agent, copies of invoices or statements which are reasonably available to any Portfolio Entity under such Construction Contract, other Construction Contract or Turbine Purchase Contract, certified by an authorized representative of Borrower, together with a copy of any supporting documentation, schedule, data or affidavit delivered under such Construction Contract, other Construction Contract or Turbine Purchase Contract, other Project Document or Turbine Purchase Contract;

5.4.11 No later than the date upon which the Independent Engineer is entitled to receive notice pursuant to any Major Construction Contract of the proposed conduct of the initial Performance Tests under such Construction Contract, promptly prior to the proposed conduct of any subsequent Performance Tests pursuant to each such Construction Contract and promptly prior to the conduct of any performance tests required under any other Project Document, written notice of such proposed test;

5.4.12 Any (a) fact, circumstance, condition or occurrence at, on, or arising from, any Site, Improvements, or other Mortgaged Property that results in material noncompliance with any Hazardous Substance Law or any Release of Hazardous Substances on or from such Site, Improvements or other Mortgaged Property that has resulted or could reasonably be expected to result in personal injury or material property damage or to have a Material Adverse Effect on a Project, and (b) pending or, to any Portfolio Entity's knowledge, threatened, Environmental Claim against any Portfolio Entity or to any Portfolio Entity's knowledge any of its Affiliates, contractors, lessees or any other Persons, arising in connection with their occupying or conducting operations on or at any Project or any related Site, Improvements or other Mortgaged Property;

5.4.13 Promptly, but in no event later than 30 days if consent of Administrative Agent or the Banks is required, and 15 days otherwise, prior to the time any Person will become an equity holder of any Portfolio Entity or the occurrence of any other change in or transfer of ownership interests in any Portfolio Entity, any Project or any Turbine notice thereof, which notice shall identify such Person and such Person's interest in the relevant Portfolio Entity, Project or Turbine and shall describe, in reasonable detail, such other change or transfer;

5.4.14 Any material notices delivered to or received from, the parties to the Project Documents relating to an Initial Project or a Funded Subsequent Project or the parties to a Turbine Purchase Contract relating to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine;

5.4.15 Initiation of any condemnation proceedings involving any Initial Project or Funded Subsequent Project or the related Site or material portion thereof;

5.4.16 Promptly, but in no event later than 15 days after any Portfolio Entity has knowledge of the execution and delivery thereof, a copy of each Additional Project Document relating to an Initial Project or a Funded Subsequent Project; and

5.4.17 Promptly, but in no event later than 30 days after the receipt thereof by any Portfolio Entity, copies of (a) all Applicable Permits relating to an Initial Project or a Funded Subsequent Project obtained by any Portfolio Entity or the Member after the Closing Date, (b) any amendment, supplement or other modification to any Applicable Permits relating to an Initial Project or a Funded Subsequent Project received by any Portfolio Entity after the Closing Date and (c) all material notices relating to any Initial Project or Funded Subsequent Project received by any Portfolio Entity from any Governmental Authority.

## 5.5 Financial Statements.

5.5.1 Unless Administrative Agent otherwise consents, deliver or cause to be delivered to Administrative Agent, in form and detail reasonably satisfactory to Administrative Agent:

(a) As soon as practicable and in any event within 45 days after the end of the first, second and third quarterly accounting periods of its fiscal year (commencing with the quarter ending September 30, 2000), an unaudited balance sheet of the Portfolio Entities, the Member, Calpine and each other Affiliated Major Project Participant as of the last day of such quarterly period and the related statements of income, cash flows, and partners' capital (where applicable) for such quarterly period and (in the case of second and third quarterly periods) for the portion of the fiscal year ending with the last day of such quarterly period, setting forth in each case in comparative form corresponding unaudited figures from the preceding fiscal year (such requirement may be satisfied with respect to any party by delivery of the appropriate Form 10-Q filed with the Securities and Exchange Commission); and

(b) As soon as available but no later than 120 days after the close of each applicable fiscal year, audited (or, if not available with respect to Persons who are not Calpine Affiliates, unaudited) financial statements of the Portfolio Entities, the Member, Calpine, each other Affiliated Major Project Participant, each Major Fuel Supplier and each Major Power Purchaser relating to an Initial Project or a Funded Subsequent Project, including a statement of equity, a balance sheet as of the close of such year, an income and expense statement, reconciliation of capital accounts and a statement of sources and uses of funds, all prepared in accordance with GAAP and in the case of audited financial statements, certified by an independent certified public accountant selected by the Person whose financial statements are being prepared and satisfactory to Administrative Agent. Such certificate for the Portfolio

Entities, the Member, Calpine and each Affiliated Major Project Participant shall not be qualified or limited because of restricted or limited examination by such accountant of any material portion of the records of the applicable Person. Such requirement may be satisfied with respect to any party by delivery of the appropriate Form 10-K filed with the Securities and Exchange Commission.

(c) Each time the financial statements are delivered under

Section 5.5.1(a) above for the Portfolio Entities, the Member, Calpine and each Affiliated Major Project Participant, deliver or cause to be delivered, along with such financial statements, a certificate signed by a Responsible Officer of such Person, certifying that such officer has made or caused to be made a review of the transactions and financial condition of such Person during the relevant fiscal period and that such review has not, to the best of such Responsible Officer's knowledge, disclosed the existence of any event or condition which constitutes an Event of Default or Inchoate Default (or, in the case of the Portfolio Entities, a Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default), or if any such event or condition existed or exists, the nature thereof and the corrective actions that such Person has taken or proposes to take with respect thereto, and also certifying that such Person is in compliance with all applicable material provisions of each Credit Document to which such Person is a party or, if such is not the case, stating the nature of such non-compliance and the corrective actions which such Person has taken or proposes to take with respect thereto.

5.6 Books, Records, Access. Maintain or cause to be maintained adequate books, accounts and records and prepare all financial statements required hereunder in accordance with GAAP and in compliance with the regulations of any Governmental Authority having jurisdiction thereof, and, subject to requirements of Governmental Rules and safety requirements, after pre-scheduling with the relevant Operator, permit employees or agents of Administrative Agent and Independent Engineer at any reasonable times and upon reasonable prior notice to inspect all of its properties, including the Sites, to examine or audit all of its books, accounts and records and make copies and memoranda thereof and to witness all Performance Tests.

5.7 Compliance with Laws, Instruments, Etc. Promptly comply, or cause compliance, in all material respects, with all Legal Requirements relating to the Portfolio Entities, the Initial Projects or the Subsequent Projects, including Legal Requirements relating to pollution control, environmental protection, equal employment opportunity or employee benefit plans, ERISA Plans and employee safety, with respect to the Portfolio Entities and each such Project or Turbine, and make such alterations to such Projects and Sites and Turbines as may be required for such compliance.

5.8 Reports. With respect to each Initial Project and Funded Subsequent Project and, in the case of Sections 5.8.6, 5.8.7 and 5.8.8, with respect to each Turbine assigned to an Initial Project (as set forth on Exhibit G-3) and Funded Turbine:

5.8.1 Deliver to Administrative Agent on the last Banking Day of each month (if any) prior to Final Completion of such Project in which no Loan is made to such Project a certificate of an authorized officer of Borrower as to the matters required by Section 3.4.3 in respect of such Project, substantially in the form of the Construction Drawdown Certificate.

5.8.2 Until Final Completion of such Project, deliver to Administrative Agent at such times as Administrative Agent may reasonably request (but not more frequently than monthly) a report describing in reasonable detail the progress of the construction of such Project since the last prior report hereunder.

5.8.3 Within 30 days following the completion of the major foundations for such Project, provide to Administrative Agent a foundation survey showing

(a) the exact location and dimensions of such foundations, (b) that such foundations comply with all applicable building and zoning codes and set-back lines, and (c) that such foundations do not encroach or interfere with existing property rights.

5.8.4 From and after the commercial operation date of such Project, deliver to Administrative Agent within 30 days of the end of each month, a summary operating report with respect to such Project which shall include, with respect to the month most recently ended, (a) a monthly and year-to-date numerical and narrative assessment of (i) such Project's compliance with each material category in the Annual Operating Budget for such Project, (ii) electrical production and delivery, (iii) fuel deliveries and use, including heat rate, (iv) plant and unit availability, including trips and scheduled and unscheduled outages, (v) cash receipts and disbursements and cash balances, including distributions to the Member, debt service payments and balances in the Accounts, (vi) maintenance activity, (vii) staffing changes with respect to project or construction managers, (viii) casualty losses of value in excess of \$500,000, (ix) replacement of equipment of value in excess of \$500,000 and (x) material disputes with contractors, materialmen, suppliers or others and any related claims against Borrower; (b) statistical data and reasonably detailed commentary thereon; and (c) a comparison of year-to-date figures to corresponding figures provided in the prior year.

5.8.5 Deliver to Administrative Agent within 60 days of the end of each year after the Closing Date, a report setting forth a narrative summary describing and assessing such Project's compliance with all Applicable Permits and Legal Requirements.

5.8.6 Provide to Administrative Agent promptly upon request such reports, statements, lists of property, accounts, budgets, forecasts and other information concerning such Project or Turbine and, to the extent reasonably available, the Major Project Participants or Turbine Purchase Contractors, as the case may be, and at such times as Administrative Agent shall reasonably require, including such reports and information as are reasonably required by the Independent Consultants.

5.8.7 Provide to Administrative Agent promptly upon receipt by any Portfolio Entity any material notices, information or reports provided by (a) Power Marketer under any Power Marketing Project Document, (b) any Fuel Supplier under a Gas Contract, (c) any other purchaser under a Power Purchase Document or (d) any Turbine Purchase Contractor under a Turbine Purchase Contract.

5.8.8 Within 30 days of the end of each fiscal year after the Closing Date, deliver to Administrative Agent a certificate, substantially in the Form of Exhibit I hereto, and otherwise in form and substance satisfactory to Administrative Agent in consultation with the

Insurance Consultant, certifying that the insurance requirements of Exhibit K have been implemented and are being complied with in all material respects.

5.9 Existence, Conduct of Business, Properties, Etc. Except as otherwise expressly permitted under this Agreement, (a) in the case of Borrower, maintain and preserve its existence as a limited liability company formed under the laws of the state of Delaware and all material rights, privileges and franchises necessary or desirable in normal conduct of its business, (b) in the case of each other Portfolio Entity, maintain and preserve its existence as a corporation, limited partnership or limited liability company, as the case may be, formed under the laws of the state of Delaware or, in the case of Freestone Power Generation, LP or Calpine Power Equipment LP, Texas and all material rights, privileges and franchises necessary or desirable in normal conduct of its business, (c) perform (to the extent not excused by force majeure events or the nonperformance of another party and not subject to a good faith dispute) all of its contractual obligations under the Project Documents or Turbine Purchase Contracts, as the case may be, to which it is party or by which it is bound, (d) maintain all necessary Permits and licenses, including all Applicable Permits, with respect to its business and each Initial Project and Funded Subsequent Project and cause all Major Project Participants to maintain all Applicable Third-Party Permits with respect to each such Project, (e) at or before the time that any Permit becomes an Applicable Permit with respect to any Initial Project or Funded Subsequent Project, obtain such Permit, (f) at or before the time that any Permit required to be obtained by a Major Project Participant becomes an Applicable Third-Party Permit with respect to any Initial Project or Funded Subsequent Project, cause the relevant third party to obtain such Permit, (g) engage only in the business contemplated by the Operative Documents and (h) perform all of its contractual obligations under the Credit Documents.

5.10 Four-Quarter Portfolio Interest Coverage Ratio; Maximum Debt to Capitalization Ratio.

(a) As promptly as practicable, but in no event later than 45 days after (a) the last Banking Day of each calendar quarter, calculate and deliver to Administrative Agent the Four-Quarter Portfolio Interest Coverage Ratio. Administrative Agent shall notify Borrower in writing of any suggested corrections, changes or adjustments which should be made to such Four-Quarter Portfolio Interest Coverage Ratio calculations within 20 days after receipt. Borrower shall incorporate all such corrections, changes or adjustment as Administrative Agent reasonably deems appropriate.

(b) (i) As promptly as practicable, but in no event later than two Banking Days after delivery by Borrower of the financial statements of the Portfolio Entities required to be delivered pursuant to Section 5.5.1 and at such other times as required under this Agreement, calculate and deliver to Administrative Agent the Debt to Capitalization Ratio based on the financial statements so delivered. Administrative Agent shall notify Borrower in writing of any suggested corrections, changes or adjustments which should be made to such ratio calculations within five days after receipt. Borrower shall incorporate all such corrections, changes or adjustments as Administrative Agent reasonably deems appropriate.

(ii) Borrower shall maintain, as of the end of each calendar quarter (after giving effect to any Construction Credit Event and/or the Turbine Purchase Credit

Event as of the end of each such calendar quarter), a Debt to Capitalization Ratio of no more than the Maximum Debt to Capitalization Ratio.

(c) For purposes of this Agreement, Borrower shall calculate the Four-Quarter Portfolio Interest Coverage Ratio and the Debt to Capitalization Ratio without taking into account the EBITDA produced by, or the Contributions with respect to, a Project (i) where a Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default shall have occurred and be continuing with respect to such Project, (ii) where, in the case of Projects Five Through Twelve, a condition precedent deferred in accordance with Section 3.13 shall not have been satisfied or waived by such Project's scheduled Completion Date (as set forth in such Project's Project Schedule) or (iii) that is an Unfunded Project.

#### 5.11 Indemnification.

5.11.1 Indemnify, defend and hold harmless Administrative Agent and each Bank, and in their capacities as such, their respective officers, directors, shareholders, controlling persons, employees, agents and servants (collectively, the "Indemnitees") from and against and reimburse the Indemnitees for:

(a) any and all claims, obligations, liabilities, losses, damages, injuries (to person, property, or natural resources), penalties, stamp or other similar taxes, actions, suits, judgments, costs and expenses (including reasonable attorney's fees) of whatever kind or nature, whether or not well founded, meritorious or unmeritorious, demanded, asserted or claimed against any such Indemnitee (collectively, "Subject Claims") in any way relating to, or arising out of or in connection with this Agreement, the other Operative Documents, any Project or any Turbine, except for claims by a Portfolio Entity against an Indemnitee;

(b) any and all Subject Claims arising in connection with the release or presence of any Hazardous Substances at any Project, whether foreseeable or unforeseeable, including all costs of removal and disposal of such Hazardous Substances, all reasonable costs required to be incurred in (i) determining whether any Project is in compliance and (ii) causing each Project to be in compliance, with all applicable Legal Requirements, all reasonable costs associated with claims for damages to persons or property, and reasonable attorneys' and consultants' fees and court costs; and

(c) any and all Subject Claims in any way relating to, or arising out of or in connection with any claims, suits, liabilities against any Portfolio Entity, the Member, Calpine or any of their Affiliates.

5.11.2 The foregoing indemnities shall not apply with respect to an Indemnitee, to the extent arising as a result of the gross negligence or willful misconduct of such Indemnitee, but shall continue to apply to other Indemnitees.

5.11.3 The provisions of this Section 5.11 shall survive foreclosure of the Collateral Documents and satisfaction or discharge of the Portfolio Entities obligations hereunder and under the other Credit Documents, and shall be in addition to any other rights and remedies of the Banks.

5.11.4 In case any action, suit or proceeding shall be brought against any Indemnitee, such Indemnitee shall notify Borrower of the commencement thereof, and Borrower shall be entitled, at its expense, acting through counsel reasonably acceptable to such Indemnitee, to participate in, and, to the extent that Borrower desires, to assume and control the defense thereof. Such Indemnitee shall be entitled, at its expense, to participate in any action, suit or proceeding the defense of which has been assumed by Borrower. Notwithstanding the foregoing, Borrower shall not be entitled to assume and control the defenses of any such action, suit or proceedings if and to the extent that, in the reasonable opinion of such Indemnitee and its counsel, such action, suit or proceeding involves the potential imposition of criminal liability upon such Indemnitee or a conflict of interest between such Indemnitee and Borrower or between such Indemnitee and another Indemnitee (unless such conflict of interest is waived in writing by the affected Indemnitees), and in such event (other than with respect to disputes between such Indemnitee and another Indemnitee) Borrower shall pay the reasonable expenses of such Indemnitee in such defense.

5.11.5 Borrower shall report to such Indemnitee on the status of such action, suit or proceeding as material developments shall occur and from time to time as requested by such Indemnitee (but not more frequently than every 60 days). Borrower shall deliver to such Indemnitee a copy of each document filed or served on any party in such action, suit or proceeding, and each material document which Borrower possesses relating to such action, suit or proceeding.

5.11.6 (a) Notwithstanding Borrower's rights hereunder to control certain actions, suits or proceedings, if any Indemnitee reasonably determines that failure to compromise or settle any Subject Claim made against such Indemnitee is reasonably likely to have an imminent and material adverse effect on such Indemnitee, such Indemnitee shall be entitled (and Borrower shall cause other relevant Portfolio Entity to agree to the same) to compromise or settle such Subject Claim.

(b) Notwithstanding Borrower's rights hereunder to control certain actions, suits or proceedings, if the Required Banks reasonably determine that failure to compromise or settle any Subject Claim made against such Indemnitee is reasonably likely to have an imminent and material adverse effect on Borrower or any Project, such Indemnitee or the Required Banks, as the case may be, shall provide Borrower with written notice of a proposed compromise or settlement of such claim specifying in detail the nature and amount of such proposed settlement or compromise. Borrower (and any other relevant Portfolio Entity) shall be deemed to have approved such proposed compromise or settlement unless, within 30 days after the date Borrower receives such notice of intended compromise or settlement, Borrower provides such Indemnitee or the Required Banks, as the case may be, with (i) a written legal analysis from counsel reasonably acceptable to such Indemnitee or Required Banks, as the case may be, reasonably concluding that, based on the magnitude of the Subject Claim, the legal basis for such Subject Claim, and/or the cost of defending such Subject Claim, the amount of such proposed settlement or compromise is not within a reasonable range of settlements or compromises for such Subject Claim, and indicating, based on such factors, such counsel's view as to the appropriate amount of a reasonable settlement or compromise for such Subject Claim (the "Settlement Amount"). If the Indemnitee or the Required Banks, as the case may be, receives such legal analysis required by this Section within such 30-day period, the Indemnitee

or the Required Banks, as the case may be, may elect to settle or compromise such Subject Claim and Borrower shall be responsible for the payment of all amounts of such compromise or settlement up to 125% of the Settlement Amount, such Indemnitee shall be responsible for payment of all amounts of such compromise or settlement in excess of such 125% limit and such compromise or settlement shall be binding upon Borrower. If Borrower does not provide such legal analysis within such period, or if such legal analysis is not reasonable, in the reasonable determination of such Indemnitee or the Required Banks, as the case may be, such Indemnitee may settle or compromise such Subject Claim (and Borrower shall cause any other relevant Portfolio Entity to agree to the same) and shall be fully indemnified by Borrower therefor. Such Indemnitee or the Required Banks, as the case may be, shall not otherwise settle or compromise any such Subject Claim other than at its own expense.

5.11.7 Upon payment of any Subject Claim by Borrower pursuant to this Section 5.11 or other similar indemnity provisions contained herein to or on behalf of an Indemnitee, Borrower, without any further action, shall be subrogated to any and all claims that such Indemnitee may have relating thereto, and such Indemnitee shall cooperate with Borrower and give such further assurances as are necessary or advisable to enable Borrower vigorously to pursue such claims.

5.11.8 Any amounts payable by Borrower pursuant to this Section 5.11 shall be regularly payable within 30 days after Borrower receives an invoice for such amounts from any applicable Indemnitee, and if not paid within such 30-day period shall bear interest at the Default Rate.

5.11.9 Notwithstanding anything to the contrary set forth herein, Borrower shall not, in connection with any one legal proceeding or claim, or separate but related proceedings or claims arising out of the same general allegations or circumstances, in which the interests of the Indemnitees do not materially differ, be liable to the Indemnitees (or any of them) under any of the provisions set forth in this Section 5.11 for the fees and expenses of more than one separate firm of attorneys (which firm shall be selected by the affected Indemnitees, or upon failure to so select, by Administrative Agent).

5.11.10 If, for any reason whatsoever, the indemnification provided under this Section 5.11 is unavailable to any Indemnitee or is insufficient to hold it harmless to the extent provided in this Section 5.11, then provided such payment is not prohibited by or contrary to any applicable Governmental Rule, Legal Requirement or public policy, Borrower shall contribute to the amount paid or payable by such Indemnitee as a result of the Subject Claim in such proportion as is appropriate to reflect the relative economic interests of Borrower and its Affiliates on the one hand, and such Indemnitee on the other hand, in the matters contemplated by this Agreement as well as the relative fault of Borrower (and its Affiliates) and such Indemnitee with respect to such Subject Claim, and any other relevant equitable considerations.

5.12 Qualifying Facility/Exempt Wholesale Generator. With respect to each Project, take or cause to be taken all necessary or appropriate actions (a) so that such Project will, from and after commercial operations of such Project, either be a Qualifying Facility or an Eligible Facility until all Obligations due the Banks under the Credit Documents have been paid in full unless such Project's failure to be a Qualifying Facility or Eligible Facility, as the case may be,

could not reasonably be expected to have a Material Adverse Effect on such Project, and (b) except to the extent that the FPA is applicable solely by reason of the relevant Project Owner being the owner of a Qualifying Facility or an Exempt Wholesale Generator, to maintain such Project Owner's and such Project's exemptions from regulation under the FPA (unless failure to so maintain such exemptions could not reasonably be expected to have a Material Adverse Effect on Borrower or such Project) and PUHCA (except regulations specifically applicable to an Exempt Wholesale Generator or a Qualifying Facility) or, if Calpine or its successor or Borrower becomes a registered holding company under PUHCA, as a subsidiary of such registered holding company.

5.13 Construction of Each Project. With respect to each Initial Project and Funded Subsequent Project, cause such Project to be constructed and equipped substantially in accordance with the Plans and Specifications, Construction Contracts, other Project Documents, Project Budget and the Project Schedule for such Project as the same may be amended from time to time pursuant to Section 6.13.

5.14 Completion. With respect to each Initial Project and Funded Subsequent Project, achieve Completion and Final Completion of such Project in a timely and diligent manner in accordance with the Project Schedule, Project Budget, Construction Contracts and Plans and Specifications of such Project as the same may be extended and, in the case of Completion, in no event later than the guaranteed completion date set therefor in such Project's Project Schedule (which shall be extended as the result of the occurrence of events of force majeure for additional periods up to an aggregate of 180 days).

5.15 Operation of Projects and Annual Operating Budget. With respect to each Initial Project and Funded Subsequent Project:

5.15.1 (a) Keep such Project, after Completion thereof, or cause the same to be kept, in good operating condition consistent with Prudent Utility Practices, all Applicable Permits (and, if applicable, Applicable Third Party Permits), Legal Requirements and the Operative Documents, and make or cause to be made all repairs (structural and non-structural, extraordinary or ordinary) necessary to keep such Project in such condition; and (b) operate such Project, after Completion thereof, or cause the same to be operated, in a manner consistent with Prudent Utility Practices and in compliance with the terms of the Power Purchase Documents so as to assure, to the extent reasonably possible, the maximum generation of net revenue for such Project consistent with the Power Purchase Documents.

5.15.2 On or before 60 days prior to the first day of the month in which Completion of such Project occurs or is anticipated to occur and 60 days prior to the first day of each calendar year thereafter, submit to Administrative Agent a draft operating plan and a budget, detailed by month for such Project, of anticipated revenues and anticipated expenditures, such budget to include debt service (if applicable), proposed distributions, maintenance, repair and operation expenses (including reasonable allowance for contingencies), Major Maintenance, reserves and all other anticipated O&M Costs for such Project for the remainder of the calendar year for the first such plan and budget and for the ensuing calendar year for each other such plan and budget and, in the case of Major Maintenance in accordance with Section 5.15.3, to the conclusion of the second full calendar year thereafter (each such annual operating plan and

budget with respect to each Project and for all the Projects as a whole, an "Annual Operating Budget"). Each Annual Operating Budget shall be subject to the reasonable approval of Administrative Agent and the Independent Engineer. Failure by Administrative Agent to approve or disapprove such draft Annual Operating Budget within 30 days after receipt thereof shall be deemed to be an approval by Administrative Agent of such draft. Borrower shall incorporate Administrative Agent's suggestions into a final Annual Operating Budget, which, subject to the provisions of the last sentence of this Section 5.15.2, shall be prepared no less than 30 days in advance of each fiscal year. The O&M Costs in each Annual Operating Budget which are subject to escalation limitations in the Project Documents shall not, absent extraordinary circumstances, be increased by more than the amounts provided in such Project Documents. Borrower shall continue to operate and maintain such Project, or cause such Project to be operated and maintained, within amounts not to exceed 115% of the aggregate amounts set forth in the applicable Annual Operating Budget; provided, however, the costs for fuel shall not be limited by the Annual Operating Budget. Pending approval of any Annual Operating Budget in accordance with the terms of this Section 5.15.2, Borrower shall continue to operate and maintain such Project, or cause such Project to be operated and maintained, within the Annual Operating Budget for such Project then in effect; provided that the amounts specified therein shall be increased by the amounts specified in the Project Documents.

5.15.3 Replace the Operator of such Project if such Operator is not operating such Project in accordance with the provisions hereof or the applicable O&M Agreement, Power Purchase Documents or any other agreement or instrument under which the relevant Project Owner holds title, an easement or a leasehold to the applicable Site, the Easements or the Collateral, and such failure could reasonably be expected to have a Material Adverse Effect on such Project, upon receipt of notice from Administrative Agent (after consultation with Borrower) to the effect that, in the opinion of the Required Banks and the Independent Engineer, said Operator has failed to perform any material obligations set forth above; provided, however, that the Operator may have 30 days from Borrower's receipt of notice to cure said failure (or to establish to the satisfaction of the Required Banks that a failure does not exist); provided, further, that if such failure cannot be corrected within such 30 days, the Required Banks will not unreasonably withhold their consent to an extension of such time if corrective action is promptly instituted by such Operator within the 30-day period and thereafter diligently pursued until the failure is corrected and such extension shall not have a Material Adverse Effect on such Project.

#### 5.16 Preservation of Rights; Further Assurances.

5.16.1 Preserve, protect and defend the rights of the Portfolio Entities under each material Project Document relating to the Initial Projects and the Funded Subsequent Projects and under each Turbine Purchase Contract relating to the Turbines assigned to Initial Projects (as set forth on Exhibit G-3) and the Funded Turbines, including prosecution of suits to enforce any rights of the Portfolio Entities thereunder and enforcement of any claims with respect thereto; provided, however, that upon the occurrence and during the continuance of an Event of Default if Administrative Agent requests that certain actions be taken and the Portfolio Entities fail to take the requested actions within five Banking Days and such failure reasonably could be expected to have a Material Adverse Effect on Borrower, any such Project or any such Turbine, Administrative Agent may enforce in its own name or in the relevant Portfolio Entity's name, such rights of any Portfolio Entity.

5.16.2 From time to time, execute, acknowledge, record, register, deliver and/or file all such notices, statements, instruments and other documents (including any memorandum of lease or other agreement, financing statement, continuation statement, certificate of title or estoppel certificate), relating to the Loans stating the interest and charges then due and any known defaults, and take such other steps as may be necessary or advisable to render fully valid and enforceable under all applicable laws the rights, liens and priorities of the Banks with respect to all Collateral and other security from time to time furnished under this Agreement and the other Credit Documents or intended to be so furnished, including (x) granting Liens, subject to no other Liens other than Permitted Liens, in favor of Administrative Agent, in any Project or portion thereof not part of the Collateral and (y) causing its partners, members or shareholders, as the case may be, to grant a first priority Lien to Administrative Agent in all the ownership interests in a Portfolio Entity, in each case to the extent permitted, without any waivers, and consistently with the characterization of the Debt incurred and Liens granted hereunder and under the other Credit Documents, under the Calpine Indenture, in each case in such form and at such times as shall be satisfactory to Administrative Agent, and pay all fees and expenses (including reasonable attorneys' fees) incident to compliance with this Section 5.16.2.

5.16.3 Subject to Section 6.23, if a Portfolio Entity shall at any time acquire any real property or leasehold or other interest in real property related to a Funded Project not covered by the Deeds of Trust, promptly upon such acquisition (or on the Closing Date if such acquisition occurred prior thereto) in furtherance of the Lien on the Project and related Collateral granted on the respective Funding Date execute, deliver and record a supplement to the applicable Deed of Trust or, if necessary, execute, deliver and record a new Deed of Trust, satisfactory in form and substance to Administrative Agent, subjecting the real property or leasehold or other interests so acquired to a lien and security interest in favor of Administrative Agent and the Banks, subject only to Permitted Liens and other exceptions to title approved by Administrative Agent, securing all of the relevant Portfolio Entity's Obligations under the Credit Documents other than such Obligations relating to Projects that have achieved Operation prior to the execution of such Deed of Trust. If requested by Administrative Agent, Borrower shall obtain an appropriate endorsement or supplement to the applicable Title Policy or procure a new Title Policy insuring the Lien of the Banks in such additional property, subject only to Permitted Liens and other exceptions to title approved by Administrative Agent, and shall obtain subordination and nondisturbance agreements from applicable third parties to the extent reasonably requested by Administrative Agent.

5.16.4 Perform, upon the request of Administrative Agent, such reasonable acts as may be necessary to carry out the intent of this Agreement and the other Credit Documents.

5.16.5 Cause the Pledged Equity Interests to be "certificated securities" as defined in Article 8 of the UCC and include in each appropriate Portfolio Entity's constituent documents terms, in each case consistent with Section 8-103(c) of the UCC, to the effect that the corresponding Pledged Equity Interests are "securities" (as such term is defined in Article 8 of the UCC) governed by Article 8 of the UCC.

5.17 Project Equity.

5.17.1 (a) Make or cause to be made Contributions with respect to Funded Projects in an amount equal to the Required Contribution Percentage of the aggregate Project Costs in respect to which Borrower has requested Loans at such time, such Contributions to be made at the time of each Borrowing and (b) make or cause to be made Contributions with respect to Funded Projects in an amount equal to any or all income taxes due or owing by Borrower and each other Portfolio Entity within 10 days after such payment becoming due (all Contributions pursuant to clauses (a) and (b) above, the "Base Equity"). Borrower may deposit some or all of the Base Equity with Administrative Agent as provided in Section 3.10. In such event, Administrative Agent shall deposit the Base Equity into the relevant Construction Sub-Accounts at Administrative Agent's New York office pursuant to the Depositary Agreement. From time to time following the deposits of such amounts, Borrower shall have the right to request that Administrative Agent transfer amounts from the relevant Construction Sub-Accounts to pay Costs upon the satisfaction of the requirements set forth in Section 3.10(a).

5.17.2 At such time, if ever as the Available Construction Funds are less than the remaining Project Costs to be incurred or paid to achieve Final Completion of the Initial Projects and the Funded Subsequent Projects, then promptly thereafter deposit or cause to be deposited with Administrative Agent, Contributions in an amount equal to all such further Project Costs, such Contributions to be made on or before the date such Project Costs are due to be paid ("Additional Borrower Equity"). All such Additional Borrower Equity proceeds shall be deposited in the relevant Construction Sub-Accounts established pursuant to Section 7.1 hereof and applied, after satisfaction of the requirements set forth in Section 3.10(a), to pay Project Costs.

5.17.3 Upon an acceleration of Loans pursuant to Section 8.2.5, promptly make or cause to be made Contributions in an amount equal to (x) the Committed Equity Funds that have not yet been contributed and that would have otherwise been contributed with respect to all remaining Costs for Funded Projects and (y) to the extent required by Section 6.4.2(i), an amount equal to the aggregate remaining progress payments to be made for Funded Turbines at the time of such acceleration.

5.18 Maintenance of Insurance. With respect to each Initial Project, Funded Subsequent Project, Turbines assigned to Initial Projects (as set forth on Exhibit G-3), without cost to the Banks, maintain or cause to be maintained on its behalf in effect at all times the types of insurance required pursuant to Exhibit K, in the amounts and on the terms and conditions specified therein, with insurance companies rated "A-" or better, with a minimum size rating of "IX," by Best's Insurance Guide and Key Ratings, (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best's Insurance Guide and Key Ratings shall no longer be published) or other insurance companies of recognized responsibility satisfactory to Administrative Agent.

5.19 Taxes and Other Government Charges. With respect to each Initial Project, Funded Subsequent Project, and, to the extent required by the applicable Turbine Purchase Contract, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) and Funded Turbine, pay, or cause to be paid, as and when due and prior to delinquency, all taxes, assessments and governmental charges of any kind that may at any time be lawfully assessed or levied against or with respect to any Portfolio Entity, such Project or such Turbine, including sales and use taxes

and real estate taxes, all other charges incurred in the operation, maintenance, use, occupancy and upkeep of such Project or such Turbine, other than utility charges, and all assessments and charges lawfully made by any Governmental Authority for public improvements that may be secured by a lien on such Project or such Turbine. In furtherance of the foregoing, Borrower shall engage a qualified Person or Persons to confirm each Portfolio Entity's compliance with all tax laws and regulations and to implement any required programs and procedures to ensure continued compliance with the same. The Portfolio Entities may contest in good faith any such taxes, assessments and other charges and, in such event, may permit the taxes, assessments or other charges so contested to remain unpaid during any period, including appeals, when the Portfolio Entities are in good faith contesting the same, so long as (a) reserves reasonably satisfactory to Administrative Agent have been established in an amount sufficient to pay any such taxes, assessments or other charges, accrued interest thereon and potential penalties or other costs relating thereto, or other adequate provision for the payment thereof shall have been made, (b) enforcement of the contested tax, assessment or other charge is effectively stayed for the entire duration of such contest, and (c) any tax, assessment or other charge determined to be due, together with any interest or penalties thereon, is immediately paid after resolution of such contest.

5.20 Event of Eminent Domain. With respect to each Initial Project and Funded Subsequent Project, if an Event of Eminent Domain shall occur with respect to any Collateral, (a) promptly upon discovery or receipt of notice of any such occurrence, provide written notice of the same to Administrative Agent,

(b) diligently pursue all its rights to compensation against the relevant Governmental Authority in respect of such Event of Eminent Domain, (c) not, without the written consent of Administrative Agent and the Required Banks, which consent shall not be unreasonably withheld, compromise or settle any claim against such Governmental Authority, (d) pay or apply all Eminent Domain Proceeds in accordance with Section 7.10. Borrower consents and shall cause each other Portfolio Entity to consent to the participation of Administrative Agent in any eminent domain proceedings, and Borrower shall from time to time deliver to Administrative Agent all documents and instruments requested by it to permit such participation.

5.21 Power Marketing Plan; Fuel Plan. With respect to each Funded Project, comply in all material respects with the provisions of the Power Marketing Plan and Fuel Plan delivered to and approved by the Technical Committee as contemplated in Article 3.

5.22 Utility Charges. With respect to each Initial Project and Funded Subsequent Project, pay, or cause to be paid, as and when due and prior to delinquency, all utility charges of any kind that may at any time be lawfully assessed or levied against or with respect to any Portfolio Entity or such Project.

5.23 Revenue Payment to Borrower. Use good faith reasonable efforts to include, or cause to be included, in each Major Project Document or Consent related thereto entered into after the date hereof, provisions to the effect that each counterparty will pay all Project Revenues or other payments, disbursements or distributions due and owing to a Project Owner directly to Borrower for application in accordance with this Agreement.

5.24 Initial Project Deeds of Trust and Equipment Finance Company Collateral Documents. Within 6 months after the first Funding Date for an Initial Project (a) execute, deliver to Administrative Agent and record in the appropriate locations the Deeds of Trust with respect to each Initial Project (other than those previously executed, delivered to Administrative Agent and recorded in accordance with Section 3.2.7) and (b)(i) execute and deliver to Administrative Agent appropriate Collateral Documents with respect to the Equipment Finance Companies and their Intermediate Parents with respect to the Initial Projects, including Equipment Finance Company Security Agreements and Pledge Agreements (Pledged Equity Interests) considered necessary by the Technical Committee to ensure that all rights and assets of such Portfolio Entities have been pledged to Administrative Agent and the Banks and (ii) take all actions necessary to provide the Banks with a valid and perfected first priority Lien on such Collateral, including without limitation, to the extent necessary, the filing of UCC-1, UCC-2 or UCC-3 financing statements, as applicable, with respect to such Collateral with the Secretary of State and/or other appropriate filing office in the states where the corresponding Initial Projects are located or the states in which such Portfolio Entities' have been formed or where their principal places of business are located, as appropriate, and the execution and delivery of the Portfolio Entity Notes and Pledged Equity Interests pledged to Administrative Agent pursuant to the Collateral Documents delivered pursuant to this Section 5.24(b) (in each case, to the extent not previously executed and delivered to Administrative Agent).

5.25 Funded Projects.5.25.1 Cause 12 Projects to become Funded Projects.

5.25.2 In the case of a Substituted Initial Project, cause such Substituted Initial Project to become a Funded Project (a) if such Substituted Initial Project's substitution occurs prior to the second anniversary of the Closing Date, no later than the second anniversary of the Closing Date and (b) if such Substituted Initial Project's substitution occurs on or after the second anniversary of the Closing Date, no later than six months after such substitution; provided, in each case, such Substituted Initial Project's satisfaction of the applicable conditions precedent to initial funding under Section 3.2 shall be determined in the same manner as it was (or would have been) for the Initial Project being replaced by such Substituted Initial Project.

## **ARTICLE 6. NEGATIVE COVENANTS**

Borrower covenants and agrees that so long as this Agreement is in effect, it will not, and will not allow any other Portfolio Entity to:

6.1 Contingent Liabilities. Except as provided in this Agreement or the other Credit Documents, become liable as a surety, guarantor, accommodation endorser or otherwise, for or upon the obligation of any other Person; provided, however, that this Section 6.1 shall not be deemed to prohibit (a) the acquisition of goods, supplies or merchandise in the normal course of business or normal trade credit; (b) the endorsement of negotiable instruments received in the normal course of its business; (c) contingent liabilities required under any Applicable Permit or Operative Document; or (d) joint liabilities incurred with respect to any partially owned Project or pursuant to a Joint Venture Agreement.

6.2 Limitations on Liens. Create, assume or suffer to exist any Lien, securing a charge or obligation on any properties or assets attributable to the Initial Contribution, Funded Project or Funded Turbine or on any related Collateral, real or personal, whether now owned or hereafter acquired, except Permitted Liens.

6.3 Indebtedness. Incur, create, assume or permit to exist any Debt except Permitted Debt.

6.4 Sale or Lease of Assets.

6.4.1 Except as permitted in Section 3.13 and Section 6.4.2 below, sell, lease, assign, transfer or otherwise dispose of assets, whether now owned or hereafter acquired except (a) in the ordinary course of its business as contemplated by the Operative Documents, (b) to the extent that such property is worn out or no longer useful or usable in connection with the operation of a relevant Project, and in each case at fair market value, or (c) in the case of a transfer of 100% of the ownership interests in a Project Owner, a Turbine Owner or an Equipment Finance Company party to an Equipment Lease with respect to a Funded Project from a direct or indirect wholly-owned Subsidiary of Borrower to Borrower or another direct or indirect wholly-owned Subsidiary of Borrower.

6.4.2 (a) In the event the Non-Affiliated Parent with respect to the Project Owner of a Designated Project exercises its right to have a Designated Project refinanced and/or to have Borrower or another applicable Portfolio Entity transfer its interest in a Designated Project to another subsidiary of Calpine (other than a Portfolio Entity), Borrower shall be permitted to have such Designated Project (including the related Project Owner and Pledged Equity Interests and any related assets) released from the Lien and obligations of the Collateral Documents and to implement a transfer of such Designated Project (whether pursuant to a refinancing or otherwise), notwithstanding the existence of an Event of Default or an Inchoate Default, and the Banks shall consent to such transfer and release, free and clear of the Liens imposed by the Collateral Documents, on the conditions that (x) Borrower prepays the Loans (with amounts other than amounts in any Account or otherwise constituting Collateral) in an amount equal to the greater of (A) the amount necessary to cause Borrower's Debt to Capitalization Ratio not to exceed the Applicable Debt to Capitalization Ratio in effect immediately after such transfer and release of such Designated Project and (B) the outstanding Loans attributable to such Project and (y) if such Designated Project is the Delta Energy Center Project or another Initial Project, Borrower identifies a Substituted Initial Project to replace such Project (such Substituted Initial Project to satisfy the requirements of the definition thereof) (in which case such Substituted Initial Project shall be deemed an Initial Project and Appendixes G-1, G-2 and G-3, as appropriate, shall be amended to reflect the foregoing and such Substituted Initial Project shall thereafter be funded with Construction Loans in accordance with Section 5.25.2). Upon satisfaction of the foregoing conditions, Administrative Agent shall execute and deliver to Borrower such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, and shall return, cancel and terminate any applicable Portfolio Entity Note and Project Owner Guaranty and shall return all related Pledged Equity Interests free and clear of the Liens imposed by the Collateral Documents, all as may be reasonably necessary to release the Liens granted to the Banks in such Project and related

Portfolio Entities, as the case may be (including the Lien on cash flows from such Project), and to permit such release and transfer of ownership.

(b) In the event that the Non-Affiliated Parent with respect to a Designated Project exercises its right to restructure the ownership interests in such Designated Project into direct undivided ownership interests (provided, after such restructuring, (x) such Non-Affiliated Parent owns no more than a 50% direct undivided ownership interest in such Project and (y) the remaining direct undivided ownership interest in such Project is held by a Portfolio Entity that is directly or indirectly wholly-owned by Borrower), then the relevant Portfolio Entity shall, notwithstanding the existence of an Event of Default or an Inchoate Default, be permitted to implement such restructuring and the Banks shall consent to such restructuring on the conditions that:

(i) The relevant Portfolio Entity and such Non-Affiliated Parent enter into a Joint Venture Agreement relating to the joint ownership and joint operation of such Project, and Borrower delivers or causes to be delivered documents and instruments similar to those contemplated for partially owned Projects similar to such Project pursuant to Section 3.3 as will permit the Banks, to the greatest extent possible, to maintain a first priority perfected Lien on the remaining Collateral owned by the relevant Project Owner in respect of such Project (including without limitation any Joint Venture Agreement described in this clause (i) above) and exercise remedies with respect to such Collateral (with the benefit of lender protective provisions), including without limitation, to the extent applicable (A) all necessary amendments to the relevant Project/Turbine Owner Security Agreement (to include, without limitation, the Joint Venture Agreement described in this clause (i) above in the Collateral subject thereto), Deed of Trust, Pledge Agreements (Pledged Equity Interests) and Project Owner Guaranty, (B) an agreement consenting to the pledge by the relevant Portfolio Entity of its interest in the Joint Venture Agreement as contemplated in this clause (i) above and an agreement by such Non-Affiliated Parent recognizing the Banks as its counterparty in the event that the Banks shall exercise remedies (including foreclosure) on the Collateral with respect to such Project, and (C) any other customary lender protective agreements or provisions, all of which documents and instruments shall be in form and substance satisfactory to the Technical Committee; and

(ii) Borrower uses any and all amounts paid by such Non-Affiliated Parent for such interest in such Project and, to the extent necessary, makes additional Contributions to prepay the Loans in an amount equal to the greater of (A) the amount necessary to cause Borrower's Debt to Capitalization Ratio not to exceed the Applicable Debt to Capitalization Ratio then in effect and (B) the net proceeds of such restructuring.

Upon the satisfaction of each of the foregoing conditions, as applicable, Administrative Agent shall execute and deliver to Borrower, subject to the provisions of clause (i) above, such documents and instruments, including UCC-3 termination statements, deeds of reconveyance, amendments of Portfolio Entity Notes and amendments of the applicable Project Owner Guaranty, and shall return any Pledged Equity Interests owned by such Non-Affiliated Parent, free and clear of the Liens imposed by the Collateral Documents, all as reasonably may be necessary to release its Lien on the portion of the Collateral (including related cash flows) that is intended to be transferred in connection with such restructuring.

(c) In the event that (x) a Project Document for a Funded Subsequent Project gives any party thereto (other than a Portfolio Entity) the unilateral right to acquire an undivided direct ownership interest in the relevant Project (but not more than a 50% undivided direct ownership interest) and (y) such party exercises such right, then the relevant Portfolio Entity shall be permitted to implement such sale to the extent required under the relevant Project Document and the Banks shall consent to the acquisition of such Project or interest therein on the conditions that:

(i) The relevant Portfolio Entity and such third party enter into a Joint Venture Agreement relating to the joint ownership and joint operation of such Project, and Borrower delivers or causes to be delivered documents and instruments similar to those contemplated for partially owned Projects similar to such Project pursuant to Section 3.3 as will permit the Banks, to the greatest extent possible pursuant to the terms of the purchase option, to maintain a first priority perfected Lien on the remaining Collateral owned by the relevant Project Owner in respect of such Project (including without limitation the Joint Venture Agreement described in this clause (i) above) and exercise remedies with respect to such Collateral (with the benefit of lender protective provisions), including without limitation, to the extent applicable (A) all necessary amendments to the relevant Project/Turbine Owner Security Agreement (to include, without limitation, the Joint Venture Agreement described in this clause (i) above in the Collateral subject thereto), Deed of Trust, Pledge Agreements (Pledged Equity Interests) and Project Owner Guaranty, (B) an agreement consenting to the pledge by the relevant Portfolio Entity of its interest in the Joint Venture Agreement as contemplated in this clause (i) above and an agreement by such third party recognizing the Banks as its counterparty in the event that the Banks shall exercise remedies (including foreclosure) on the Collateral with respect to such Project, and (C) any other customary lender protective agreements or provisions, all of which documents and instruments shall be in form and substance satisfactory to the Technical Committee; and

(ii) Borrower uses the entire amount of the purchase price paid by such Person for such interest in such Project and, to the extent necessary, makes additional Contributions to prepay the Loans in an amount equal to the greater of (A) the book value of the pro rata percentage of such Project purchased by such Person calculated in accordance with GAAP and (B) the net proceeds of such sale.

Upon the satisfaction of each of the foregoing conditions, as applicable, Administrative Agent shall execute and deliver to Borrower, subject to the provisions of clause (i) above, such documents and instruments, including UCC-3 termination statements, deeds of reconveyance, amendments of Portfolio Entity Notes and amendments of the applicable Project Owner Guaranty, and shall return related Pledged Equity Interests, all as reasonably may be necessary to release its Lien on the portion of the Collateral (including related cash flows) that is intended to be transferred in connection with such sale.

(d) [\*]

(e) In the event that (x) a Project Document for a Funded Subsequent Project or a Substituted Initial Project gives any party thereto the unilateral right to acquire no more than 33% of the equity interests in the Project Owner with respect to such Project and (y) such party exercises such right, then Borrower shall be permitted to implement such sale to the extent required under the relevant Project Document, notwithstanding the existence of an Event of Default or Inchoate Default, and the Banks shall consent to acquisition of such interest, subject to the Liens imposed by the Collateral Documents, on the conditions that:

(i) Such party, in its capacity as a Non-Affiliated Parent, shall execute and/or deliver to Administrative Agent (A) a Pledge Agreement (Pledged Equity Interests) and its Pledged Equity Interests with respect to such Project Owner in accordance therewith, (B) documents and instruments similar to those contemplated for Non-Affiliated Parents pursuant to Section 3; and

(ii) Borrower uses the entire amount of the purchase price paid by such Person for such interest in such Project Owner to prepay the Loans.

Upon the satisfaction of each of the foregoing conditions, Administrative Agent shall execute and deliver to Borrower such documents and instruments as reasonably may be necessary to enable such Person to acquire such equity interests in such Project Owner, subject to the Liens imposed by the Collateral Documents; provided, however, that in no event shall any such document or instrument affect or deprive the Banks from having a perfected, first priority Lien on all of the relevant Project Owner's right, title and interest in and to such Project (including the cash flows therefrom).

(f) Borrower shall be permitted to implement sale-leaseback or similar tax-related financing with respect to the Oneta Energy Center Project and two other Projects, on the conditions that (i) at the time of the closing of such a sale-leaseback or similar tax-related financing, if such Project is an Initial Project, Borrower identifies a Substituted Initial Project to

replace such Project (such Substituted Initial Project to satisfy the requirements of the definition thereof) (in which case such Substituted Initial Project shall be deemed an Initial Project and Appendixes G-1, G-2 and G-3, as appropriate, shall be amended to reflect the foregoing and such Substituted Initial Project shall thereafter be funded with Construction Loans in accordance with Section 5.25.2), (ii) concurrently with the closing of each sale-leaseback or similar tax-related financing Borrower uses all of the net proceeds of such financing and, to the extent necessary, makes additional Contributions to prepay the Loans in an amount equal to the greater of (A) the book value of the relevant Project calculated in accordance with GAAP and (B) the net proceeds of such financing, (iii) no Inchoate Default or Event of Default has occurred and is continuing, (iv) Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall equal or exceed [\*] to 1.00, and (v) Borrower's Debt to Capitalization Ratio as of the most recent calendar quarter shall be no higher than the Maximum Debt to Capitalization Ratio. Upon satisfaction of each of the foregoing conditions Administrative Agent shall execute and deliver to Borrower such documents and instruments, including UCC-3 termination statements, deeds of reconveyance, shall return, cancel and terminate any applicable Portfolio Entity Note and Project Owner Guaranty, and shall return all related Pledged Equity Interests, free and clear of the Liens imposed by the Collateral Documents, all as reasonably may be necessary to release the Liens granted to the Banks in such Project and the related Portfolio Entities, as the case may be (including the Lien on cash flows from such Project), and to permit such transfer of ownership.

(g) Borrower shall have the right in its sole discretion without payment of additional consideration or any mandatory prepayment of Loans to have any Unfunded Subsequent Project transferred to another Person or Persons (whether by sale of assets or equity), and the Banks shall promptly consent to the transfer of such Project and/or related Project Owner, as the case may be, notwithstanding the existence of an Inchoate Default or Event of Default or any other circumstance or condition whatsoever. Upon receipt of notice from Borrower, Administrative Agent shall execute and deliver to Borrower such documents and instruments as may be reasonably necessary to permit such transfer of ownership.

(h) In the event a Project to which a Turbine is assigned (as set forth in Exhibit G-3) is transferred and/or released pursuant to this Section 6.4 or if Borrower elects not to proceed with the development of an Unfunded Subsequent Project, (i) Borrower shall have the right in its discretion to have such Turbine released from the Liens of the Collateral Documents and to transfer ownership of such Turbine to another Person or Persons, and the Banks shall promptly release such Turbine and consent to its transfer to another Person or Persons upon written notice to Administrative Agent, so long as Borrower shall prepay the aggregate principal amount of all Turbine Purchase Loans (if any) made hereunder to pay Turbine Costs related to such Turbine (with amounts other than amounts in any Account or otherwise constituting Collateral),

(ii) Borrower shall have the right at its discretion, upon written notice to Administrative Agent, to have such Turbine assigned to another Project, in which case Exhibit G-3 shall be amended to reflect such assignment, or (iii) subject to Section 6.4.2(g), Borrower shall have the right at its discretion to make Contributions to pay Turbine Costs with respect to such Turbine in accordance with Section 3.10(a) until such time as Borrower selects either clause (i) or

(ii) above with respect to such Turbine, and until such time as Borrower selects clause (ii) above with respect to such Turbine, if ever, such Turbine will not be eligible to receive Turbine Purchase Loans for the payment of Turbine Costs associated thereto. Upon receipt of a notice

under clause (i) above requesting the release of any such Turbine and compliance with the conditions thereto, Administrative Agent shall promptly execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Turbine from the Liens of the Collateral Documents and to permit such transfer of ownership.

(i) (i) In the event the Loans are accelerated pursuant to Section 8.2.5, at the election of the Required Banks, Borrower shall, or shall cause Calpine to, make either (A) Contributions in an amount equal to the aggregate remaining payments to be made under the Turbine Purchase Contracts with respect to Turbines that have not been assigned to Funded Projects or (B) all remaining payments under the applicable Turbine Purchase Contracts with respect to Funded Turbines that have not been assigned to Funded Projects, and  
(ii) if on the date that is 30 days prior to the Turbine Delivery Date with respect to any Turbine, the Project to which such Turbine has been assigned (as set forth on Exhibit G-3) is not a Funded Project, Borrower shall, or shall cause Calpine to, make all remaining payments under the applicable Turbine Purchase Contract with respect to such Turbine (with amounts other than amounts in any Account or otherwise constituting Collateral), and Borrower and/or the applicable Portfolio Entities shall grant Administrative Agent a Lien on the Collateral related to the Unfunded Project to which such Turbine is assigned (as set forth on Exhibit G-3) securing all outstanding Loans hereunder other than Loans attributable to Projects which have achieved Operation prior to the date such Lien is granted; provided, however, that in any such case, Borrower shall have the right in its discretion to prepay or cause to be prepaid the aggregate amount of outstanding Turbine Purchase Loans attributable to such Turbine(s) (with amounts other than amounts in any Account or otherwise constituting Collateral) and, upon Administrative Agent's receipt of such payment, to have such Turbine(s) released from the Liens of the Collateral Documents and to transfer ownership of such Turbine(s) to Calpine. If Borrower exercises the right in the foregoing proviso, upon prepayment in full of all such Turbine Purchase Loans, the Banks shall promptly release such Turbine(s) and consent to the transfer of such Turbine(s) to Calpine, and Administrative Agent shall promptly execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Turbine(s) from the Liens of the Collateral Documents and to permit such transfer(s) of ownership.

(j) In the event that Borrower is unable, after using commercially reasonable efforts, to satisfy the conditions precedent for initial funding for any Initial Project under Section 3.2, and the failure to satisfy the conditions precedent for initial funding of such Initial Project is not otherwise waived in accordance with this Agreement, Borrower shall have the right in its discretion to have such Initial Project and/or related Portfolio Entities released from the Liens of the Collateral Documents and to transfer ownership of such Initial Project and/or Portfolio Entities to another Person or Persons at any time prior to such Initial Project becoming a Funded Project, and the Banks shall promptly release such Initial Project and/or Portfolio Entities and consent to its transfer to another Person or Persons on the conditions that:

(i) (A) No Inchoate Default or Event of Default has occurred and is continuing, (B) Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall equal or exceed [\*] to 1.00 and (C) Borrower's Debt to Capitalization Ratio as of the most recent calendar quarter shall be no higher than the Maximum Debt to Capitalization Ratio.

(ii) Unless Borrower has made or caused to be made Contributions to pay Project Costs for the Initial Projects other than such Project in an aggregate amount equal to or greater than of \$500,000,000, the properties and assets attributable to such Contributions being subject to the valid and first priority Lien of the Collateral Documents, Borrower makes additional Contributions to prepay the Loans in an amount equal to the lesser of

(x) the difference between (A) \$500,000,000 and (B) the total amount of Contributions made or caused to be made to pay Project Costs for Initial Projects at such time and (y) the total amount of Contributions attributed to such Project, if any, as of the Closing Date in satisfaction of Section 3.1.23; and

(iii) Borrower identifies a Substituted Initial Project to replace such Project (such Substituted Initial Project to satisfy the requirements of the definition thereof).

Upon satisfaction of the foregoing conditions, Administrative Agent shall execute and deliver to Borrower such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, shall return, cancel and terminate any applicable Portfolio Entity Note and Project Owner Guaranty, and shall return all related Pledged Equity Interests, free and clear of the Liens imposed by the Collateral Documents, all as may be reasonably necessary to release the Liens granted to the Banks in such Initial Project and/or related Portfolio Entities, as the case may be (including the Lien on cash flows from such Initial Project), and to permit such transfer of ownership. Concurrently with the release and transfer of such Initial Project and/or related Project Owner, such Substituted Initial Project shall be deemed an Initial Project and Appendixes G-1, G-2 and G-3, as appropriate, shall be amended to reflect the foregoing and such Substituted Initial Project shall thereafter be funded with Construction Loans in accordance with Section 5.25.2.

(k) Upon any release of a Project or Turbine from the Lien of the Collateral Documents as provided herein, such Project or Turbine shall cease to be an Initial Project, Subsequent Project or Turbine, as applicable, for purposes of this Agreement and the other Credit Documents.

(l) Borrower or the applicable Portfolio Entity shall have the right to transfer and convey, notwithstanding the existence of an Event of Default or Inchoate Default and free and clear of all Liens under the Credit Documents, real estate interests, including Easements, relating to (i) the transmission or transportation of power, gas, water or other inputs or outputs to or from a Project, (ii) access to or from the Project, or (iii) the provision of other services to the Project, to a Governmental Authority, local utility or similar Person, so long as the Technical Committee is satisfied that the transmission or transportation of such commodities, access and the provision of such other services to or from the Project will not be adversely affected as a result of such conveyance. In the event of such transfer and conveyance, Administrative Agent shall execute and deliver to Borrower such documents and instruments, including UCC-3 termination statements and deeds of reconveyance, as reasonably may be necessary to release such real estate interests and related portions of the Collateral from the Liens under the Credit Agreement.

6.5 Changes. Change the nature of its business or expand its business beyond the business contemplated in the Operative Documents, including without limitation purchasing gas with the intention of reselling such gas; provided (a) each Portfolio Entity shall be directly or indirectly a wholly-owned Subsidiary of Borrower other than Project Owners with respect to Subsequent Projects which shall be indirectly or directly at least 50% owned by Borrower, the Delta Energy Center Project Owner and as otherwise permitted pursuant to Section 6.4.2, (b) each Project Owner shall hold title to only one Project (or portion thereof), (c) each Project Owner shall own 100% of its respective Project other than Project Owners that are directly or indirectly wholly-owned by Borrower and which own at least an undivided 50% interest in the Delta Energy Center Project, a Substituted Initial Project or a Subsequent Project, (d) each Turbine is 100% owned by a Turbine Owner (that is directly or indirectly wholly-owned by Borrower) and (e) all equipment that is leased to a Funded Project by an Equipment Finance Company pursuant to an Equipment Lease is 100% owned by such Equipment Finance Company.

6.6 Distributions. (a) Subject to Section 7.14 and those distributions made to Non-Affiliated Parents pursuant to Waterfall Level 7, and except for payments by the Delta Energy Center Project Owner under the Calpine DEC Credit Agreement in accordance with the terms thereof, directly or indirectly, make or declare any distribution (in cash, property or obligation) on, repay any subordinated indebtedness or make any other payment on account of, any interest in Borrower or any other Portfolio Entity (including any transfers of any tax benefits) unless:

(i) no Event of Default or Inchoate Default has occurred and is continuing and such payment or distribution will not result in an Inchoate Default or Event of Default;

(ii) no Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing with respect to the Project to which the funds to be distributed are attributable, such payment or distribution will not result in such Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default and such Project shall have achieved Final Completion;

(iii) such distribution is made at Waterfall Level 8;

(iv) no Material Adverse Effect with respect to Borrower has occurred and is continuing;

(v) the proceeds of such payment or distribution are in an amount that is not greater than the Deemed Interest due, from time to time, on the amount of Contributions to Borrower for Funded Projects (other than Contributions made in connection with the release of Collateral pursuant to Section 6.4.2) in excess of the difference between (x) the total aggregate Project Costs for the Initial Projects, as reflected in the Project Budgets delivered to the Lead Arrangers on the Closing Date pursuant to Section 3.1.14 less (y) [\*];

(vi) at the time of such proposed distribution or payment, all the Initial Projects are Funded Projects; and

(vii) Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall equal or exceed [\*] to 1.00.

(b) Notwithstanding anything herein to the contrary, if Borrower makes Contributions, or causes Contributions to be made, whether before or after Commercial Operation of any Project, to itself or its Subsidiaries in order to enable one or more Project Owners to pay amounts due the applicable Equipment Finance Company pursuant to an Equipment Lease, such payments under the applicable Equipment Lease shall not be considered Project Revenues, and if and to the extent that such payments are not used to pay the purchase price for such equipment to the vendor thereof, and are in excess of all other Contributions then required to be made in accordance with this Agreement, Borrower (or the relevant Subsidiaries) shall be entitled to make distributions equal to the amount of such Contributions, free and clear of the Liens of the Collateral Documents.

6.7 Investments. Make any investments (whether by purchase of stocks, bonds, notes or other securities, loan, extension of credit, advance or otherwise) other than Permitted Investments and investments in other Portfolio Entities.

6.8 Transactions With Affiliates. Except for (a) the Equity Documents, the Project Documents and the Additional Project Documents approved by Administrative Agent and/or the Technical Committee, as the case may be, pursuant to this Agreement and the transactions permitted thereby, (b) arms-length transactions in the ordinary course of business, (c) transfers of ownership interests permitted under Section 6.4.1(c) and the related Equipment Leases, (d) the Calpine DEC Credit Agreement and documents related thereto, and (e) as otherwise expressly permitted or contemplated by this Agreement and the other Credit Documents, directly or indirectly enter into any transaction or series of transactions relating to an Initial Project, a Funded Subsequent Project, a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine with or for the benefit of an Affiliate without the prior written approval of Administrative Agent; provided, Borrower shall, subject to Sections 3.2 and 3.3 and except in the case of an Equipment Lease, cause (i) any Affiliate entering into a Project Document with a Project Owner for the supply of goods or services to any such Project to deliver to Administrative Agent a duly executed Affiliated Subordination Agreement substantially in the form of Exhibit D-8 with conforming changes to address the specifics of such Project or otherwise in form and substance reasonably satisfactory to Administrative Agent (or, if applicable, amend an existing Affiliated Subordination Agreement) in order to subordinate O&M Costs, to the extent satisfactory to Administrative Agent, that a Project Owner may incur pursuant to such Project Document to the Obligations and (ii) if such Affiliate is a Subsidiary of Calpine, Calpine to deliver to Administrative Agent (A) if such Affiliate is a Subsidiary of Calpine that is directly or indirectly more than 50% owned by Calpine, a duly executed Affiliated Party Agreement Guaranty (or, if applicable, an amendment to an existing

Affiliated Party Agreement Guaranty) in order to evidence Calpine's guaranty of 100% of such Affiliate's performance under such Project Document in favor of such Project Owner or (B) if such Affiliate is a Subsidiary of Calpine that is directly or indirectly 50% owned by Calpine, a duly executed Affiliated Party Agreement Guaranty (or, if applicable, an amendment to an existing Affiliated Party Agreement Guaranty) in order to evidence Calpine's guaranty of at least Calpine's percentage ownership in such Affiliate's performance under such Project Document in favor of such Project Owner and a duly executed guaranty agreement in favor of such Project Owner executed by a guarantor satisfactory to the Technical Committee and in form and substance satisfactory to the Technical Committee in order to evidence such guarantor's guaranty of those obligations of such Affiliate under such Project Document not otherwise addressed in the relevant Affiliated Party Agreement Guaranty. Notwithstanding the foregoing, in no event shall (x) any Project Owner enter into any Project Document with respect to any Project other than such Project Owner's Project, and (y) Borrower enter into any Project Document.

6.9 Regulations. Directly or indirectly apply any part of the proceeds of any Loan or other revenues to the purchasing or carrying of any margin stock within the meaning of Regulations T, U or X of the Federal Reserve Board, or any regulations, interpretations or rulings thereunder.

6.10 ERISA. Establish, maintain, contribute to or become obligated to contribute to any ERISA Plan or suffer or permit any member of the Controlled Group to do so.

6.11 Partnerships, Etc. Become a general or limited partner in any partnership or a member in any limited liability company (except, in the case of Borrower and Intermediate Parents, with respect to other Portfolio Entities) create and hold stock in any subsidiary (except with respect to other Portfolio Entities) or, except as otherwise expressly permitted by this Agreement, become a joint venturer in any joint venture.

6.12 Dissolution. Except as otherwise expressly permitted by this Agreement or in connection with the acquisition of a Subsequent Project, liquidate or dissolve, or sell or lease or otherwise transfer or dispose of all or any substantial part of its property, assets or business or combine, merge or consolidate with or into any other entity, or change its legal form, or purchase or otherwise acquire all or substantially all of the assets of any Person.

6.13 Amendments; Change Orders; Completion.

6.13.1 Directly or indirectly, amend, modify, supplement or waive, or permit or consent to the amendment, modification, supplement or waiver (including any waiver (or refund) of liquidated damages payable by any Major Contractor under any Major Construction Contract or any Turbine Purchase Contractor under any Turbine Purchase Contract) of, any of the provisions of, or give any consent under, (a) any of (i) the Major Project Documents (other than Major Gas Supply Contracts, Major Gas Transportation Agreements and Major Power Purchase Agreements) relating to an Initial Project or a Funded Subsequent Project or (ii) any of the Turbine Purchase Contracts relating to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine without first submitting to Administrative Agent a copy of such proposed amendment, modification, supplement or waiver and if, in the reasonable judgment of Administrative Agent, the amendment, modification, supplement or waiver could reasonably be expected to have a Material Adverse Effect on Borrower or any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine, obtaining the prior written consent of the Required Banks thereto, which consent shall not be unreasonably withheld or delayed or (b) any Project Document between

Borrower or a Project Owner and an Affiliate thereof relating to an Initial Project or a Funded Subsequent Project (but not including the amendment, modification, supplement or waiver of any "Transactions" under any Power Marketing Agreement or Gas Supply Contract between Borrower and such Affiliate) without obtaining the prior written consent of the Required Banks thereto.

6.13.2 Without the prior written consent of Administrative Agent direct or consent to any change order under any of the Major Construction Contracts relating to an Initial Project or a Funded Subsequent Project or any of the Turbine Purchase Contracts relating to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine if such change order:

(a) in the case of a Project, will, individually or together with all previous change orders, increase or decrease the Project Costs of a particular Initial Project or Funded Subsequent Project by more than \$2,500,000 in the aggregate (exclusive of increases reimbursed by insurance awards, condemnation awards or contractual damage awards); provided, however, notwithstanding the foregoing, Borrower or a Project Owner may direct or consent to any such change order without the prior written consent of Administrative Agent if such change order will not individually increase the Project Costs of a particular Initial Project or Funded Subsequent Project by more than \$250,000 and such change order, together with all previous change orders, will not increase the Project Costs of such Initial Project or Funded Subsequent Project by more than \$5,000,000 in the aggregate (in each case, exclusive of increases reimbursed by insurance awards, condemnation awards or contractual damage awards);

(b) in the case of a Turbine, will, individually or together with all previous change orders, increase or decrease the Turbine Costs of a particular Turbine assigned to a Initial Project (as set forth on Exhibit G-3) or Funded Turbine by more than \$1,000,000 in the aggregate (exclusive of increases reimbursed by insurance awards, condemnation awards or contractual damage awards);

(c) in the case of a Project, is reasonably likely to delay Completion of any Project beyond the Loan Maturity Date;

(d) is reasonably likely to permit or result in any adverse modification or impair the enforceability of any warranty under any Major Construction Contract, any Maintenance Contract or any O&M Agreement relating to an Initial Project or a Funded Subsequent Project or any warranty under any Turbine Purchase Contract relating to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine, in each case if such modification or impairment could reasonably be expected to have a Material Adverse Effect on a Project;

(e) is reasonably likely, in the opinion of the Independent Engineer, to impair or reduce the maximum capacity, efficiency, output, performance, reliability, durability or availability of any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine, or increase O&M Costs associated with any Initial Project or Funded Subsequent Project, or decrease Project Revenues from any Initial

Project or Funded Subsequent Project, in each case after accounting for other favorable or unfavorable circumstances which may have affected such Project or Turbine, as the case may be;

(f) is not permitted by any Major Project Document relating to an Initial Project or a Funded Subsequent Project or Turbine Purchase Contract relative to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Project or would (i) materially diminish any obligation of any Major Project Participant or Turbine Purchase Contractor, as the case may be, or (ii) materially increase any obligation of any Portfolio Entity thereunder;

(g) is likely, in the reasonable opinion of Administrative Agent, to present a significant risk of the revocation or material modification of any Applicable Permit or Third Party Permit relating to an Initial Project or a Funded Subsequent Project or jeopardize any Project's status as a Qualifying Facility or an Eligible Facility, as the case may be;

(h) may cause any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine not to comply or lessen any such Project's or Turbine's ability to comply with Legal Requirements; or

(i) relates to a Major Construction Contract between any Portfolio Entity and an Affiliate of Borrower.

6.13.3 Declare "Completion", "Final Construction Completion", "Final Project Completion" or "Mechanical Completion" (as such terms are defined in the Construction Contracts) under the Construction Contracts relating to an Initial Project or a Funded Subsequent Project or declare that the "Acceptance Date" has occurred or approve the successful completion of the "Acceptance Tests" relating to an Initial Project or a Funded Subsequent Project (as such terms are defined in the Construction Contracts) without the written approval of Administrative Agent acting in consultation with the Independent Engineer, which approval shall not be unreasonably withheld or delayed.

6.13.4 Consent, without Administrative Agent's prior approval, to (a) any action taken by any Contractor or Turbine Purchase Contractor to conform the equipment or services provided by such Person to the intellectual property rights of others if such action could reasonably be expected to materially and adversely affect a Portfolio Entity's continued use of any Initial Project, Funded Subsequent Project, Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine or (b) to the settlement by any Contractor or Turbine Purchase Contractor of any claim or proceeding which could reasonably be expected to materially adversely affect a Portfolio Entity's rights relating to an Initial Project, a Funded Subsequent Project, a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine.

6.13.5 Direct any Major Contractor or Turbine Purchase Contractor to suspend the work being performed under any Construction Contract or any Turbine Purchase Contract relating to an Initial Project, a Funded Subsequent Project, a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine without Administrative Agent's prior consent.

Wherever Administrative Agent is required to approve or consent to any change order under this Section 6.13, Administrative Agent shall use good faith efforts to respond to each change order request as soon as possible and in all events within 20 days. No change order shall be deemed approved by Administrative Agent until expressly approved.

6.14 Compliance with Operative Documents. Do or permit (to the extent within its control) to be done in, upon or about any Project or Turbine or any part thereof, or do or permit (to the extent within its control) to be done any act under the Operative Documents, or omit or refrain from any act under the Operative Documents, where such act done or permitted to be done, or such omission of or refraining from action, could reasonably be expected to have a Material Adverse Effect on Borrower, an Initial Project or a Funded Subsequent Project.

6.15 Name and Location; Fiscal Year. Unless waived in writing by Administrative Agent, change its name, the location of its principal place of business or its federal employer identification number without notice to Administrative Agent at least 45 days prior to such change, or change its fiscal year without Administrative Agent's consent.

6.16 Use of Project Sites. Use, or permit to be used, any Site owned or leased by a Portfolio Entity for any purpose other than for the construction, operation and maintenance of the Project situated thereon as contemplated by the Operative Documents, without the prior written approval of Administrative Agent.

6.17 Assignment. Assign its rights hereunder or under any of the other Credit Documents, under any of the Project Documents relating to an Initial Project or a Funded Subsequent Project or under a Turbine Purchase Contract relating to a Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or a Funded Turbine, to any Person except as permitted under this Agreement and the other Credit Documents.

6.18 Abandonment of Project or Turbine. Except as set forth in Section 6.4, voluntarily cease or abandon the development, construction or operation of any Initial Project or Funded Subsequent Project or voluntarily cease or abandon the procurement of any Turbine assigned to an Initial Project (as set forth on Exhibit G-3) or Funded Turbine.

6.19 Hazardous Substance. Release, emit or discharge into the environment any Hazardous Substances in violation of any Hazardous Substance Laws, Legal Requirements or Applicable Permits.

6.20 Additional Project Documents. Except as contemplated under the Power Marketing Plans and Fuel Plans, enter into or become a party to any Project Document relating to an Initial Project or a Funded Subsequent Project not in existence or specifically contemplated pursuant to this Agreement (with the form of such contemplated agreement approved by the Technical Committee) on the Funding Date with respect to such Project, except (a) with the prior written consent of Administrative Agent acting at the direction of the Technical Committee, and (b) if required by Administrative Agent, upon delivery to Administrative Agent of a Consent from such third party in substantially the form of Exhibit E-1; provided that the consent of Administrative Agent and the Technical Committee shall not be required for a Portfolio Entity to enter into Additional Project Documents (i) with Persons other than Affiliates of Borrower and

(ii) pursuant to which such Portfolio Entity will incur obligations or liabilities with a value of not more than \$1,000,000 individually, or \$2,000,000 in the aggregate, per year. In the event that the consent of Administrative Agent is required in connection with a proposed Project Document pursuant to this Section 6.20, Administrative Agent shall have 20 days from the time at which it received such proposed Project Document to approve or disapprove such proposed Project Document. No proposed Project Document shall be deemed approved by Administrative Agent until expressly approved.

6.21 Project Budget Amendments. Directly or indirectly, amend, modify, allocate, re-allocate or supplement or permit or consent to the amendment, modification, allocation, re-allocation or supplement of, any of the provisions of any Project Budget relating to an Initial Project or a Funded Subsequent Project.

6.22 Loan Proceeds; Project Revenues. Use, pay, transfer, distribute or dispose of any Loan proceeds in any manner or for any purposes except as provided in Section 5.1.1 or of any Project Revenues in any manner or for any purposes except as provided in Sections 5.1.2, 7.1 and 7.2.

6.23 Acquisition of Real Property. Acquire or lease any real property or other interest in real property (excluding the acquisition (but not the exercise) of any options to acquire any such interests in real property and the acquisition of any Easements) unless (a) Borrower shall have delivered to Administrative Agent on behalf of the Banks the Environmental Consultant's Phase I environmental report with respect to such real property along with a corresponding reliance letter from the Environmental Consultant confirming that no Hazardous Substances were found in, on or under such real property and that a Phase II environmental report is not warranted by the findings of such Phase I environmental report and (b) if Hazardous Substances were found in, on or under such real property pursuant to such Phase I environmental report or a Phase II environmental report is warranted by the findings of such Phase I environmental report, Borrower shall have either (i) delivered to Administrative Agent on behalf of the Banks a Phase II environmental report with respect to such real property along with a corresponding reliance letter from the Environmental Consultant, confirming, in form and substance satisfactory to Administrative Agent, either (A) that no Hazardous Substances were found in, on or under such real property or (B) matters otherwise satisfactory to Administrative Agent or (ii) delivered to Administrative Agent an environmental indemnity agreement in form and substance satisfactory to Administrative Agent pursuant to which an indemnitor satisfactory to Administrative Agent indemnifies the Portfolio Entities and the Banks from any and all damages or other liabilities relating to or arising from Hazardous Substances then in, on or under such real property or otherwise caused by or attributable to such indemnitor.

6.24 Accounts. Maintain, or permit other Portfolio Entities to maintain, any bank accounts other than the Accounts.

**ARTICLE 7.**  
**APPLICATION OF FUNDS**

7.1 Construction Account.

7.1.1 Establishment of Account. On or prior to the Closing Date, Borrower and Administrative Agent shall establish the Construction Account at the Depository Agent's New York office and within the Construction Account a sub-account for each Initial Project (other than Substituted Initial Projects). On or prior to the initial funding of Construction Loans in respect of a Substituted Initial Project or a Subsequent Project, Borrower and Administrative Agent shall establish a sub-account within the Construction Account for such Project and, on or prior to the initial funding of Turbine Purchase Loans in respect of a Turbine, Borrower and Administrative Agent shall establish a sub-account within the Construction Account for such Turbine (a "Turbine Purchase Sub-Account" and, each sub-account established pursuant to the two preceding sentences, a "Construction Sub-Account"). Subject to the satisfaction (or waiver) of the applicable provisions of Article 3 in respect of the applicable Project or Turbine, as the case may be, there shall be deposited into each Construction Sub-Account the proceeds of all Loans made hereunder in respect of the corresponding Project or, in the case of each Turbine Purchase Sub-Account, the corresponding Turbine, and all amounts required to be deposited in such Construction Sub-Account pursuant to Sections 3.10(a), 5.1.2 and 5.17.

7.1.2 Disbursements from Construction Account. Amounts shall be disbursed from each Construction Sub-Account from time to time as provided in this Section 7.1. Borrower shall have the right to cause Administrative Agent

(a) to disburse amounts from the Construction Sub-Account for the corresponding Project to the accounts of each of the Contractors performing work on such Project for amounts due and owing to such Contractors under the Construction Contracts, or to any other materialmen, subcontractors, Administrative Agent or any other Person performing work on such Project in payment of amounts due and owing to such parties in respect of such Project in accordance with a duly completed Construction Drawdown Certificate, (b) to transfer up to \$250,000 in any month from the Construction Sub-Account with respect to a Project to the Operating Account with respect to such Project to pay specified amounts of less than \$50,000, individually, (c) to maintain up to \$100,000 in any Operating Account by transferring amounts from the corresponding Construction Sub-Account to pay unspecified amounts (the expenditure of which shall be identified, and substantiated to the reasonable satisfaction of Administrative Agent in the immediately subsequent Construction Drawdown Certificate), (d) to disburse amounts from the Turbine Purchase Sub-Account for the corresponding Turbine to the account of the Turbine Purchase Contractor performing work with respect to such Turbine in payment for amounts due and owing to such Turbine Purchase Contractor under the Turbine Purchase Contract in accordance with a duly completed Turbine Purchase Drawdown Certificate, and (e) to transfer amounts (i) from the Construction Sub-Account for the corresponding Project to the Operating Account with respect to such Project for payment by Borrower of amounts due and owing to Contractors under the Construction Contracts or to any other materialmen, subcontractors or other Persons performing work on such Project of amounts due and owing to such parties in respect of such Project in accordance with a duly completed Construction Drawdown Certificate and (ii) from the Turbine Purchase Sub-Account for the corresponding Turbine to the Operating Account for payment by Borrower of amounts due and owing to the Turbine Purchase Contractor

performing work with respect to such Turbine for amounts due and owing to such Turbine Purchase Contractor under the Turbine Purchase Contract in accordance with a duly completed Turbine Purchase Drawdown Certificate. Borrower agrees that, where Administrative Agent has not transferred such amounts to the relevant Operating Account pursuant to clause (e) above, Administrative Agent may transfer any or all of a Loan and other sums in the applicable Construction Sub-Account directly into the account of any Contractor or Turbine Purchase Contractor, as the case may be, for amounts due and owing to such Person under the relevant Construction Contract or Turbine Purchase Contract, as the case may be, or any other materialmen or subcontractors in payment of amounts due and owing to such parties in respect of the applicable Project or Turbine without further authorization from Borrower; provided, however, that if Borrower has notified Administrative Agent that it is contesting a claim for payment by any such Person or a subcontractor or materialmen in accordance with the requirements of this Agreement and the definition of "Permitted Liens," Administrative Agent will not, except as described in the proviso to the next sentence, be entitled to pay any amount being contested. Borrower hereby constitutes and appoints Administrative Agent its true and lawful attorney-in-fact to make such direct payments and this power of attorney shall be deemed to be a power coupled with an interest and shall be irrevocable; provided that, except upon the occurrence and continuation of an Event of Default or a Non-Fundamental Project Default with respect to the relevant Project, Administrative Agent shall not exercise its rights under this power of attorney except to make payments (a) as directed by Borrower or (b) which Administrative Agent reasonably believes, if not promptly made, are reasonably likely to have a Material Adverse Effect on the applicable Project. No further direction or authorization from Borrower shall be necessary to warrant or permit Administrative Agent to make such direct Loans in accordance with the foregoing sentence, and all such direct Loans shall satisfy pro tanto the obligations of Administrative Agent and the Banks hereunder, and shall be secured by the Collateral Documents as fully as if made directly to Borrower, regardless of the disposition thereof by any Contractor, Turbine Purchase Contractor, or any other subcontractors, materialmen, laborers or other parties. Upon Completion of a Project, any amounts remaining in the applicable Construction Sub-Account in excess of amounts necessary to pay for "punchlist" items for such Project shall, at Borrower's option, (i) be transferred to the Construction Sub-Account for another Project, (ii) be transferred to the relevant sub-account of the Revenue Account, and/or (iii) be applied to prepay Loans. Upon Final Completion of a Project, any amounts remaining in the Construction Sub-Account for such Project shall be transferred to the relevant sub-account of the Revenue Account. At any time when there exists no remaining Turbine Costs for a Funded Turbine, any amounts remaining in the corresponding Turbine Purchase Sub-Account shall, at Borrower's option, (i) be transferred to the Construction Sub-Account for another Turbine, (ii) be transferred to the Construction Sub-Account for a Project, and/or (iii) be applied to prepay Loans; provided, in the case of clause (ii) of this sentence, the Turbine Purchase Loans corresponding to such transferred amounts shall be deemed Construction Loans in the manner set forth in Section 2.3.5.

7.1.3 Rights of Administrative Agent. Administrative Agent will have the right, but not the obligation, to (a) supply any missing endorsements of Borrower, refuse any item for deposit except as required by the terms of this Agreement, and pay and charge items payable by Administrative Agent pursuant to

Section 7.1.2 in any order convenient to Administrative Agent; (b) refuse to honor any check drawn on the Construction Account or any sub-account therein which is not consistent with this Agreement, or which has been improperly filled out or

endorsed; (c) create and charge to the Construction Account or the applicable Construction Sub-Account overdrafts and all applicable charges; (d) remit copies of checks and other items with statements instead of the originals which may be retained by Administrative Agent; and (e) pay fees, interest and other charges owing by Borrower.

## 7.2 Revenue Account.

7.2.1 Establishment of Account; Priority of Payments. On or prior to the Closing Date, Borrower and Administrative Agent shall establish the Revenue Account at the Depository Agent's New York office and within the Revenue Account a sub-account for each Initial Project (other than Substituted Initial Projects). On or prior to the initial funding of Construction Loans in respect of a Substituted Initial Project or a Subsequent Project, Borrower and Administrative Agent shall establish a sub-account within the Revenue Account for such Project. There shall be deposited into the Revenue Account the amounts specified in Section 5.1.2 and the applicable portion of withdrawals from time to time from the Working Capital Reserve Account pursuant to Section 7.8.3. So long as no Event of Default has occurred and is continuing, or will occur upon giving effect to the application described below, funds in the Revenue Account shall be applied at the following times and in the following order of priority by disbursement or internal account transfer by the Depository Agent, (a) on Administrative Agent's volition with respect to Waterfall Levels 1 through 6 and 8 or if Administrative Agent reasonably believes that failure to make any such payment could reasonably be expected to have a Material Adverse Effect with respect to Borrower or a Project, or (b) pursuant to a disbursement requisition executed by Borrower, directly to the Person entitled thereto, in each case at the following times, commencing on the date funds are first deposited in the Revenue Account, and in the following order of priority (each, a "Waterfall Level"):

- (1) from time to time, provided that Administrative Agent has timely received and approved a Disbursement Requisition delivered pursuant to Section 7.2.2, amounts in the Revenue Account shall be transferred to a Project's Operating Account for payment of Senior O&M Costs incurred with respect to such Project in an amount determined pursuant to Section 7.2.2 below;
- (2) as and when due under the terms of this Agreement, from the Revenue Account to the payment of all fees, costs, charges and any other amounts due and payable to Administrative Agent, LC Bank and the Banks in connection with this Agreement and the other Credit Documents;
- (3) as and when due, on a pro rata basis among the Banks, from the Revenue Account to the payment of interest on the Loans and on Reimbursement Obligations;
- (4) as and when due, from the Revenue Account, to repayment of the Reimbursement Obligations incurred in connection with Letters of Credit;
- (5) on the last Banking Day of each calendar quarter, as and to the extent requested by Borrower, from the Revenue Account to the Working Capital Reserve Account as required by Section 7.8;

(6) on the last Banking Day of each calendar quarter, in the event that the conditions to distributions set forth in Section 6.6 have been satisfied, provided that Administrative Agent has timely received and approved a Disbursement Requisition delivered pursuant to Section 7.2.2, and as and to the extent requested by Borrower from the Revenue Account to the payment of Subordinated O&M Costs in an amount determined pursuant to Section 7.2.3 below;

(7) on the last Banking Day of each calendar quarter, (a) with respect to any Non-Affiliated Parent, for payment to such Non-Affiliated Parent in an amount equal to such Non-Affiliated Parent's percentage interest in the net Project Revenues from such Project remaining after payment of the amounts described in clauses (1) through (6) with respect to such Project and other amounts which Borrower certifies are properly chargeable to such Non-Affiliated Parent's interest and (b) in the event that the conditions to distributions set forth in Section 6.6 have been satisfied, for payment of obligations owed to Persons that are not Affiliates of Borrower and which obligations have been approved by the Technical Committee in its sole discretion;

(8) on the last Banking Day of each calendar quarter, in the event that the conditions to distributions set forth in Section 6.6 have been satisfied, for payment to Borrower or distribution by Borrower in amounts described in and for application in accordance with Section 6.6;

(9) on the last Banking Day of each calendar quarter, on a pro rata basis among the Banks, to the prepayment of principal amounts of the Loans outstanding; and

(10) on the last Banking Day of each calendar quarter, provided no Loans are then outstanding, to Borrower.

To the extent reasonably practicable, funds in the various sub-accounts of the Revenue Account shall be applied at each Waterfall Level to costs, payments or other uses as described in such Waterfall Level related or attributable to the Project to which such sub-account relates; provided, if funds in any such sub-account are insufficient for such application, Borrower or Administrative Agent may apply funds in other sub-accounts of the Revenue Account to such application; provided further, however, that the Lien of the Collateral Documents on the Project Revenues from a particular Project shall not secure Obligations relating to or arising from Projects that had achieved Operation prior to the date such Lien was granted to Administrative Agent on behalf of the Banks pursuant to the Credit Documents.

7.2.2 O&M Costs. Sums shall be transferred to the Operating Accounts for the payment of Senior O&M Costs as provided in this Section 7.2.2. On or before the fifth Banking Day prior to the last Banking Day of each month during which Borrower desires to transfer sums to the Operating Account for the corresponding Project for the payment of Senior O&M Costs incurred in respect of the corresponding Project, Borrower shall submit to Administrative Agent a certificate in the form of Exhibit C-10 detailing the amounts to be so transferred ("Disbursement Requisition"), which amounts shall not exceed the Senior O&M Costs incurred in respect of the corresponding Project which have become, or are anticipated to become, due and payable during such month. Administrative Agent shall review such Disbursement

Requisition within five Banking Days following receipt thereof, and shall transfer the amounts specified therein to the applicable Operating Account for application in accordance with Waterfall Level 1 to the extent that such expenditures are in accordance with the terms of the applicable Annual Operating Budget and this Agreement, as such budget may be exceeded pursuant to the terms hereof. Notwithstanding anything in this Section 7.2.2 to the contrary, the transfers to, and expenditures from, the Revenue Account or a sub-account therein for Senior O&M Costs (other than O&M Costs incurred in an emergency and fuel costs and netting any O&M Costs consisting of payments under Equipment Leases against the corresponding Project Revenues resulting from such payments) payable pursuant to Waterfall Level 1 shall not, without Administrative Agent's consent, exceed 115% of the aggregate amounts specified in such Annual Operating Budget. Borrower shall promptly pay or cause to be paid all Senior O&M Costs in excess of the amounts permitted under the preceding sentence by Contributions of additional funds; provided, however, that if Administrative Agent subsequently approves a variation in such Annual Operating Budget which would have allowed the payment of such excess Senior O&M Costs, Borrower shall be entitled to recover any such Senior O&M Costs previously paid by Contributions of additional funds at Waterfall Level 1. Each Disbursement Requisition shall reflect a reduction in the Senior O&M Costs for which Borrower requests that funds be transferred to the Operating Account during such month for any amounts which remain, or are expected to remain, in the applicable Operating Account at the end of any month as a result of a previous Disbursement Requisition.

7.2.3 Subordinated O&M Costs. On or before the fifth Banking Day prior to the end of each calendar quarter on which Borrower desires to make payments of Subordinated O&M Costs, Borrower shall include in the Disbursement Requisition submitted pursuant to Section 7.2.2 on such date the amounts to be so paid, which amounts shall not exceed the Subordinated O&M Costs which have become due and payable. Administrative Agent shall review such Disbursement Requisition within five Banking Days following receipt thereof, and, to the extent funds exist in the Revenue Account after application of amounts in such account to Waterfall Levels 1 through 5, make payment of the Subordinated O&M Costs specified therein in accordance with Section 7.2.1 to the designated payee thereof to the extent that such expenditures are in accordance with the terms of the relevant Annual Operating Budget.

7.2.4 Mandatory Prepayment.

(a) If on the last Banking Day of any calendar quarter, an Event of Default shall exist, Borrower shall use all amounts, if any, in the Revenue Account and all sub-accounts thereof at such time after application of amounts in such account to Waterfall Levels 1 through 5 (i) to prepay the Loans (and the Reimbursement Obligations, pro rata), and (ii) upon repayment in full of the Loans and the Reimbursement Obligations, to repay all other Obligations of Borrower to the Banks, as designated by Administrative Agent and the Required Banks.

(b) Nothing in this Section 7.2.4 shall limit in any manner the rights and remedies of Administrative Agent and the Banks upon and during the continuation of an Event of Default under this Agreement.

7.3 Operating Account.

7.3.1 Establishment of Account. On or prior to the Funding Date for a Project, the relevant Project Owner and Administrative Agent shall establish at a mutually acceptable financial institution an account entitled "[RELEVANT] Project -- Operating Account" (each, an "Operating Account" and collectively, the "Operating Accounts").

7.3.2 Funding. From time to time, in accordance with Section 7.1.2 or the provisions of the Waterfall Levels, Borrower shall cause to be transferred to the Operating Accounts the amounts specified in Sections 7.1.2, 7.2.1 and 7.2.2, as the case may be.

7.3.3 Withdrawals. The relevant Project Owner shall be entitled to withdraw amounts from an Operating Account (a) to pay Project Costs for the corresponding Project in accordance with Section 7.1.2 or (b) to pay Senior O&M Costs for the corresponding Project which have become due and payable in respect of such Project in accordance with the Disbursement Requisition in which such Senior O&M Costs were described. Amounts transferred to an Operating Account for the payment of Project Costs which are not, for any reason, applied to the payment of Project Costs pursuant to the Construction Drawdown Certificate pursuant to which such amounts were transferred, shall be retained in such Operating Account for application to the following month's Project Costs in accordance with Section 7.1.2. Amounts transferred to an Operating Account for the payment of Senior O&M Costs which are not, for any reason, applied to the payment of Senior O&M Costs in accordance with the Disbursement Requisition pursuant to which such amounts were transferred, shall be retained in such Operating Account for application to the following month's Senior O&M Costs in accordance with Section 7.2.2.

7.3.4 Security Interest. Each Operating Account shall be established in a state in which the Uniform Commercial Code as adopted in such state governs the creation, perfection and priority of security interests in "Deposit Accounts" (as defined in such Uniform Commercial Code), and each Operating Account shall be maintained as a "Deposit Account" in accordance with such Uniform Commercial Code. The relevant Project Owner shall execute and deliver such documents and instruments as Administrative Agent shall reasonably request in order to grant Administrative Agent a perfected first priority Lien in each Operating Account.

7.4 Loss Proceeds Account. On or prior to the Closing Date, Borrower and Administrative Agent shall establish at the Depository Agent's New York Office the Loss Proceeds Account, and within the Loss Proceeds Account a sub-account for each Initial Project (other than Substituted Initial Projects). On or prior to the initial funding of Construction Loans in respect of a Substituted Initial Project or a Subsequent Project, Borrower and Administrative Agent shall establish a sub-account within the Loss Proceeds Account for such Project. Except where a Project Document for a Funded Project that is not directly or indirectly wholly-owned by Borrower may, with the approval of the Technical Committee, direct otherwise, all Insurance Proceeds, Eminent Domain Proceeds and damage payments described in Section 7.7 shall be deposited in the appropriate subaccount in the Loss Proceeds Account and applied (a) as specified in Sections 7.5 through 7.7 and (b) if no such application is specified, to the prepayment of the Loans, and thereafter to payment of all other Obligations of Borrower.

7.5 Application of Insurance Proceeds.

7.5.1 General. Borrower shall notify Administrative Agent of casualties as provided in Section 5.4.4 and any other casualty as to which Insurance Proceeds have been made available. Borrower shall keep Administrative Agent timely apprised of insurance claim proceedings. All amounts and proceeds (including instruments) in respect of the proceeds of any insurance policy required to be maintained by a Portfolio Entity hereunder (including the pro rata portion of such amounts received under any policy maintained by a Joint Venture) ("Insurance Proceeds") shall be applied as provided in this Section 7.5 except where a Project Document for a Funded Project that is not directly or indirectly wholly-owned by Borrower may, with the approval of the Technical Committee, direct otherwise. Except where a Project Document for a Funded Project that is not directly or indirectly wholly-owned by a Borrower may, with the approval of the Technical Committee, direct otherwise, and except as set forth in Section 7.5.9, all Insurance Proceeds (or, in the case of a Project that is not wholly-owned by a Portfolio Entity, such Portfolio Entity's share of such Insurance Proceeds) shall be paid by the insurers directly to Administrative Agent (as loss payee or additional insured as provided in Exhibit

K). If any Insurance Proceeds required to be paid to Administrative Agent pursuant to the preceding sentence are paid directly to any Portfolio Entity, Calpine or any other Person with respect to any Project or Turbine by any insurer, such Insurance Proceeds shall be received only in trust for Administrative Agent, shall be segregated from other funds of the Portfolio Entities, Calpine or such other Person, as the case may be, and Borrower shall cause such amounts to be forthwith paid over to Administrative Agent in the same form as received (with any necessary endorsement). To the fullest extent that it effectively may do so under applicable law, Administrative Agent shall apply all such Insurance Proceeds in accordance with the provisions of this Section 7.5.

7.5.2 Delay in Start Up and Business Interruption Insurance. Any delay in start up Insurance Proceeds received by Administrative Agent or any Portfolio Entity (i) prior to Completion of the Project to which such Insurance Proceeds relate shall be deposited into the Construction Sub-Account for such Project for application in accordance with Section 7.1 and (ii) on or after Completion of the Project to which such Insurance Proceeds relate shall be deposited into the Revenue Account for application in accordance with Section 7.2.

7.5.3 Applications; Mandatory Prepayments. All Insurance Proceeds (other than those described in Sections 7.5.2, 7.5.4 and 7.5.9) and all Eminent Domain Proceeds shall be applied (a) to the prepayment of Loans and Reimbursement Obligations, pro rata, and (b) to the payment of all other Obligations of Borrower, unless, with respect to a Project, each of the following conditions are satisfied or waived by Administrative Agent, or the Required Banks, as required pursuant to Section 7.5.5 or 7.5.6, in which event such amounts shall be applied to the repair or restoration of the Project to which such Insurance Proceeds or Eminent Domain Proceeds relate in accordance with the terms of such subsections:

(a) such damage or destruction does not constitute the destruction of all or substantially all of the man-made portion of the Project to which such Insurance Proceeds or Eminent Domain Proceeds relate;

(b) neither a Non-Fundamental Project Default or a Non-Fundamental Project Inchoate Default with respect to the damaged or destroyed Project nor an Inchoate Default or an Event of Default has occurred and is continuing and after giving effect to any

proposed repair and restoration, such damage or destruction or proposed repair and restoration will not result in a Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default with respect to such Project or an Event of Default or an Inchoate Default;

(c) Borrower and the Independent Engineer certify, and Administrative Agent (with, if applicable, the consent of the Required Banks) determines in its reasonable judgment, that repair or restoration of the Project to which such Insurance Proceeds or Eminent Domain Proceeds relate is technically and economically feasible within a twelve-month period and that a sufficient amount of funds is or will be available to Borrower and the relevant Project Owner and, if applicable, the Joint Venturer to make repairs and restorations; provided, however, that if such Project is not wholly-owned by a Project Owner, then the Joint Venture Agreement shall, unless otherwise approved by the Technical Committee, require the other Persons owning an interest in such Project to use their share of Insurance Proceeds or Eminent Domain Proceeds for the repair or restoration of such Project;

(d) Borrower certifies, and Administrative Agent (with, if applicable, the consent of the Required Banks) determines in its reasonable judgment, that a sufficient amount of funds is or will be available to Borrower to make all payments of Debt Service which will become due during, if any, and following repair period and to maintain the Four-Quarter Portfolio Interest Coverage Ratios set forth in the Base Case Project Projections, unless the Required Banks agree otherwise;

(e) if such damage or destruction occurs prior to the Completion of a Project, such repair or restoration will not adversely affect, in the reasonable judgment of Administrative Agent in consultation with the Independent Engineer, achievement of Completion in accordance with the terms and conditions of this Agreement and the other Credit Documents;

(f) no Permit is necessary to proceed with the repair and restoration of the Project to which such Insurance Proceeds or Eminent Domain Proceeds relate and no material amendment to the Project Documents, or, except with the consent of the Required Banks, this Agreement or any of the Credit Documents, and no other instrument is necessary for the purpose of effecting the repairs or restorations of the Project to which such Insurance Proceeds or Eminent Domain Proceeds relate or subjecting the repairs or restorations to the Liens of the applicable Collateral Documents and maintaining the priority of such Liens or, if any of the above is necessary, Borrower will be able to obtain the same as and when required;

(g) Administrative Agent shall receive an opinion of counsel acceptable to Administrative Agent opining as to the Permits described in paragraph (f) above, and an opinion to the effect that such repairs or restoration (to the extent constituting Collateral) will be subject to the Liens of the applicable Collateral Documents at the same level of priority as the other Collateral; and

(h) Administrative Agent shall receive such additional title insurance, title insurance endorsements, mechanic's lien waivers, certificates, opinions or other matters as it may reasonably request as necessary or appropriate in connection with such repairs or restoration

of the Project to which such Insurance Proceeds or Eminent Domain Proceeds relate or to preserve or protect the Banks' interests hereunder and in the applicable Collateral.

7.5.4 Proceeds Less than \$1,000,000. If there shall occur any damage or destruction of a Project with respect to which Insurance Proceeds received by the Portfolio Entities for any single loss not in excess of \$1,000,000 are payable, such Insurance Proceeds received by the Portfolio Entities shall be held by Administrative Agent in the Loss Proceeds Account and released by Administrative Agent to Borrower in accordance with Section 7.5.7.

7.5.5 Proceeds in Excess of \$1,000,000, Not in Excess of \$10,000,000. Provided that the conditions set forth in Section 7.5.3 have been waived by Administrative Agent and the Independent Engineer, or have been acknowledged by such Persons as having been satisfied, if there shall occur any damage or destruction of a Project with respect to which Insurance Proceeds received by the Portfolio Entities for any single loss in excess of \$1,000,000, but not in excess of \$10,000,000, are payable, such Insurance Proceeds received by the Portfolio Entities shall be held by Administrative Agent in the Loss Proceeds Account and released by Administrative Agent to Borrower in accordance with Section 7.5.7.

7.5.6 Proceeds in Excess of \$10,000,000. Provided that the conditions set forth in Section 7.5.3 have been waived by Administrative Agent, the Required Banks and the Independent Engineer, or have been acknowledged by such Persons as having been satisfied, if there shall occur any damage or destruction of a Project with respect to which Insurance Proceeds for any single loss in excess of \$10,000,000 are payable, such Insurance Proceeds shall be held by Administrative Agent in the Loss Proceeds Account and released by Administrative Agent to Borrower in accordance with Section 7.5.7.

7.5.7 Repair and Restoration Procedures. Amounts which are to be applied to repair or restoration of a Project pursuant to this Section 7.5 shall be disbursed by Administrative Agent from the Loss Proceeds Account in accordance with the following procedures:

(a) Borrower shall cause any repairs or restoration to be commenced and completed promptly and diligently either using Insurance Proceeds as contemplated in paragraph (b) below or, to the extent such proceeds are not, or have not yet been made, available, using Borrower's funds;

(b) From time to time (after Administrative Agent or the Required Banks, if applicable, shall have duly approved the making of such repairs or restoration), Administrative Agent's authorization of release of Insurance Proceeds for application toward such repairs or restoration shall be conditioned upon Borrower's written request and the presentation to Administrative Agent of all documents, certificates and information with respect to such Insurance Proceeds which would be required in order to obtain a Loan under this Agreement, including a certificate from Borrower (i) describing in reasonable detail the nature of the repairs or restoration to be effected with such release, (ii) stating the cost of such repairs or restoration and the specific amount requested to be paid over to or upon the order of Borrower and that such amount is requested to pay the cost thereof, (iii) stating that the aggregate amount requested by Borrower in respect of such repairs or restoration (when added to any other Insurance Proceeds received by the Portfolio Entities or otherwise made available to a Project in respect of such

damage or destruction) does not exceed the cost of such repairs or restoration and that a sufficient amount of funds is or will be available to the Portfolio Entities to complete the applicable Project, and (iv) stating that neither a Non-Fundamental Project Inchoate Default with respect to the damaged or destroyed Project nor an Inchoate Default has occurred and is continuing other than a Non-Fundamental Project Default with respect to such Project or an Event of Default resulting solely from such damage or destruction.

7.5.8 Excess Insurance Proceeds. If, after Insurance Proceeds have been applied to the repair or restoration of a Project as provided in Sections 7.5.4, 7.5.5 or 7.5.6, the Banks in consultation with the Independent Consultants determine that such Project will be able to operate at a level enabling Borrower to satisfy its obligations hereunder as well as before the damage or destruction, any excess Insurance Proceeds shall be paid into the Revenue Account. In the event that the Banks in consultation with the Independent Engineer determine otherwise, such excess Insurance Proceeds shall be applied

(a) to the prepayment of Loans and Reimbursement Obligations, pro rata, and (b) to the payment of all other Obligations of Borrower.

7.5.9 Turbine Insurance Proceeds. Any Insurance Proceeds related to Turbines shall be distributed directly to Borrower, provided that, with respect to a Funded Turbine, Borrower pays to Administrative Agent the aggregate amount of the Turbine Purchase Loans then outstanding with respect to such Turbine. Upon satisfaction of the foregoing condition, Administrative Agent shall execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Turbine from the Liens of the Collateral Documents and to permit such transfer of ownership.

7.5.10 Events of Default. If a Non-Fundamental Project Default with respect to the damaged or destroyed Project or an Event of Default shall have occurred and be continuing, then any provisions of this Sections 7.5 to the contrary notwithstanding, the Insurance Proceeds (including any Permitted Investments made with such proceeds, which shall be liquidated in such manner as the Banks shall deem reasonable and prudent under the circumstances) may be applied by Administrative Agent (a) to curing such Non-Fundamental Project Default or Event of Default, and any Insurance Proceeds remaining thereafter shall be applied as provided in this Section 7.5 or (b) if such Non-Fundamental Project Default or Event of Default cannot be cured, toward payment of all other Obligations of Borrower, in connection with exercise of the Banks' remedies pursuant to Article 8.

7.6 Application of Eminent Domain Proceeds. All amounts and proceeds (including instruments) received in respect of any Event of Eminent Domain ("Eminent Domain Proceeds") shall be subject to the same treatment as Insurance Proceeds as provided in Section 7.5.

7.7 Application of Certain Damages Payments; Mandatory Prepayments.

7.7.1 Contractor. All delay related liquidated damages (or, in the case of a Project that is not wholly-owned by a Portfolio Entity, such Portfolio Entity's share of such liquidated damages) shall (a) if received prior to Completion of the Project in respect of which they were received, be deposited in the Construction Account and applied pursuant to Section 7.1 or (b) if received after Completion of such Project, be deposited in the Revenue Account and applied pursuant to Section 7.2.1. All performance related liquidated damages (or, in the case of

a Project that is not wholly-owned by a Portfolio Entity, such Portfolio Entity's share of such liquidated damages), including all payments in lieu of performance related liquidated damages payable by Calpine pursuant to clause (vii) of the definition of "Completion", shall be applied first to the prepayment of Loans and Reimbursement Obligations, pro rata, in accordance with Section 2.1.7 and thereafter to all other Obligations of Borrower.

7.7.2 Power Purchasers. All damage payments made by Power Marketer or any other purchaser of the power generated by a Project in satisfaction of such party's obligations under its purchase agreement (or, in the case of a Project that is not wholly-owned by a Portfolio Entity, such Portfolio Entity's share of such damage payments,) shall (a) to the extent such damages are intended to replace lost revenues, be deposited in the Revenue Account for application as provided in Section 7.2, and (b) otherwise, applied to (i) the prepayment of Loans and the Reimbursement Obligations, pro rata, and (ii) to the extent that all such Loans and Reimbursement Obligations, as applicable, have been prepaid, applied to the other Obligations of Borrower.

7.7.3 Other. Except as otherwise expressly permitted under this Agreement, including this Section 7.7, Borrower shall apply the proceeds of any other surety, performance or similar bonds and any other liquidated or other damages paid in respect of damage payments or performance payments by (a) any contractors or subcontractors or other Persons involved in the construction and operation of a Project or (b) any Turbine Purchase Contractors with respect to Turbines (or in the case of a Project or a Turbine that is not wholly-owned by a Portfolio Entity, such Portfolio Entity's share of such proceeds), to the prepayment of the Loans and Reimbursement Obligations, pro rata, and thereafter to the Obligations of Borrower or, with the prior written consent of Administrative Agent acting in consultation with the Independent Engineer, to such other application in relation to a Project or a Turbine as Borrower may request.

#### 7.8 Working Capital Reserve Account.

7.8.1 Establishment of Account. On or prior to the Closing Date, Borrower and Administrative Agent shall establish the Working Capital Reserve Account at the Depository Agent's New York office and within the Working Capital Reserve Account a sub-account for each Initial Project (other than Substituted Initial Projects). On or prior to the initial funding of Construction Loans in respect of a Substituted Initial Project or a Subsequent Project, Borrower and Administrative Agent shall establish a sub-account within the Working Capital Reserve Account for such Project.

7.8.2 Funding. On the last Banking Day of each calendar quarter, Borrower shall cause such portion as Borrower may direct of the amounts then in the Revenue Account in excess of the amounts applied through Waterfall Level 4 to be deposited into the Working Capital Reserve Account, until the amounts deposited therein equal the Working Capital Reserve Requirement; provided, if the applicable Project's Project Budget approved by the Lead Arrangers or the Technical Committee, as the case may be, pursuant to Article 3 contains initial working capital as an approved Project Cost, such amounts up to the Working Capital Reserve Requirement shall be deposited into the Working Capital Reserve Account on the Completion Date with respect to such Project.

7.8.3 Withdrawals. Borrower shall be entitled to submit a duly executed Reserve Account Disbursement Requisition in substantially the form of Exhibit C-11 (a "Reserve Account Disbursement Requisition") in order to withdraw amounts from the Working Capital Reserve Account, including for deposit into the Revenue Account, to pay all Senior O&M Costs (a) that have become due and payable for any Initial Project or Funded Subsequent Project, (b) for which insufficient amounts are available in the Revenue Account or applicable Operating Account and (c) which, unless Administrative Agent consents, do not, together with all Senior O&M Costs previously paid during the same calendar year with respect to such Project, exceed 115% of the amounts of Senior O&M Costs (other than fuel costs) specified for such Project in the applicable Annual Operating Budget for such calendar year, or as otherwise approved by Administrative Agent and the Independent Engineer. To the extent reasonably practicable, funds in the various sub-accounts of the Working Capital Reserve Account shall be applied to costs, payments or other uses as described in this Section 7.8 related or attributable to the Project to which such sub-account relates; provided, if funds in any such sub-account are insufficient for such application, Borrower or Administrative Agent may apply funds in other sub-accounts of the Working Capital Reserve Account to such application.

7.8.4 Earnings. All earnings on monies in the Working Capital Reserve Account shall accrue to the Working Capital Reserve Account up to the Working Capital Reserve Requirement and shall thereafter be deposited in the Revenue Account.

7.9 Security Interest in Proceeds and Accounts. Borrower hereby pledges, assigns and transfers to Administrative Agent on behalf of the Banks and grants to Depositary Agent on behalf of the Banks a security interest in and to all of its right, title and interest in and to all Insurance Proceeds and Eminent Domain Proceeds (to the extent permitted under the Calpine Indenture) (collectively, "Proceeds"), Accounts, Sub-Accounts and contents of Accounts and Sub-Accounts, as security for the Loans and the full and faithful performance of all of Borrower's obligations hereunder and under the other Credit Documents. Borrower shall not have any rights or powers with respect to any Account except to have funds on deposit therein applied or distributed in accordance with this Agreement. Administrative Agent is hereby authorized to reduce to cash any Permitted Investment (without regard to maturity) in order to make any application required by any section of this Article 7 or otherwise pursuant to the Credit Documents. Upon the occurrence and during the continuance of an Event of Default, Administrative Agent shall have all rights and powers with respect to Proceeds, the Accounts and the contents of the Accounts as it has with respect to any other Collateral and may apply such amounts to the payment of interest, principal, fees, costs, charges or other amounts due or payable to Administrative Agent or the Banks with respect to the Loans in such order as the Required Banks may elect in their sole discretion. If such Event of Default occurs and is continuing, until such time as the Required Banks so elect to exercise such rights and powers, amounts in the Revenue Account shall continue to be applied by Administrative Agent to the payment categories specified in Waterfall Levels 1 (to the extent of actual Senior O&M Costs payable to third parties that are not Affiliates of Borrower) and 2 through 5 and Level 9, and, to the extent that Administrative Agent, as directed by the Required Banks acting in their sole discretion, so elects Waterfall Levels 6, 7, 8 and 10. Borrower shall not have any rights or powers with respect to such amounts except as expressly provided in this Article 7.

7.10 Permitted Investments. All amounts held by Borrower and/or Administrative Agent in the Accounts or as Insurance Proceeds or Eminent Domain Proceeds shall only be invested in Permitted Investments as provided in the Depositary Agreement. Borrower shall not hold funds in any accounts other than the Accounts; provided that the relevant Project Owners shall be permitted to maintain the Operating Accounts in accordance with Section 7.3.

7.11 Earnings on Accounts. Except as otherwise expressly provided herein, including with respect to the Revenue Account and the Operating Accounts, all earnings on funds in any Account maintained hereunder shall, on the last day of each calendar quarter, be deposited in the Revenue Account.

7.12 Dominion and Control. Each of the Accounts and the amounts held thereunder (including Permitted Investments therein) shall at all times be under the exclusive dominion and control of the Depositary Agent.

7.13 Termination of Commitments. Upon repayment in full of all Obligations and expiration or irrevocable termination of all Commitments, Administrative Agent shall disburse any amounts on deposit in the Accounts to Borrower, or, if applicable, as directed by a court of competent jurisdiction.

7.14 Flow of Funds Between Portfolio Entities.

(a) On or prior to the Closing Date each of the Project Owners with respect to the Initial Projects, each of the Turbine Owners with respect to the Turbines assigned to the Initial Projects (as set forth on Exhibit G-3) and each Equipment Finance Company (to the extent in existence on the Closing Date) (in each case, other than such Persons with respect to the Delta Energy Center Project) shall execute and deliver to Development Company or CCFC II Equipment Finance Company, as the case may be, a Portfolio Entity Note and, to the extent not executed and delivered pursuant to the foregoing, on or prior to the initial funding of Construction Loans in respect of each Funded Project and Turbine Purchase Loans in respect of each Funded Turbine, the relevant Project Owner, Turbine Owner, or Equipment Finance Company, as the case may be, shall execute and deliver to Development Company or CCFC II Equipment Finance Company, as applicable, a Portfolio Entity Note. On or prior to the Closing Date Development Company and CCFC II Equipment Finance Company shall execute and deliver to Borrower a Portfolio Entity Note. The Portfolio Entity Notes which, in accordance with this Agreement, shall be pledged by Borrower, Development Company and CCFC II Equipment Finance Company to Administrative Agent pursuant to the Borrower Security Agreement, the Development Company Security Agreement and the CCFC II Equipment Finance Company Security Agreement, respectively, shall evidence the loans made by Borrower to Development Company and CCFC II Equipment Finance Company, respectively, and CCFC II Equipment Finance Company and Development Company to the other Portfolio Entities, respectively, in accordance with Section 7.14(b). In the event that (i) the ownership of a Funded Turbine or a Turbine assigned to an Initial Project or a Funded Subsequent Project is transferred from a Turbine Owner to an Equipment Finance Company or from a Turbine Owner or an Equipment Finance Company to the relevant Project Owner, (ii) the ownership of a Turbine Owner or an Equipment Finance Company is transferred from Development Company to CCFC II Equipment Finance Company, or vice versa, or (iii) the ownership of an Equipment Finance

Company, a Turbine Owner or a Project Owner is transferred from Development Company or CCFC II Equipment Finance Company to Borrower or CCFC II Equipment Finance Holdings Company, the Portfolio Entity Note executed by the Portfolio Entity whose ownership or assets are transferred may likewise be transferred to the direct or indirect parent of the Portfolio Entity to whom such assets or ownership is transferred, subject in all cases to the pledge of such Portfolio Entity Notes in favor of Administrative Agent, such that the Portfolio Entity Note executed by each Portfolio Entity shall run to the benefit of the parent of such Portfolio Entity after giving effect to such transfer. In connection with any such transfer, Borrower and each relevant Portfolio Entity shall execute and deliver such amendments to the Collateral Documents or additional Collateral Documents as the Technical Committee considers necessary to preserve the Banks' Lien on the Portfolio Entity Notes and any related Collateral.

(b) All proceeds of Loans, Contributions and any other amounts utilized by Borrower with respect to the Projects or the Turbines in accordance with this Agreement, including amounts disbursed from the Accounts in accordance with this Article 7, shall constitute, depending on the purpose for which such payments or other distributions are made, either (i) consecutive loans consisting first of a loan by Borrower to Development Company and then a loan by Development Company to the relevant Project Owner, Turbine Owner or Equipment Finance Company or (ii) consecutive loans consisting first of a loan by Borrower to CCFC II Equipment Finance Company (or CCFC II Equipment Finance Holdings Company, if applicable) and then a loan by CCFC II Equipment Finance Company (or CCFC II Equipment Finance Holdings Company, if applicable) to the relevant Turbine Owner or Equipment Finance Company, in each case such loans to be evidenced by the relevant Portfolio Entity Notes as set forth in Section 7.14(a) above.

(c) Borrower shall use its good faith reasonable efforts to cause all Project Revenues, Insurance Proceeds, Eminent Domain Proceeds, damage payments (including delay or performance liquidated damage payments) and any other amounts due any Portfolio Entity to be paid or otherwise delivered by such Persons making such payment or delivery directly to Borrower for deposit in the Accounts as required pursuant to this Agreement. Upon the receipt of such amounts by Borrower, such amounts shall be deemed consecutive repayments of amounts due and owing first from the relevant Portfolio Entity to Development Company or CCFC II Equipment Finance Company (or a subsequent holder of the Portfolio Entity Note, if applicable), as the case may be, and then from Development Company or CCFC II Equipment Finance Company (or a subsequent holder of the Portfolio Entity Note, if applicable), as the case may be, to Borrower, in each case under the corresponding Portfolio Entity Note; provided, to the extent no amounts are due and owing under such Portfolio Entity Notes such amounts shall be deemed distributions to Development Company, CCFC II Equipment Finance Company, CCFC II Equipment Finance Holdings Company, or Borrower, as the case may be, with respect to its ownership interest in the Portfolio Entity making such distribution.

(d) If any amounts described in Sections 7.14(b) and (c) above are paid directly to or received directly by any Portfolio Entity, such amounts shall be received only in trust for Administrative Agent, shall be segregated from other funds of such Portfolio Entities, and Borrower shall cause such amounts to be forthwith paid over to (i) in the case of clause (b) above, the Person to which such amounts are due and owing and (ii) in the case of clause

(c)

above, Administrative Agent for application in accordance with this Agreement, in each case in the same form as received (with any necessary endorsement).

(e) Other than with respect to the Operating Accounts held by the relevant Portfolio Entities, no Portfolio Entity, other than Borrower, shall have any right, power or interest with respect to the Accounts, Sub-Accounts and contents of Accounts and Sub-Accounts and no such Portfolio Entity shall hold funds in any accounts.

## **ARTICLE 8. EVENTS OF DEFAULT; REMEDIES**

8.1 Events of Default. The occurrence of any of the following events shall constitute an event of default ("Events of Default") hereunder:

8.1.1 Failure to Make Payments. Borrower shall fail to pay, in accordance with the terms of this Agreement, (a) any principal on any Loan, or any Reimbursement Obligation, on the date that such sum is due, (b) any interest on any Loan or on any Reimbursement Obligation or any scheduled fee, cost, charge or sum due hereunder or under the other Credit Documents, within three days after the date that such sum is due, or (c) any other fee, cost, charge or other sum due under this Agreement within five days after written notice that such sum is due and has not been paid.

8.1.2 Judgments. A final judgment or judgments shall be entered against

(i) Calpine in the amount of \$25,000,000 or more individually or in the aggregate or (ii) any Portfolio Entity or the Member in the amount of \$1,000,000 or more individually or in the aggregate (other than, in the case of both clauses (i) and (ii) above, (a) a judgment which is fully covered by insurance or discharged within 30 days after its entry, or (b) a judgment, the execution of which is effectively stayed within 30 days after its entry but only for 30 days after the date on which such stay is terminated or expires) or, in the case of both clauses (i) and (ii) above, which if left unstayed could reasonably be expected to have a Material Adverse Effect on Borrower.

8.1.3 Misstatements; Omissions. Any financial statement, representation, warranty or certificate made or prepared by, under the control of or on behalf of any Portfolio Entity and furnished to Administrative Agent, the Lead Arrangers, the Technical Committee or any Bank pursuant to this Agreement, or in any separate statement or document to be delivered to Administrative Agent or any Bank hereunder or under any other Credit Document, shall contain an untrue or misleading statement of a material fact or shall fail to state a material fact necessary to make the statements therein not misleading as of the date made, in either case, which could reasonably be expected to result in a Material Adverse Effect on Borrower.

8.1.4 Bankruptcy; Insolvency. Any of the Portfolio Entities, the Member, Calpine, any Construction Manager (so long as such Construction Manager has outstanding or unperformed obligations under any Construction Management Agreement), any Operator, any Project Manager, any Joint Venturer, Power Marketer or any other purchaser of capacity or energy from a Project (so long as Power Marketer or such other purchaser, as the case may be, has outstanding or unperformed obligations under the Power Purchase Documents to which it is

party and such party's Bankruptcy Event could reasonably be expected to have a Material Adverse Effect on Borrower), any Fuel Supplier (so long as such party's Bankruptcy Event could reasonably be expected to have a Material Adverse Effect on Borrower) or any Turbine Purchase Contractor, Major Contractor, Major Gas Transporter or counterparty to any electrical transmission or interconnection agreement or material water supply agreement (so long as such Turbine Purchase Contractor, Major Contractor, Major Gas Transporter or counterparty has outstanding or unperformed obligations under the Turbine Purchase Contract, Major Construction Contract, Major Gas Transportation Agreement or other agreement to which it is a party and such party's Bankruptcy Event could reasonably be expected to have a Material Adverse Effect on Borrower) shall become subject to a Bankruptcy Event; provided that, solely with respect to a Bankruptcy Event affecting any entity other than the Portfolio Entities, the Member and Calpine, no Event of Default shall occur as a result of such Bankruptcy Event if the applicable Portfolio Entity obtains a Replacement Obligor (or, in the case of the occurrence of a Bankruptcy Event with respect to a Joint Venturer, if such Portfolio Entity or another Person acquired such Person's interest in such Project or Turbine, as the case may be) for the affected party within 90 days thereafter and such Bankruptcy Event has not had and does not have prior to so obtaining such Replacement Obligor (or purchaser of the Joint Venturer's interest), a Material Adverse Effect on Borrower.

8.1.5 Debt Cross Default. Except with respect to debt evidenced by the Portfolio Entity Notes, any Portfolio Entity, Calpine or any other Calpine Affiliate other than a Calpine Sole Purpose Entity shall default for a period beyond any applicable grace period (a) in the payment of any principal, interest or other amount due under any agreement involving the borrowing of money or the advance of credit and the outstanding amount or amounts payable under all such agreements equals or exceeds \$1,000,000 in the aggregate (or, in the case of Calpine only, \$10,000,000 in the aggregate), or (b) in the payment of any amount or performance of any obligation due under any guarantee or other agreement if in either case, pursuant to such default, the holder of the obligation concerned has the right to accelerate the maturity of an indebtedness evidenced thereby which equals or exceeds \$1,000,000 (or, in the case of Calpine only, \$10,000,000 in the aggregate). For purposes of this Section, the term "Calpine Sole Purpose Entity" shall mean a Calpine Affiliate (i) whose sole purpose is the ownership and maintenance of a power project (other than a Project) that has been financed on a non-recourse basis and (ii) that is not directly connected to a Project or responsible for actions materially and directly affecting a Project.

8.1.6 ERISA. If any Portfolio Entity or any member of the Controlled Group should establish, maintain, contribute to or become obligated to contribute to any ERISA Plan and (a) a reportable event (under Section 4043(b) or (c) of ERISA for which notice to the PBGC is not waived) shall have occurred with respect to any ERISA Plan and, within 30 days after the reporting of such reportable event to Administrative Agent by Borrower (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent may reasonably request with respect thereto, Administrative Agent shall have notified Borrower in writing that (i) Administrative Agent has made a determination that, on the basis of such reportable event, there are reasonable grounds for the termination of such ERISA Plan by the PBGC or for the appointment by the appropriate United States District Court of a trustee to administer such ERISA Plan and (ii) as a result thereof, an Event of Default exists hereunder; or (b) a trustee shall be appointed by a United States District Court to administer any

ERISA Plan; or (c) the PBGC shall institute proceedings to terminate any ERISA Plan; or (d) a complete or partial withdrawal by any Portfolio Entity or any member of the Controlled Group from any Multiemployer Plan shall have occurred, or any Multiemployer Plan shall enter reorganization status, become insolvent, or terminate (or notify Borrower or any member of the Controlled Group of its intent to terminate) under Section 4041A of ERISA and, within 30 days after the reporting of any such occurrence to Administrative Agent by Borrower (or Administrative Agent otherwise obtaining knowledge of such event) and the furnishing of such information as Administrative Agent may reasonably request with respect thereto, Administrative Agent shall have notified Borrower in writing that Administrative Agent has made a determination that, on the basis of such occurrence, an Event of Default exists hereunder; provided that any of the events described in this Section 8.1.6 shall involve (A) one or more ERISA Plans that are single-employer plans (as defined in Section 4001(a)(15) of ERISA) and under which the aggregate gross amount of unfunded benefit liabilities (as defined in Section 4001(a)(16) of ERISA), including vested unfunded liabilities which arise or might arise as the result of the termination of such ERISA Plans, and/or (B) one or more Multiemployer Plans to which the aggregate liabilities of the Portfolio Entity and all members of the Controlled Group, shall exceed \$1,000,000.

#### 8.1.7 Breach of Terms of Agreement.

(a) Borrower or the relevant Project Owner under its respective Project Owner Guaranty shall fail to perform or observe any of the covenants (in the case of the relevant Project Owner, as if such covenants were fully set forth and incorporated in its respective Project Owner Guaranty) set forth in Section 5.1, 5.9(a), 5.9(g), 5.10, 5.11, 5.17, 5.18, 5.24, or Article 6 (other than Section 6.7, 6.8, 6.14, 6.15, 6.20, 6.23 or 6.24).

(b) Borrower or the relevant Project Owner under its respective Project Owner Guaranty shall fail to perform or observe any of the covenants (in the case of the relevant Project Owner, as if such covenants were fully set forth and incorporated in its respective Project Owner Guaranty) set forth in Section 5.4 (unless the event with respect to which notice is required to be given relates to one or more specific Projects), 5.5 (unless the party whose financial statements were not properly delivered is not a Calpine Affiliate), 5.6 (unless the books, accounts or records in question specifically relate to one or more Projects), 5.7 (unless the failure to comply with the Legal Requirement in question specifically relates to one or more Projects), 5.12, 5.16.2, 5.16.4, 5.19, 5.20, 5.24, 6.7, 6.8, 6.15, 6.19, or any other covenant to be observed or performed by it hereunder or any other Credit Document not otherwise specifically provided for in Section 8.1.7(a), elsewhere in this Article 8 or in the definition of the term "Non-Fundamental Project Default" and such failure shall continue unremedied for a period of 30 days after Borrower becomes aware thereof or receives written notice thereof from Administrative Agent provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure, (iii) a Portfolio Entity is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and cannot after considering the nature of the cure be reasonably expected to have a Material Adverse Effect on Borrower and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer of Borrower to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action the relevant Portfolio Entity is taking to cure such failure, then such 30 day cure

period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Portfolio Entity diligently to cure such failure.

(c) Any Non-Affiliated Parent, Portfolio Entity, the Member or Calpine shall be in breach of, or in default under, its respective Pledge Agreement (Pledged Equity Interests), Project/Turbine Owner Security Agreement, CCFC II Equipment Finance Company Security Agreement, Equipment Finance Company Security Agreement, Development Company Security Agreement or any other Credit Document to which it is a party and such failure shall continue unremedied for a period of 30 days after any such Person becomes aware thereof or receives written notice thereof from Administrative Agent provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure, (iii) such Person is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and cannot after considering the nature of the cure be reasonably expected to have a Material Adverse Effect on Borrower and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer of the relevant Person to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action the relevant Person is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Person diligently to cure such failure.

(d) Calpine shall be in breach of, or in default under, the Project Completion Guaranty or the Turbine Purchase Guaranty.

#### 8.1.8 Loss of Qualifying Facility or Eligible Facility Status.

(a) If loss of Qualifying Facility or Eligible Facility status of a Project could reasonably be expected to have a Material Adverse Effect on Borrower (i) FERC shall have issued an order determining that any Project has ceased to be a Qualifying Facility or Eligible Facility, as the case may be, or (ii) any Project shall have failed to meet the criteria for a Qualifying Facility or Eligible Facility, as the case may be, and, subject to cure rights equivalent to those set forth in clause (a)(i) of the definition of "Non-Fundamental Project Default", shall have failed to obtain a waiver from FERC on account thereof within six months after the end of any calendar year in which Borrower knows or should reasonably have known that it has failed to meet such criteria.

(b) Any Portfolio Entity or the Member shall lose the exemption from regulation under PUHCA.

#### 8.1.9 Abandonment.

(a) At any time prior to the Completion of any Initial Project (except an Initial Project that has been replaced by a Substituted Initial Project) or Funded Subsequent Project, a Portfolio Entity shall announce that it is abandoning such Project or such Project shall be abandoned or work thereon shall cease for a period of more than 30 consecutive days for any reason (which period (i) shall be measured from the first occurrence of a work stoppage and continuing until work of a substantial nature is resumed and thereafter diligently continued, and (ii) shall not include delays caused by any event of "force majeure" (as defined in the relevant Project Document) or default by a Major Project Participant (other than a Portfolio Entity or its

Affiliates) under the Construction Contracts) or any Project shall not be constructed substantially in accordance with the Plans and Specifications (except as to changes therein approved by Administrative Agent).

(b) At any time following the Completion of any Initial Project or Funded Subsequent Project, a Portfolio Entity shall announce that it is abandoning such Project or such Project shall be abandoned or operation thereof shall cease for a period of more than 30 consecutive days for any reason (other than force majeure).

8.1.10 Security. Any of the Collateral Documents, once executed and delivered, shall, except as the result of the acts or omissions of Administrative Agent or the Banks, fail to provide the Banks the Liens, first priority security interest, rights, titles, interest, remedies permitted by law, powers or privileges intended to be created thereby or cease to be in full force and effect with respect to Collateral relating to the Initial Projects, the Funded Subsequent Projects and the Turbines assigned to the Initial Projects (as set forth in Exhibit G-3) and the Funded Turbines, or the first priority or validity thereof or the applicability thereof to the Loans, the Notes, the Reimbursement Obligations or any other obligations purported to be secured or guaranteed thereby or any part thereof shall be disaffirmed by or on behalf of Calpine, the Member or any Portfolio Entity.

8.1.11 Loss of Control. (a) Calpine shall cease to indirectly own 100% of the ownership interests in Borrower, (b) the Member shall cease to directly own 100% of the membership interests in the Borrower, (c) except for (i) Designated Projects, (ii) Project Owners approved pursuant to Section 3.3 which are at least directly or indirectly 50% owned by Borrower, and (iii) as otherwise permitted pursuant to Section 6.4.2, Borrower shall cease to directly own 100% of the ownership interests in each of the other Portfolio Entities, or (c) except for (i) Projects approved pursuant to Section 3.3 which are at least 50% owned by a Project Owner, or (ii) as otherwise permitted pursuant to Section 6.4.2, a Project Owner shall cease to directly own or, with respect to Turbines and other equipment leased pursuant to Equipment Leases, lease 100% of its respective Project.

8.1.12 Loss of or Failure to Obtain Applicable Permits or Applicable Third Party Permits.

(a) The relevant Portfolio Entity shall fail to obtain any Permit on or before the date that such Permit becomes an Applicable Permit with respect to an Initial Project or a Funded Subsequent Project, or any Major Project Participant shall fail to obtain any Permit on or before the date that such Permit becomes an Applicable Third Party Permit with respect to an Initial Project or a Funded Subsequent Project, and such failure could reasonably be expected to have a Material Adverse Effect on Borrower or the Projects, taken as a whole.

(b) Any Applicable Permit necessary for operation of any Initial Project or Funded Subsequent Project shall be materially modified (other than modifications contemplated in a Project Document requested by a Portfolio Entity and approved in writing in advance of such modification by Administrative Agent acting at the direction of the Required Banks which approval shall not be unreasonably withheld), revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction and within 30 days thereafter

Borrower is not able to demonstrate to the reasonable satisfaction of the Required Banks that such modification or loss of such Permit reasonably could not be expected to have a Material Adverse Effect on Borrower.

(c) Any Third Party Permit necessary for performance by the applicable Major Project Participant with respect to an Initial Project or a Funded Subsequent Project, shall be materially modified, revoked, canceled or not renewed by the issuing agency or other Governmental Authority having jurisdiction and within 90 days thereafter (i) Borrower is not able to demonstrate to the reasonable satisfaction of the Required Banks that such modification or loss of such Third Party Permit will not have a Material Adverse Effect on Borrower or (ii) a Portfolio Entity is not able to obtain a Replacement Obligor for such Major Project Participant, where prior to a Portfolio Entity obtaining such Replacement Obligor such breach or default has not had and could not reasonably be expected to have, a Material Adverse Effect on Borrower.

8.1.13 Loss of Collateral. Any substantial portion of any Portfolio Entity's property relating to an Initial Project, Funded Subsequent Project or Turbine is seized or appropriated without fair value being paid therefor so as to allow replacement of such property and/or prepayment of Loans and to allow the Portfolio Entities in Administrative Agent's reasonable judgment to continue satisfying its obligations hereunder and under the other Operative Documents.

8.1.14 Non-Fundamental Defaults. A Non-Fundamental Project Default has occurred, is continuing, and could reasonably be expected to have a Material Adverse Effect with respect to Borrower.

8.2 Remedies. Upon the occurrence and during the continuation of an Event of Default, but subject to Section 1(a) of the Project Completion Guaranty, Administrative Agent, LC Bank and the Banks may, at the election of the Required Banks, without further notice of default, presentment or demand for payment, protest or notice of non-payment or dishonor, or other notices or demands of any kind, all such notices and demands being waived, exercise any or all of the following rights and remedies, in any combination or order that the Required Banks may elect, in addition to such other rights or remedies as the Banks may have hereunder, including without limitation, such rights and remedies under

Section 5.17.3, under the Collateral Documents or at law or in equity:

8.2.1 No Further Loans or Letters of Credit. Cancel all commitments, refuse, and Administrative Agent, LC Bank and the Banks shall not be obligated, to continue any Loans, make any additional Loans, issue, renew, extend or increase the Stated Amount of any Letter of Credit, or make any payments, or permit the making of payments, from any Account or any Proceeds or other funds held by Administrative Agent under the Credit Documents or on behalf of Borrower.

8.2.2 Cash Collateralization of Letters of Credit. Maintain in the Accounts for payment of any Reimbursement Obligations or interest thereon arising in connection with any outstanding Letter of Credit an amount of cash equal to the Stated Amount of each such Letter of Credit (plus accrued interest on the amounts in such Accounts).

8.2.3 Prepayment of Loans. Cause the Loans to be prepaid as set forth in Section 7.2.4.

8.2.4 Cure by Administrative Agent. Without any obligation to do so, make disbursements or Loans to or on behalf of Borrower to cure any Event of Default hereunder and to cure any default and render any performance under any Project Documents or Turbine Purchase Contracts as the Required Banks in their sole discretion may consider necessary or appropriate, whether to preserve and protect the Collateral or the Banks' interests therein or for any other reason, and all sums so expended, together with interest on such total amount at the Default Rate (but in no event shall the rate exceed the maximum lawful rate), shall be repaid by Borrower to Administrative Agent on demand and shall be secured by the Credit Documents, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Loan Commitment, Total Turbine Purchase Loan Commitment and Total Letter of Credit Commitment.

8.2.5 Acceleration. Declare and make all sums of accrued and outstanding principal and accrued but unpaid interest remaining under this Agreement together with all unpaid fees, costs (including Liquidation Costs and charges due hereunder or under any other Credit Document), immediately due and payable and require Borrower immediately, without presentment, demand, protest or other notice of any kind, all of which Borrower hereby expressly waives, to pay Administrative Agent or the Banks an amount in immediately available funds equal to the aggregate amount of any outstanding Reimbursement Obligations, provided that in the event of an Event of Default occurring under Section 8.1.4 with respect to Borrower, all such amounts shall become immediately due and payable without further act of Administrative Agent or the Banks.

8.2.6 Cash Collateral. Apply or execute upon any amounts on deposit in any Account or any Proceeds or any other monies of Borrower on deposit with Administrative Agent or any Bank in the manner provided in the Uniform Commercial Code and other relevant statutes and decisions and interpretations thereunder with respect to cash collateral.

8.2.7 Possession of Projects and Turbines. Enter into possession of any Project or Turbine and perform any and all work and labor necessary to complete such Project or Turbine substantially according to the Plans and Specifications or to operate and maintain such Project or Turbine, and all sums expended by Administrative Agent in so doing, together with interest on such total amount at the Default Rate, shall be repaid by Borrower to Administrative Agent upon demand and shall be secured by the Credit Documents to the extent provided herein, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total Loan Commitment, Total Turbine Purchase Loan Commitment and Total Letter of Credit Commitment.

8.2.8 Remedies Under Credit Documents. Exercise any and all rights and remedies available to it under any of the Credit Documents, including judicial or non-judicial foreclosure or public or private sale of any of the Collateral pursuant to the Collateral Documents.

**ARTICLE 9.**  
**SCOPE OF LIABILITY**

Except as set forth in this Article 9, notwithstanding anything in the Credit Agreement or the other Credit Documents to the contrary, the Banks shall have no claims with respect to the transactions contemplated by the Operative Documents against the Portfolio Entities, the Member, Calpine or any of their respective Affiliates (other than the Portfolio Entities), shareholders, officers, directors or employees (collectively the "Nonrecourse Persons"), and the Banks' recourse against the Portfolio Entities shall be limited to the Collateral, the Projects, the Turbines and the equipment and assets owned by the Equipment Finance Companies (and all portions thereof and rights or appurtenances thereto), all Project Revenues, all Proceeds, and all income or revenues of the foregoing as and to the extent provided herein and in the Collateral Documents; provided that (a) the foregoing provision of this Article 9 shall not constitute a waiver, release or discharge of any of the indebtedness, or of any of the terms, covenants, conditions, or provisions of this Agreement, any other Security Document or Credit Document and the same shall continue (but without personal liability to the Nonrecourse Person or to the Portfolio Entities except as provided herein and therein) until fully paid, discharged, observed, or performed; (b) the foregoing provision of this Article 9 shall not limit or restrict the right of Administrative Agent and/or the Banks (or any assignee, beneficiary or successor to any of them) to name the Portfolio Entities or any other Person as a defendant in any action or suit for a judicial foreclosure or for the exercise of any other remedy under or with respect to this Agreement or any other Security Document or Credit Document, or for injunction or specific performance, so long as no judgment in the nature of a deficiency judgment shall be enforced against any Nonrecourse Person, and recourse to the Portfolio Entities shall be limited as provided above, except as set forth in this Article 9, (c) the foregoing provision of this Article 9 shall not in any way limit or restrict any right or remedy of Administrative Agent and/or the Banks (or any assignee or beneficiary thereof or successor thereto) with respect to, and each of the Nonrecourse Persons and the Portfolio Entities shall remain fully liable to the extent that it would otherwise be liable for its own actions with respect to, any fraud (which shall not include innocent or negligent misrepresentation), willful misrepresentation, or misappropriation of Project Revenues, Proceeds or any other earnings, revenues, rents, issues, profits or proceeds from or of the Collateral that should or would have been paid as provided herein or paid or delivered to Administrative Agent or any Bank (or any assignee or beneficiary thereof or successor thereto) towards any payment required under this Agreement or any other Credit Document; (d) the foregoing provision of this Article 9 shall not affect or diminish or constitute a waiver, release or discharge of any specific written obligation, covenant, or agreement in respect of any Project or Turbine made by any of the Nonrecourse Persons or any security granted by the Nonrecourse Persons in support of the obligations of such persons under any Equity Document or as security for the obligations of the Portfolio Entities; and (e) nothing contained herein shall limit the liability of (i) any Person who is a party to any Project Document or Turbine Purchase Contract or has issued any certificate or other statement in connection therewith with respect to such liability as may arise by reason of the terms and conditions of such Project Document or Turbine Purchase Contract (but subject to any limitation of liability in such Project Document or Turbine Purchase Contract), certificate or statement, or (ii) any Person rendering a legal opinion pursuant to this Agreement, in each case under this clause (e) relating solely to such liability of such Person as may arise under such referenced agreement, instrument or opinion. The limitations on recourse set forth in this Article 9 shall survive the termination of this Agreement

and the full payment and performance of the Obligations hereunder and under the other Operative Documents.

**ARTICLE 10.**  
**ADMINISTRATIVE AGENT; SUBSTITUTION; TECHNICAL COMMITTEE**

10.1 Appointment, Powers and Immunities.

10.1.1 Each Bank hereby appoints and authorizes Administrative Agent to act as its agent hereunder and under the other Credit Documents with such powers as are expressly delegated to Administrative Agent by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. Administrative Agent shall not have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Bank. Notwithstanding anything to the contrary contained herein Administrative Agent shall not be required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes Administrative Agent to any liability. Each of Administrative Agent, the Banks and any of their respective Affiliates shall not be responsible to any other Bank for any recitals, statements, representations or warranties made by the Member, any Portfolio Entity or its Affiliates contained in this Agreement or in any certificate or other document referred to or provided for in, or received by Administrative Agent, or any Bank under this Agreement, for the value, validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement, the Notes or any other document referred to or provided for herein or for any failure by the Member, any Portfolio Entity or its Affiliates to perform their respective obligations hereunder or thereunder. Administrative Agent may employ agents and attorneys-in-fact and shall not be responsible for the negligence or misconduct of any such agents or attorneys-in-fact selected by it with reasonable care.

10.1.2 Administrative Agent and its respective directors, officers, employees or agents shall not be responsible for any action taken or omitted to be taken by it or them hereunder or under any other Credit Document or in connection herewith or therewith, except for its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, Administrative Agent (a) may treat the payee of any Note as the holder thereof until Administrative Agent receives written notice of the assignment or transfer thereof signed by such payee and in form satisfactory to Administrative Agent; (b) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken in good faith by them in accordance with the advice of such counsel, accountants or experts; (c) makes no warranty or representation to any Bank for any statements, warranties or representations made in or in connection with any Project Document, Turbine Purchase Contract or Credit Document; (d) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of any Operative Document on the part of any party thereto or to inspect the property (including the books and records) of any Portfolio Entity or any other Person; and (e) shall not be responsible to any Bank for the due execution, legality, validity, enforceability, genuineness, sufficiency or value of any Operative Document or any other instrument or document furnished pursuant hereto. Except as otherwise provided under this Agreement, Administrative Agent shall take such action with respect to the Credit Documents as shall be directed by the Required Banks.

10.2 Reliance by Administrative Agent. Administrative Agent shall be entitled to rely upon any certificate, notice or other document (including any cable, telegram, telecopy or telex) believed by it to be genuine and correct and to have been signed or sent by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel, independent accountants and other experts selected by Administrative Agent. As to any other matters not expressly provided for by this Agreement, Administrative Agent shall not be required to take any action or exercise any discretion, but shall be required to act or to refrain from acting upon instructions of the Required Banks or, where expressly provided, the Required Banks (except that Administrative Agent shall not be required to take any action which exposes Administrative Agent to personal liability or which is contrary to this Agreement, any other Credit Document or any Legal Requirement) and shall in all cases be fully protected in acting, or in refraining from acting, hereunder or under any other Credit Document in accordance with the instructions of the Required Banks (or, where so expressly stated, the Required Banks), and such instructions of the Required Banks (or Required Banks, where applicable) and any action taken or failure to act pursuant thereto shall be binding on all of the Banks.

10.3 Non-Reliance. Each Bank represents that it has, independently and without reliance on Administrative Agent or any other Bank, and based on such documents and information as it has deemed appropriate, made its own appraisal of the financial condition and affairs of the Portfolio Entities and decision to enter into this Agreement and agrees that it will, independently and without reliance upon Administrative Agent, or any other Bank, and based on such documents and information as it shall deem appropriate at the time, continue to make its own appraisals and decisions in taking or not taking action under this Agreement. Each of Administrative Agent and any Bank shall not be required to keep informed as to the performance or observance by the Member, any Portfolio Entity or its Affiliates under this Agreement or any other document referred to or provided for herein or to make inquiry of, or to inspect the properties or books of the Member, any Portfolio Entity or its Affiliates.

10.4 Defaults. Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Inchoate Default, Event of Default, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default unless Administrative Agent has received a notice from a Bank or Borrower, referring to this Agreement, describing such Inchoate Default, Event of Default, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default and indicating that such notice is a notice of default. If Administrative Agent receives such a notice of the occurrence of an Inchoate Default, Event of Default, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default Administrative Agent shall give notice thereof to the Banks and Borrower. Administrative Agent shall take such action with respect to any Inchoate Default or Event of Default as is provided in Article 8 or if not provided for in Article 8, as Administrative Agent shall be reasonably directed by the Required Banks; provided, however, unless and until Administrative Agent shall have received such directions, Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Inchoate Default or Event of Default as it shall deem advisable in the best interest of the Banks.

10.5 Indemnification. Without limiting the Obligations of Borrower hereunder, each Bank agrees to indemnify Administrative Agent and its officers, directors, shareholders, controlling persons, employees, agents and servants, ratably in accordance with their

Proportionate Shares for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against Administrative Agent or any such Person in any way relating to or arising out of this Agreement or any documents contemplated by or referred to herein or therein or the transactions contemplated hereby or thereby or the enforcement of any of the terms hereof or thereof or of any such other documents; provided, however, that no Bank shall be liable for any of the foregoing to the extent they arise from Administrative Agent's or any such Person's gross negligence or willful misconduct. Administrative Agent of any such Person shall be fully justified in refusing to take or to continue to take any action hereunder unless it shall first be indemnified to its satisfaction by the Banks against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action. Without limitation of the foregoing, each Bank agrees to reimburse Administrative Agent and any such Person promptly upon demand for its ratable share of any out-of-pocket expenses (including counsel fees) incurred by Administrative Agent or any such Person in connection with the preparation, execution, administration or enforcement of, or legal advice in respect of rights or responsibilities under, the Operative Documents, to the extent that Administrative Agent or any such Person is not reimbursed for such expenses by Borrower.

10.6 Successor Administrative Agent. Administrative Agent acknowledges that its current intention is to remain Administrative Agent hereunder. Nevertheless, Administrative Agent may resign at any time by giving written notice thereof to the Banks and Borrower. Administrative Agent may be removed involuntarily only for a material breach of its duties and obligations hereunder or under the other Credit Documents or for gross negligence or willful misconduct in connection with the performance of its duties hereunder or under the other Credit Documents and then only upon the affirmative vote of the Required Banks (excluding Administrative Agent from such vote and Administrative Agent's Proportionate Share of the Commitment from the amounts used to determine the portion of the Commitment necessary to constitute the required Proportionate Share of the remaining Banks). Upon any such resignation or removal, the Required Banks shall have the right, with the consent of Borrower (such consent not to be unreasonably withheld or delayed) to appoint a successor Administrative Agent. If no successor Administrative Agent shall have been so appointed by the Required Banks, and shall have accepted such appointment, within 30 days after the retiring Administrative Agent's giving of notice of resignation or the Banks' removal of the retiring Administrative Agent, the retiring Administrative Agent may, on behalf of the Banks, with the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Administrative Agent, which shall be a Bank, if any Bank shall be willing to serve, and otherwise shall be a commercial bank having a combined capital and surplus of at least \$500,000,000. Upon the acceptance of any appointment as Administrative Agent under the Operative Documents by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Administrative Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations as Administrative Agent only under the Credit Documents. After any retiring Administrative Agent's resignation or removal hereunder as Administrative Agent, the provisions of this Article 10 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under the Operative Documents.

10.7 Authorization. Administrative Agent is hereby authorized by the Banks to execute, deliver and perform each of the Credit Documents to which Administrative Agent is or is intended to be a party and each Bank agrees to be bound by all of the agreements of Administrative Agent contained in the Credit Documents. Administrative Agent is further authorized by the Banks to release liens on property that the Portfolio Entities permitted to sell or transfer pursuant to the terms of this Agreement, the other Credit Documents or the Operative Documents, and to enter into agreements supplemental hereto for the purpose of curing any formal defect, inconsistency, omission or ambiguity in this Agreement or any Credit Document to which it is a party.

10.8 Administrative Agent, Technical Committee, Bookrunner, Arrangers, Co-Syndication Agents and Co-Documentation Agents. With respect to its Commitment, the Loans made by it and any Note issued to it, each of the financial institutions acting as Administrative Agent or as members of the Technical Committee shall have the same rights and powers under the Operative Documents as any other Bank and may exercise the same as though it were not Administrative Agent or a member of the Technical Committee, as the case may be. The term "Bank" or "Banks" shall, unless otherwise expressly indicated, include Administrative Agent and members of the Technical Committee, in each case in their individual capacity. The financial institutions acting as Administrative Agent and members of the Technical Committee and their Affiliates may accept deposits from, lend money to, act as trustee under indentures of, and generally engage in any kind of business with Borrower or any other Person, without any duty to account therefor to the Banks. The parties acknowledge and agree that the Bookrunner, Arrangers, Co-Syndication Agents and the Co-Documentation Agents shall not, in such capacities (but not in their capacities as Banks), have any rights, responsibilities, duties, obligations (including any fiduciary obligations) or liability hereunder.

10.9 Amendments; Waivers. Subject to the provisions of this Section 10.9, unless otherwise specified in this Agreement or another Credit Document, the Required Banks (or Administrative Agent with the consent in writing of the Required Banks) and Borrower may enter into agreements supplemental hereto for the purpose of adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Banks or Borrower hereunder or waiving any Inchoate Default or Event of Default; provided, however, that no such supplemental agreement shall, without the consent of all of the Banks:

(i) Modify Section 2.1.1(d), 2.1.2(d), 2.7, 2.8, 2.9, 5.1, 5.17, 6.17, 6.22, 7.1 through 7.14, 8.1.10, 10.1, 10.13, 10.14 or 10.17;

(ii) Increase the amount of the Commitment of any Bank hereunder; or

(iii) Reduce the percentage specified in the definition of Required Banks; or

(iv) Permit Borrower to assign its rights under this Agreement except as provided in Section 6.17, or permit a transfer of ownership of a Portfolio Entity, a Project or a Turbine except as provided in Section 8.1.11, or

(v) Amend this Section 10.9; or

(vi) Release any Collateral from the Lien of any of the Collateral Documents, except as permitted in Section 6.4, or allow release of any funds from any Account otherwise than in accordance with the terms hereof; or

(vii) Extend the maturity of any Loan or any of the Notes or reduce the principal amount thereof, or reduce the rate or change the time of payment of interest due on any Loan or any Notes; or

(viii) Extend the Loan Maturity Date; or

(ix) Reduce the amount or extend the payment date for any amount due under Article 2, whether principal, interest, fees or other amounts; or

(x) Reduce or change the time of payment of any fee due or payable hereunder; or

(xi) Terminate the Project Completion Guaranty or the Turbine Purchase Guaranty except in accordance with its terms; or

(xii) Subordinate the Loans to any other Indebtedness.

Any proposed action to be taken by the Required Banks under the Credit Documents, including, without limitation, supplemental agreements with Borrower adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Banks or Borrower hereunder or waiving any Inchoate Default or Event of Default under this Section 10.9 or Section 3.12, shall be deemed so taken by the Required Banks unless, after the Banks have received from Administrative Agent and/or Borrower notice of such proposed action together with all other documentation and other information reasonably necessary for the Banks' consideration of such proposed action, Banks having Proportionate Shares exceeding 33.33% at the time of such notice notify Administrative Agent of such Banks' disapproval of such proposed action by the Determination Date.

#### 10.10 Withholding Tax.

10.10.1 Administrative Agent may withhold from any interest payment to any Bank an amount equivalent to any applicable withholding tax. If the forms or other documentation required by Section 2.6 are not delivered to Administrative Agent, then Administrative Agent may withhold from any interest payment to any Bank not providing such forms or other documentation, an amount equivalent to the applicable withholding tax.

10.10.2 If the Internal Revenue Service or any authority of the United States or other jurisdiction asserts a claim that Administrative Agent did not properly withhold tax from amounts paid to or for the account of any Bank (because the appropriate form was not delivered, was not properly executed, or because such Bank failed to notify Administrative Agent of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Bank shall indemnify Administrative

Agent fully for all amounts paid, directly or indirectly, by Administrative Agent as tax or otherwise, including penalties and interest, together with all expenses incurred, including legal expenses, allocated staff costs, and any out of pocket expenses.

10.10.3 If any Bank sells, assigns, grants participation in, or otherwise transfers its rights under this Agreement, the purchaser, assignee, participant or transferee, as applicable, shall comply and be bound by the terms of Sections 2.6.7, 10.10.1 and 10.10.2 as though it were such Bank.

10.11 General Provisions as to Payments. Administrative Agent shall promptly distribute to each Bank, subject to the terms of the assignment and assumption agreement between Administrative Agent and such Bank, its pro rata share of each payment of principal and interest payable to the Banks on the Loans and of fees hereunder received by Administrative Agent for the account of the Banks and of any other amounts owing under the Loans. The payments made for the account of each Bank shall be made, and distributed to it, for the account of (a) its domestic lending office in the case of payments of principal of, and interest on, its Base Rate Loans, (b) its domestic or foreign lending office, as each Bank may designate in writing to Administrative Agent, in the case of LIBOR Loans, and (c) its domestic lending office, or such other lending office as it may designate for the purpose from time to time, in the case of payments of fees and other amounts payable hereunder. Banks shall have the right to alter designated domestic lending offices upon notice to Administrative Agent and Borrower.

10.12 Substitution of Bank. Should any Bank fail to make a Loan in violation of its obligations under this Agreement (a "Non-Advancing Bank"), Administrative Agent shall (a) in its sole discretion fund the Loan on behalf of the Non-Advancing Bank or (b) cooperate with Borrower or any other Bank to find another Person that shall be acceptable to Administrative Agent and that shall be willing to assume the Non-Advancing Bank's obligations under this Agreement (including the obligation to make the Loan which the Non-Advancing Bank failed to make but without assuming any liability for damages for failing to have made such Loan or any previously required Loan). Subject to the provisions of the next following sentence, such Person shall be substituted for the Non-Advancing Bank hereunder upon execution and delivery to Administrative Agent of an agreement acceptable to Administrative Agent by such Person assuming the Non-Advancing Bank's obligations under this Agreement, and all interest and fees which would otherwise have been payable to the Non-Advancing Bank shall thereafter be payable to such Person. Nothing in (and no action taken pursuant to) this Section 10.12 shall relieve the Non-Advancing Bank from any liability it might have to Borrower or to the other Banks as a result of its failure to make any Loan.

10.13 Participation.

10.13.1 Nothing herein provided shall prevent any Bank from selling a participation in one or more of its Commitments (and Loans made and Letters of Credit issued thereunder); provided that (a) no such sale of a participation shall alter such Bank's or Borrower's obligations hereunder, (b) any agreement pursuant to which any Bank may grant a participation in its rights with respect to its Commitment (Letters of Credit and Loans) shall provide that, with respect to such Commitment (Letters of Credit and Loans), subject to the following proviso, such Bank shall retain the sole right and responsibility to exercise the rights of

such Bank, and enforce the obligations of Borrower relating to such Commitment (Letters of Credit and Loans), including the right to approve any amendment, modification or waiver of any provision of this Agreement or any other Bank Document and the right to take action to have the Notes declared due and payable pursuant to Article 8; provided, however, that such agreement may provide that the participant may have rights to approve or disapprove decreases in Commitments, interest rates or fees, lengthening of maturity of any Loans, extend the payment date for any amount due under Article 2 hereof or release of any material Collateral. No recipient of a participation in any Commitment or Loans of any Bank shall have any rights under this Agreement or shall be entitled to any reimbursement for Taxes, Other Taxes increased costs or reserve requirements under Sections 2.6 or 2.8 or any other indemnity or payment rights against Borrower (but shall be permitted to receive from the Bank granting such participation a proportionate amount which would have been payable to the Bank from whom such Person acquired its participation).

10.13.2 Notwithstanding anything to the contrary contained herein, any Bank (a "Granting Bank") may grant to a special purpose funding vehicle (a "SPC"), identified as such in writing from time to time by the Granting Bank to Administrative Agent and Borrower, the option to provide to Borrower all or any part of any Loan that such Granting Bank would otherwise be obligated to make to Borrower pursuant to this Agreement; provided that (i) nothing herein shall constitute a commitment by any SPC to make any Loan, (ii) if an SPC elects not to exercise such option or otherwise fails to provide all or any part of such Loan, the Granting Bank shall be obligated to make such Loan pursuant to the terms hereof. The making of a Loan by an SPC hereunder shall utilize the Commitment of the Granting Bank to the same extent, and as if, such Loan were made by such Granting Bank. Each party hereto hereby agrees that no SPC shall be liable for any indemnity or similar payment obligation under this Agreement (all liability for which shall remain with the Granting Bank). In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior indebtedness of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings under the laws of the United States or any state thereof. In addition, notwithstanding anything to the contrary contained in this Section 10.13, any SPC may (i) with notice to, but without the prior written consent of, Borrower and Administrative Agent and without paying any processing fee therefor, assign all or a portion of its interests in any Loans to the Granting Bank or to any financial institutions (consented to by Borrower and Administrative Agent) providing liquidity and/or credit support to or for the account of such SPC to support the funding or maintenance of Loans and (ii) disclose on a confidential basis any non-public information relating to its Loans to any rating agency, commercial paper dealer or provider of any surety, guarantee or credit or liquidity enhancement to such SPC. This section may not be amended without the written consent of the SPC.

10.14 Transfer of Commitment. Notwithstanding anything else herein to the contrary, any Bank, after receiving Borrower's prior written consent as to the identity of the assignee, which consent shall not be unreasonably withheld or delayed or, so long as an Event of Default has occurred and is continuing, required, may from time to time, at its option, sell, assign, transfer, negotiate or otherwise dispose of a portion of one or more of its Commitments (and Loans made and Letters of Credit issued thereunder) (including the Bank's interest in this

Agreement and the other Credit Documents) to any bank or other lending institution which in such assigning Bank's judgment is reasonably capable of performing the obligations of a Bank hereunder and reasonably experienced in project financing; provided, however, that no Bank (including any assignee of any Bank) may assign any portion of its Commitment (including Loans and Letters of Credit) of less than \$10,000,000 (unless to another Bank) and provided, further, that assignments of any rights or obligations under any Letter of Credit shall require the consent of the LC Bank; provided, further, that any Bank may assign all or any portion of its Commitments to an Affiliate of such Bank. In the event of any such assignment, (a) the assigning Bank's Proportionate Share shall be reduced and its obligations hereunder released by the amount of the Proportionate Share assigned to the new lender, (b) the parties to such assignment shall execute and deliver to Administrative Agent an Assignment Agreement evidencing such sale, assignment, transfer or other disposition substantially in the form of Exhibit L or otherwise satisfactory to Administrative Agent together with an assignment fee payable to Administrative Agent of \$3,500 (provided such assignment fee shall not be required with respect to the initial syndication of the Lead Arrangers' and Arrangers' Commitments) and any other related documentation reasonably requested by Administrative Agent, including without limitation such withholding tax certificates as may be appropriate pursuant to Section 2.6.7, (c) at the assigning Bank's option, Borrower shall execute and deliver to such new lender new Notes in the forms attached hereto as Exhibit B in a principal amount equal to such new lender's Commitment, and Borrower shall execute and exchange with the assigning Bank a replacement note for any Note in an amount equal to the Commitment retained by the Bank, if any and (d) Administrative Agent may amend Exhibit H attached hereto to reflect the Proportionate Shares of the Banks following such assignment. Thereafter, such new lender shall be deemed to be a Bank and shall have all of the rights and duties of a Bank (except as otherwise provided in this Article 10), in accordance with its Proportionate Share, under each of the Credit Documents.

10.15 Laws. Notwithstanding the foregoing provisions of this Article 10, no sale, assignment, transfer, negotiation or other disposition of the interests of any Bank hereunder or under the other Credit Documents shall be allowed if it would require registration under the federal Securities Act of 1933, as then amended, any other federal securities laws or regulations or the securities laws or regulations of any applicable jurisdiction. Borrower shall, from time to time at the request and expense of Administrative Agent, execute and deliver to Administrative Agent, or to such party or parties as Administrative Agent may designate, any and all further instruments as may in the opinion of Administrative Agent be reasonably necessary or advisable to give full force and effect to such disposition.

10.16 Assignability to Federal Reserve Bank. Notwithstanding any other provision contained in this Agreement or any other Credit Document to the contrary, any Bank may assign all or any portion of the Loans or Notes held by it to any Federal Reserve Bank or the United States Treasury as collateral security pursuant to Regulation A of the Board of Governors of the Federal Reserve System and any Operating Circular issued by such Federal Reserve Bank, provided that any payment in respect of such assigned Loans or Notes made by Borrower to or for the account of the assigning and/or pledging Bank in accordance with the terms of this Agreement shall satisfy Borrower's obligations hereunder in respect of such assigned Loans or Notes to the extent of such payment. No such assignment shall release the assigning Bank from its obligations hereunder.

10.17 Technical Committee. Each Bank hereby appoints and authorizes each of Banc of America Securities LLC, Credit Suisse First Boston, TD Securities (USA) Inc. and The Bank of Nova Scotia to act as its technical committee hereunder and under the other Credit Documents (the "Technical Committee") with such powers as are expressly delegated to the Technical Committee by the terms of this Agreement and the other Credit Documents, together with such other powers as are reasonably incidental thereto. The Technical Committee shall not have any duties or responsibilities except those expressly set forth in this Agreement or in any other Credit Document, or be a trustee or a fiduciary for any Bank. Notwithstanding anything to the contrary contained herein the Technical Committee shall not be required to take any action which is contrary to this Agreement or any other Credit Documents or any Legal Requirement or exposes the Technical Committee to any liability. All decisions and determinations to be made by the Technical Committee hereunder and under the other Credit Documents shall be made by unanimous consent of its members. Borrower and each Bank hereby agrees that the protective provisions set forth in Section 5.11 and Sections 10.1 through 10.5 shall apply to and protect, mutatis mutandis, each member of the Technical Committee and all determinations, decisions, actions or inactions taken or omitted to be taken by the Technical Committee. In the event that any member of the Technical Committee at any time reduces its Commitment to less than \$10,000,000, ceases to be a Bank hereunder or otherwise resigns from the Technical Committee, the remaining members of the Technical Committee shall appoint a Bank as a successor member to the Technical Committee; provided (i) such Bank shall be a Bank with one of the five largest Commitments at such time among the Banks who are not then members of the Technical Committee and (ii) Borrower does not reasonably disapprove of such Bank within two Banking Days of receipt of notice of such Bank's appointment to the Technical Committee.

10.18 Notices to Technical Committee and Banks. Administrative Agent promptly shall deliver all material documents, instruments and notices that it receives hereunder and under the other Operative Documents to the Technical Committee and to each Bank that is not a member of the Technical Committee.

## **ARTICLE 11. INDEPENDENT CONSULTANTS**

11.1 Removal and Fees. Administrative Agent, in its reasonable discretion, may remove from time to time, any one or more of the Independent Consultants and, after consulting with Borrower as to an appropriate Person, appoint replacements as Administrative Agent may choose. Notice of any replacement Independent Consultant shall be given by Administrative Agent to Borrower, the Banks and to the Independent Consultant being replaced. All reasonable fees and expenses of the Independent Consultants (whether the original ones or replacements) shall be paid by Borrower.

11.2 Duties. Each Independent Consultant shall be contractually obligated to Administrative Agent to carry out the activities required of it in this Agreement and as otherwise requested by Administrative Agent and shall be responsible solely to Administrative Agent. Borrower acknowledges that it will not have any cause of action or claim against any Independent Consultant resulting from any decision made or not made, any action taken or not taken or any advice given by such Independent Consultant in the due performance in good faith

of its duties to Administrative Agent, except to the extent arising from such Independent Consultant's gross negligence or willful misconduct.

### 11.3 Independent Consultants' Certificates.

11.3.1 Until the receipt by Administrative Agent of certificates satisfactory to Administrative Agent from each Independent Consultant whom Administrative Agent considers necessary or appropriate certifying Final Completion, Borrower shall provide such documents and information to the Independent Consultants as any of the Independent Consultants may reasonably consider necessary in order for the Independent Consultants to deliver to Administrative Agent the following certificates:

(a) all certificates to be delivered pursuant to Article 3, if any, or, if no Loan has taken place in any month, certificates delivered at the end of the month as to the matters required by Exhibit C-11; and

(b) monthly after the Closing Date, a full report and status of the progress of each Initial Project and Funded Subsequent Project to that date, a complete assessment of Project Costs to Final Completion of such Projects and such other information and certification as Administrative Agent may reasonably require from time to time.

11.3.2 Following Final Completion of each Project, Borrower shall provide such documents and information to the Independent Consultants (subject to the execution by such Independent Consultants of confidentiality agreements reasonably acceptable to Administrative Agent and Borrower) as they may reasonably consider necessary in order for the Independent Consultants to deliver annually to Administrative Agent a certificate setting forth a full report on the status of such Project and such other information and certification as Administrative Agent may reasonably require from time to time.

11.4 Certification of Dates. Administrative Agent will request that the Independent Consultants act diligently in the issuance of all certificates required to be delivered by the Independent Consultants hereunder, if their issuance is appropriate. Borrower shall provide the Independent Consultants with reasonable notice of the expected occurrence of any such dates or events.

## **ARTICLE 12. MISCELLANEOUS**

12.1 Addresses. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Administrative Agent:	Credit Suisse First Boston, New York Branch Eleven Madison Avenue New York, New York 10010-3629 Attn: Portfolio Management Telephone No.: (212) 325-9126 Telecopy No.: (212) 325-8321
-----------------------------	--

If to Borrower: Calpine Construction Finance Company II, LLC  
50 West San Fernando Street  
San Jose, California 95113  
Attn: General Counsel  
Telephone No.: (408) 995-5115  
Telecopy No.: (408) 995-0505

and 6700 Koll Center Parkway, Suite 200  
Pleasanton, California 94566  
Attn: Corporate Asset Management  
Telephone No.: (925) 600-2000  
Telecopy No.: (925) 600-8926

If to the Technical Committee: The Bank of Nova Scotia  
One Liberty Plaza, 25th Floor  
New York, New York 10006  
Attn: Scott Heyer  
Telephone No.: (212) 225-5622  
Telecopy No.: (212) 225-5090

Credit Suisse First Boston, New York Branch  
Eleven Madison Avenue  
New York, New York 10010-3629  
Attn: Portfolio Management  
Telephone No.: (212) 325-9126  
Telecopy No.: (212) 325-8321

Banc of America Securities LLC  
600 Montgomery, Ninth Floor  
San Francisco, California 94104  
Attn: Raymond Gagne  
Telephone No.: (415) 627-2109  
Telecopy No.: (415) 627-2734

TD Securities (USA) Inc.  
31 West 52nd Street  
New York, New York 10019  
Attn: Deborah Gravinese  
Telephone No.: (212) 827-7777  
Telecopy No.: (212) 827-7778

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, ETA, Emery, DHL, AirBorne and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telegram, or by telecopy or other

electronic means (including electronic mail) confirmed by telephone. Notice so given shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct electronic means shall be deemed to have been validly and effectively given on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

12.2 Additional Security; Right to Set-Off. Any deposits or other sums at any time credited or due from Banks and any Project Revenues, securities or other property of Borrower in the possession of Administrative Agent may at all times be treated as collateral security for the payment of the Loans and the Notes and all other obligations of Borrower to Banks under this Agreement and the other Credit Documents, and Borrower hereby pledges to Administrative Agent for the benefit of the Banks and grants Administrative Agent a security interest in and to all such deposits, sums, securities or other property. Regardless of the adequacy of any other collateral, Administrative Agent and only Administrative Agent, may execute or realize on the Banks' security interest in any such deposits or other sums credited by or due from Banks to Borrower, may apply any such deposits or other sums to or set them off against Borrower's obligations to Banks under the Notes and this Agreement at any time after the occurrence and during the continuance of any Event of Default.

12.3 Delay and Waiver. No delay or omission to exercise any right, power or remedy accruing to the Banks upon the occurrence of any Event of Default or Inchoate Default or any breach or default of the Portfolio Entities under this Agreement or any other Credit Document shall impair any such right, power or remedy of the Banks, nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring, nor shall any waiver of any single Event of Default, Inchoate Default or other breach or default be deemed a waiver of any other Event of Default, Inchoate Default or other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of Administrative Agent and/or the Banks of any Event of Default, Inchoate Default or other breach or default under this Agreement or any other Credit Document, or any waiver on the part of Administrative Agent and/or the Banks of any provision or condition of this Agreement or any other Credit Document, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Agreement or any other Credit Document or by law or otherwise afforded to Administrative Agent, LC Bank and the Banks, shall be cumulative and not alternative.

12.4 Costs, Expenses and Attorneys' Fees; Syndication.

12.4.1 Borrower will pay to Administrative Agent, Lead Arrangers, Arrangers, Co-Syndication Agents and Co-Documentation Agents all of its reasonable costs and expenses in connection with the preparation, negotiation, closing and administering this Agreement and the documents contemplated hereby and any participation or syndication of the Loans or this

Agreement, including the reasonable fees, expenses and disbursements of Latham & Watkins and other associated local attorneys retained by such Persons in connection with the preparation of such documents and any amendments hereof or thereof, or the preparation, negotiation, closing, administration, enforcement, participation or syndication of the Loans or this Agreement, the reasonable fees, expenses and disbursements of the Independent Consultants and any other engineering, insurance and construction consultants to Administrative Agent, Lead Arrangers, Arrangers, Co-Syndication Agents and Co-Documentation Agents incurred in connection with this Agreement or the Loans subsequent to the Closing Date, and the travel and out-of-pocket costs incurred by such Persons following the Closing Date, and Borrower further agrees to pay Administrative Agent, Lead Arrangers, Arrangers, Co-Syndication Agents and Co-Documentation Agents the out-of-pocket costs and travel costs incurred by such Persons in connection with syndication of the Loans or this Agreement; provided, however, Borrower shall not be required to pay advertising costs of any of the Banks or the fees of the Banks' attorneys, other than Latham & Watkins and associated local counsel or the fees and costs of any engineers or consultants other than the Independent Engineer and the Independent Consultant engaged by Administrative Agent. Borrower will reimburse Administrative Agent, Lead Arrangers, Arrangers, Co-Syndication Agents and Co-Documentation Agents for all costs and expenses, including reasonable attorneys' fees, expended or incurred by such Persons in enforcing this Agreement or the other Credit Documents in connection with an Event of Default or Inchoate Default, in actions for declaratory relief in any way related to this Agreement or in collecting any sum which becomes due such Persons on the Notes or under the Credit Documents.

12.4.2 In connection with syndication of the Loans and Commitments, an information package containing certain relevant information concerning Borrower, the Projects, the Turbines and the other Project and Turbine participants has been provided to potential Banks and participants. Borrower agrees to cooperate and to cause the Member and Calpine to cooperate in the syndication of the Loans and Commitments in all respects reasonably requested by Administrative Agent, Lead Arrangers, Arrangers, Co-Syndication Agents and Co-Documentation Agents, including participation in bank meetings held in connection with such syndication, and to provide, for inclusion in any additional package, all information which such Persons may request from it or which such Persons or Borrower may consider material to a lender or participant, or necessary or appropriate for accurate and complete disclosure. Upon request of Administrative Agent, Lead Arrangers, Arrangers, Co-Syndication Agents and Co-Documentation Agents, Borrower shall represent to such Persons, and indemnify such Persons for claims relating to, the accuracy and completeness of such disclosure, upon terms acceptable to such Persons.

12.5 Entire Agreement. This Agreement and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings in respect to the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Agreement and any such agreement, document or instrument, the terms, conditions and provisions of this Agreement shall prevail. This Agreement and the other Credit Documents may only be amended or modified by an instrument in writing signed by Borrower, Administrative Agent and any other parties to such agreements.

12.6 Governing Law. This Agreement, and any instrument or agreement required hereunder (to the extent not otherwise expressly provided for therein), shall be governed by, and construed under, the laws of the State of New York, without reference to conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

12.7 Severability. In case any one or more of the provisions contained in this Agreement should be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

12.8 Headings. Paragraph headings have been inserted in this Agreement as a matter of convenience for reference only and it is agreed that such paragraph headings are not a part of this Agreement and shall not be used in the interpretation of any provision of this Agreement.

12.9 Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with GAAP and practices consistent with those applied in the preparation of the financial statements submitted by Borrower to Administrative Agent, and all financial data submitted pursuant to this Agreement shall be prepared in accordance with such principles and practices.

12.10 Additional Financing. The parties hereto acknowledge that the Banks have made no agreement or commitment to provide any financing except as set forth herein.

12.11 No Partnership, Etc. The Banks and Borrower intend that the relationship between them shall be solely that of creditor and debtor. Nothing contained in this Agreement, the Notes or in any of the other Credit Documents shall be deemed or construed to create a partnership, tenancy-in-common, joint tenancy, joint venture or co-ownership by or between the Banks, Borrower or any other Person. The Banks shall not be in any way responsible or liable for the debts, losses, obligations or duties of the Portfolio Entities or any other Person with respect to any Project, Turbine or otherwise. All obligations to pay real property or other taxes, assessments, insurance premiums, and all other fees and charges arising from the ownership, operation or occupancy of any Project or Turbine and to perform all obligations and other agreements and contracts relating to any Project or Turbine shall be the sole responsibility of the Portfolio Entities.

12.12 Deed of Trust/Collateral Documents. The Loans are or will be secured in part by the Deeds of Trust encumbering certain properties associated with the Projects in such Projects' respective states. Reference is hereby made to the Deeds of Trust and the other Collateral Documents for the provisions, among others, relating to the nature and extent of the security provided thereunder, the rights, duties and obligations of the Portfolio Entities and the rights of Administrative Agent and the Banks with respect to such security.

12.13 Limitation on Liability. No claim shall be made by any Portfolio Entity, the Member, Calpine or any of their Affiliates, against the Banks or any of their Affiliates, directors, employees, attorneys or agents for any special, indirect, consequential or punitive damages in respect of any breach or wrongful conduct (whether or not the claim therefor is based on contract, tort or duty imposed by law), in connection with, arising out of or in any way related to the transactions contemplated by this Agreement or the other Operative Documents or any act or

omission or event occurring in connection therewith except to the extent that any such claims are caused by the willful misconduct of the Banks; and Borrower hereby waives, releases and agrees not to sue upon any such claim for any such damages, whether or not accrued and whether or not known or suspected to exist in its favor.

**12.14 Waiver of Jury Trial. THE BANKS AND BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHTS THEY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH, THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT, OR ANY COURSE OR CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN), OR ACTIONS OF THE BANKS OR BORROWER. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE BANKS TO ENTER INTO THIS AGREEMENT.**

**12.15 Consent to Jurisdiction.** The Banks and Borrower agree that any legal action or proceeding by or against Borrower or with respect to or arising out of this Agreement, the Notes, or any other Credit Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of the Agreement, the Banks and Borrower accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The Banks and Borrower irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure of the Deed of Trust. Notwithstanding the foregoing, service of process shall not be deemed served or mailed to Administrative Agent or the Banks until a copy of all matters to be served have been mailed to Latham & Watkins, 701 B Street, Suite 2100, San Diego, California 92101, Attn: Andrew Singer or such other Person as Administrative Agent or the Banks may hereafter designate by notice given pursuant to Section 12.1. The Banks and Borrower further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of Borrower based upon the assertion that the rate of interest charged by the Banks on or under this Agreement, the Loans and/or the other Credit Documents is usurious. The Banks and Borrower hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of any Project, Turbine, this Agreement or any other Credit Document brought before the foregoing courts on the basis of forum non-conveniens.

**12.16 Usury.** Nothing contained in this Agreement or the Notes shall be deemed to require the payment of interest or other charges by Borrower or any other Person in excess of the amount which the holders of the Notes may lawfully charge under any applicable usury laws. In the event that the holders of the Notes shall collect moneys which are deemed to constitute interest which would increase the effective interest rate to a rate in excess of that permitted to be charged by applicable law, all such sums deemed to constitute interest in excess of the legal rate shall, upon such determination, at the option of the holder of the Notes, be returned to Borrower or credited against the principal balance of the Notes then outstanding.

12.17 Knowledge and Attribution. References in this Agreement and the other Credit Documents to the "knowledge," "best knowledge" or facts and circumstances "known to" Borrower, and all like references, mean facts or circumstances of which a Responsible Officer of a Portfolio Entity or the Member has actual knowledge after due inquiry.

12.18 Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Borrower may not assign or otherwise transfer any of its rights under this Agreement except as provided in Section 6.17, and the Banks may not assign or otherwise transfer any of their rights under this Agreement except as provided in Article 10.

12.19 Counterparts. This Agreement may be executed in one or more duplicate counterparts and when signed by all of the parties listed below shall constitute a single binding agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties have caused this Credit Agreement to be duly executed by their officers or partners thereunto duly authorized as of the day and year first above written.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By: Calpine CCFC II Holdings, Inc., a Delaware  
corporation, its sole member.

By:

Name:

Title:

**THE BANK OF NOVA SCOTIA**  
as Lead Arranger, Co-Syndication Agent, Bookrunner  
and Bank

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH as Lead  
Arranger, Administrative Agent and Bank**

By:

Name:

Title:

By:

Name:

Title:

**BANC OF AMERICA SECURITIES LLC,  
as Arranger and Co-Syndication Agent**

By:

Name:  
Title:

**BANK OF AMERICA, N.A.,  
as Bank**

By:

Name:  
Title:

**ING (U.S.) CAPITAL LLC,  
as Arranger, Co-Syndication Agent and Bank**

By:

Name:  
Title:

**BAYERISCHE LANDESBANK GIROZENTRALE,  
as Arranger, Co-Documentation Agent, LC Bank and Bank**

By:

Name:  
Title:

By:  
Name:  
Title:

**CIBC WORLD MARKETS CORP.,  
as Arranger and Co-Documentation Agent**

By:

Name:  
Title:

**CIBC, INC.,  
as Bank**

By:

Name:  
Title:

**DRESDNER KLEINWORT BENSON NORTH AMERICA SERVICES LLC,  
as Arranger and Co-Documentation Agent**

By:

Name:  
Title:

By:  
Name:  
Title:

**DRESDNER BANK AG, NEW YORK AND  
GRAND CAYMAN BRANCHES,  
as Bank**

By:

Name:  
Title:

By:  
Name:  
Title:

**TD SECURITIES (USA) INC.,  
as Arranger and Co-Documentation Agent**

By:

Name:  
Title:

**TORONTO DOMINION (TEXAS) INC.,  
as Bank**

By:

Name:  
Title:

150

**EXHIBIT A**  
**to Credit Agreement**

**DEFINITIONS**

"Accounts" means the Construction Account, the Revenue Account, the Operating Accounts, the Working Capital Reserve Account and the Loss Proceeds Account, including any sub-accounts within such accounts.

"Acquisitions" means the purchase by Calpine or a Subsidiary thereof of (a) all of the outstanding ownership interests of Polsky Energy Corporation and (b) all right, title and interest in and to the assets comprising the Oneta Energy Center Project.

"Activation Fee" has the meaning set forth in Section 2.4.3 of the Credit Agreement.

"Additional Borrower Equity" has the meaning given in Section 5.17.2 of the Credit Agreement.

"Additional Commitment" has the meaning given in Section 2.11.2 of the Credit Agreement.

"Additional Major Project Document" means an Additional Project Document that is a Major Project Document.

"Additional Project Documents" means any material contracts or agreements related to the construction, testing, maintenance, repair, operation or use of one or more of the Projects entered into by a Project Owner or an Equipment Finance Company and any other Person, or assigned to a Project Owner or an Equipment Finance Company, subsequent to the Funding Date of a particular Project. Without in any way limiting the foregoing, all such contracts and agreements providing for the payment by a Project Owner or an Equipment Finance Company of \$1,000,000 or more, or the provision to a Project Owner or an Equipment Finance Company of \$1,000,000 in value of goods or services, entered into by or assigned to a Project Owner or an Equipment Finance Company after the Funding Date for the respective Project shall be deemed to constitute an Additional Project Document.

"Administrative Agent" means Credit Suisse First Boston, New York Branch, acting in its capacity as administrative agent for the Banks under the Credit Agreement, or its successor appointed pursuant to the terms of the Credit Agreement.

"Affiliate" of a specified Person means any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the Person specified, or who holds or beneficially owns 10% or more of the equity interest in the Person specified or 10% or more of any class of voting securities of the Person specified. When used with respect to Borrower, "Affiliate" shall include the Member, Calpine and any Affiliate of the Member or Calpine (other than the Portfolio Entities).

"Affiliated Major Project Participant" means Calpine and each Major Project Participant (other than the Portfolio Entities) that is an Affiliate of Calpine.

"Affiliated Party Agreement Guaranty" means, collectively, for each Project, the contract or agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement or as otherwise required thereby entered into by Calpine in favor of the Project Owner with respect to such Project guarantying in whole or in part the obligations of Subsidiaries of Calpine (other than Equipment Finance Companies) pursuant to Project Documents to which such Subsidiaries are party.

"Affiliated Subordination Agreement" means, collectively, for each Affiliate of Borrower (other than Equipment Finance Companies) providing goods or services to a Project, the contract or agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement or as otherwise required thereby entered into by such Affiliate in favor of Administrative Agent for the subordination of O&M Costs as provided therein.

"Aggregate LC Stated Amount" means, as of any time, the aggregate Stated Amount of all Letters of Credit issued and outstanding under the Credit Agreement.

"Annual Operating Budget" has the meaning given in Section 5.15.2 of the Credit Agreement.

"Applicable Debt to Capitalization Ratio" means (a) for so long as there exist fewer than nine Funded Projects, a Debt to Capitalization Ratio of 0.70 to 1.00, (b) for so long as there exist nine Funded Projects, a Debt to Capitalization Ratio of 0.675 to 1.00, (c) for so long as there exist 10 Funded Projects, a Debt to Capitalization Ratio of 0.65 to 1.00, (d) for so long as there exist 11 Funded Projects, a Debt to Capitalization Ratio of 0.625 to 1.00, (e) for so long as there exist 12 Funded Projects, a Debt to Capitalization Ratio of 0.60 to 1.00, and (f) for so long as there exist more than 12 Funded Projects, a Debt to Capitalization Ratio of 0.70 to 1.00. For purposes of determining the Applicable Debt to Capitalization Ratio, Funded Projects that are released from the Lien of the Collateral Documents as provided in the Credit Agreement shall not thereafter be considered Funded Projects.

"Applicable Margin" shall mean, for all Loans, the amount set forth below for the applicable Type of Loan (with (lambda) being Borrower's Debt to Capitalization Ratio):

Level	Debt to Capitalization Ratio (Projects) (lambda)=/ < 50%	Base Rate, (% p.a.)	LIBO Rate (% p.a.)
I	(lambda)=/ < 50%	0.75%	1.50%
II	50% < (lambda) =/ < 60%	1.00%	1.75%
III	60% < (lambda)	1.50%	2.25%

"Applicable Permit" means any Permit, including any zoning, environmental protection, pollution (including air, water or noise), sanitation, FERC, PUC, import, export, safety, siting or building Permit (a) that is necessary to be obtained by or on behalf of a Project Owner at the time the determination is made in light of the stage of development, construction or operation of a Project (to the extent required by Legal Requirements or the Operative Documents) to construct, test, operate, maintain, repair, own or use a Project as contemplated by the Operative Documents, to sell electricity and steam therefrom, for a Project Owner to enter into any Operative Document or to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements, (b) that is necessary so that none of Borrower or the other Portfolio Entities, Administrative Agent, Lead Arrangers, Technical Committee or the Banks nor any Affiliate of any of them may be deemed by any Governmental Authority to be subject to regulation under the FPA or PUHCA or under any state laws or regulations respecting the rates of, or the financial or organizational regulation of, electric utilities as a result of the construction or operation of a Project or the sale of electricity or steam therefrom, or (c) that is listed on Part I(A) of any Permit Schedule.

"Applicable Third Party Permit" means any Permit, including any zoning, environmental protection, pollution, sanitation, FERC, PUC, import, export, safety, siting or building Permit (a) that is necessary to be obtained by any Person (other than a Project Owner) that is a party to a Project Document, a Credit Document or an Additional Project Document in order to perform such Person's obligations under and as contemplated by the Operative Documents to which such Person is a party, or in order to consummate any transaction contemplated thereby, in each case in accordance with all applicable Legal Requirements or (b) that is listed on Part I(B) of any Permit Schedule.

"Arrangers" means each of Banc of America Securities LLC, ING (U.S.) Capital LLC, Bayerische Landesbank Girozentrale, CIBC World Markets Corp., Dresdner Kleinwort Benson North America Services LLC and TD Securities (USA) Inc. as the arrangers of the Commitments.

"Available Construction Funds" means, at any time and without duplication, the sum of (a) amounts in the Construction Account and all subaccounts thereunder other than the Turbine Purchase Sub-Account (provided, however, that amounts in any given Construction Sub-Account shall only be taken into account to the extent of the Project Costs remaining to be paid in respect of the Project to which such Construction Sub-Account relates), (b) the Available Loan Commitment, (c) undisbursed Insurance Proceeds which are available for payment of Project Costs, (d) any delay liquidated damages which Borrower or another Portfolio Entity has received under any Construction Contract, (e) any other liquidated damages which Borrower or another Portfolio Entity has received under the other Project Documents and which, by the terms of the Credit Agreement, are available for the payment of Project Costs, (f) any undisbursed amounts on deposit with Administrative Agent or Depositary Agent constituting Base Equity or Additional Borrower Equity or amounts deposited pursuant to Section 3.10(a) of the Credit Agreement which are designated to be used to pay Project Costs but not Turbine Costs other than Turbine Costs for Turbines assigned to the applicable Project(s) (as set forth on Exhibit G-3 to the Credit Agreement), (g) the Base Equity required to be funded pursuant to Section 5.17.1 of the Credit Agreement and (h) any other Committed Equity Funds which are designated to be

used to pay Project Costs but not Turbine Costs other than Turbine Costs for Turbines assigned to the applicable Project(s) (as set forth on Exhibit G-3 to the Credit Agreement).

"Available Loan Commitment" means at any time and from time to time during the Loan Availability Period, the Total Loan Commitment at such time minus the sum of (a) the aggregate principal amount of all Loans outstanding at such time plus (b) the aggregate Stated Amount of all Letters of Credit and outstanding Reimbursement Obligations thereunder at such time.

"Bank" or "Banks" means the banks and other financial institutions that are or become parties to the Credit Agreement and their successors and assigns including each LC Bank.

"Banking Day" means any day other than a Saturday, Sunday or other day on which banks are or Administrative Agent is authorized to be closed in the State of New York or the State of California and, where such term is used in any respect relating to a LIBOR Loan, which is also a day on which dealings in Dollar deposits are carried out in the London interbank market.

"Bankruptcy Event" shall be deemed to occur, with respect to any Person, if that Person shall institute a voluntary case seeking liquidation or reorganization under the Bankruptcy Law, or shall consent to the institution of an involuntary case thereunder against it; or such Person shall file a petition or consent or shall otherwise institute any similar proceeding under any other applicable Federal or state law, or shall consent thereto; or such Person shall apply for, or by consent or acquiescence there shall be an appointment, of a receiver, liquidator, sequestrator, trustee or other officer with similar powers for itself or any substantial part of its assets; or such Person shall make an assignment for the benefit of its creditors; or such Person shall admit in writing its inability to pay its debts generally as they become due; or if an involuntary case shall be commenced seeking liquidation or reorganization of such Person under the Bankruptcy Law or any similar proceedings shall be commenced against such Person under any other applicable Federal or state law and (i) the petition commencing the involuntary case is not timely controverted,

(ii) the petition commencing the involuntary case is not dismissed within 60 days of its filing, (iii) an interim trustee is appointed to take possession of all or a portion of the property, and/or to operate all or any part of the business of such Person and such appointment is not vacated within 60 days, or

(iv) an order for relief shall have been issued or entered therein; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver, liquidator, sequestrator, trustee or other officer having similar powers, of such Person or all or a part of its property shall have been entered; or any other similar relief shall be granted against such Person under any applicable Federal or state law.

"Bankruptcy Law" means Title 11, United States Code, and any other state or federal insolvency, reorganization, moratorium or similar law for the relief of debtors, or any successor statute.

"Base Case Project Projections" means a projection of operating results for the Projects over a period ending no sooner than the Loan Maturity Date, showing at a minimum Borrower's reasonable good faith estimates, as of the date of delivery, of revenue, operating

expenses, Four-Quarter Portfolio Interest Coverage Ratios (on an annual basis), Debt to Capitalization Ratios projected to exist from time to time and sources and uses of revenues over the forecast period, in each case as delivered pursuant to Section 3.1.16, 3.2.24, 3.3.27 or 3.3.41 of the Credit Agreement.

"Base Equity" has the meaning given in Section 5.17.1 of the Credit Agreement.

"Base Rate" means the greater of (a) the prime commercial lending rate announced by Credit Suisse First Boston at its New York office or (b) the Federal Funds Rate plus 0.50%.

"Base Rate Construction Loan" has the meaning given in Section 2.1.1(b)(i) of the Credit Agreement.

"Base Rate Loans" means, collectively, the Base Rate Construction Loans and the Base Rate Turbine Purchase Loans.

"Base Rate Turbine Purchase Loans" has the meaning given in Section 2.1.2(b)(i) of the Credit Agreement.

"Baytown Energy Center Project" means the Initial Project titled "Baytown Energy Center" set forth on Exhibit G-1 to the Credit Agreement.

"Beneficiary" has the meaning given in the granting clause of the Deeds of Trust.

"Bookrunner" means The Bank of Nova Scotia.

"Borrower" means Calpine Construction Finance Company II, LLC, a Delaware limited liability company.

"Borrower Security Agreement" means the Borrower Security Agreement dated as of October 16, 2000 in substantially the form of Exhibit D-4A to the Credit Agreement as executed by Borrower in favor of Administrative Agent.

"Borrower's Environmental Consultant" means with respect to any Project, the Person providing environmental consulting services and site assessment report(s) to the Portfolio Entities with respect to such Project and who provides a reliance letter in form and substance reasonably acceptable to the Technical Committee.

"Borrowing" means a borrowing by Borrower of any Loan or the issuance, renewal, extension or increase in the Stated Amount of any Letter of Credit.

"Broad River - Phase II Project" means the Initial Project titled "Broad River Energy Center II" set forth on Exhibit G-1 to the Credit Agreement.

"Calpine" means Calpine Corporation, a Delaware corporation.

"Calpine DEC Credit Agreement" means the Credit Agreement between Calpine, as lender, and the Delta Energy Center Project Owner, as borrower, and to which Borrower and/or Development Company will become parties (as lenders), pursuant to which Calpine and, after becoming party, Borrower and/or Development Company will loan funds on a secured basis to the Delta Energy Center Project Owner to pay Project Costs incurred with respect to such Project, such agreement and all other documents associated therewith to be in form and substance satisfactory to the Technical Committee.

"Calpine Indenture" means, collectively, (a) that certain Indenture dated February 17, 1994 relating to the principal amount of \$105,000,000 9 1/4% Senior Notes due 2004 by and between Calpine and State Street Bank and Trust Company (as successor to Shawmut Bank Connecticut), as trustee, as supplemented by that certain First Supplemental Indenture, dated as of July 31, 2000; (b) that certain Indenture dated as of May 16, 1996 relating to the issuance of the principal amount of \$180,000,000 of 10 1/2% Senior Notes due 2006, by and between Calpine and State Street Bank and Trust Company (as successor to Fleet National Bank), as trustee, as supplemented by that certain First Supplemental Indenture, dated as of August 1, 2000; (c) that certain Indenture dated as of July 8, 1997 relating to the issuance of a principal amount of \$275,000,000, 8 3/4% Senior Notes due 2007, by and between Calpine and The Bank of New York, as trustee, as supplemented by that certain First Supplemental Indenture dated as of September 10, 1997 and that certain Second Supplemental Indenture, dated as of July 31, 2000; (d) that certain Indenture dated as of March 31, 1998 relating to the issuance of a principal amount of \$400,000,000, 7 7/8% Senior Notes due 2008, by and between Calpine and the Bank of New York, as trustee, as supplemented by that certain First Supplemental Indenture dated as of July 24, 1998 and that Second Supplemental Indenture, dated as of July 31, 2000; (e) that certain Indenture, dated as of March 29, 1999, relating to the issuance of a principal amount of \$250,000,000, 7 5/8% Senior Notes due 2006 and the issuance of a principal amount of \$350,000,000, 7 3/4% Senior Notes due 2009 by and between Calpine and The Bank of New York, as trustee, as supplemented by that certain First Supplemental Indenture, dated as of July 31, 2000; (f) that certain Indenture, dated as of August 10, 2000, relating to the issuance of a principal amount of \$250,000,000, 8 1/4% Senior Notes due 2005 and the issuance of a principal amount of \$750,000,000, 8 5/8% Senior Notes due 2010 by and between Calpine and Wilmington Trust, as trustee, as supplemented by that certain First Supplemental Indenture, dated as of September 28, 2000; and (g) such additional indentures relating to senior notes of Calpine issued after the date hereof.

"Capital Adequacy Requirement" has the meaning given in Section 2.8.4 of the Credit Agreement.

"Capitalization" means, at any time, the sum of (x) the aggregate Debt of the Portfolio Entities at such time (except (a) Debt consisting of Contributions made in the form of subordinated loans and (b) Portfolio Entity Debt) and (y) the Net Worth of the Portfolio Entities at such time. The Debt and Net Worth of the Portfolio Entities with respect to partially owned Projects shall be determined in accordance with GAAP.

"Carville Project" means the Initial Project titled "Carville Energy Center" set forth on Exhibit G-1 to the Credit Agreement.

"CCFC II Equipment Finance Company" means CCFC II Equipment Finance Company, LLC, a Delaware limited liability company.

"CCFC II Equipment Finance Company Security Agreement" means the CCFC II Equipment Finance Company Security Agreement dated as of October 16, 2000 in substantially the form of Exhibit D-4D to the Credit Agreement as executed by CCFC II Equipment Finance Company in favor of Administrative Agent.

"CCFC II Equipment Finance Holdings Company" means CCFC II Equipment Finance Holdings Company, LLC, a Delaware limited liability company.

"Change of Law" has the meaning given in Section 2.8.2 of the Credit Agreement.

"Closing Date" means the date when each of the conditions precedent listed in Section 3.1 of the Credit Agreement has been satisfied (or waived in accordance with the terms of the Credit Agreement).

"COD" means, with respect to a Project, the date on which such Project has achieved Commercial Operation.

"Co-Documentation Agents" means each of Bayerische Landesbank Girozentrale, CIBC World Markets Corp., Dresdner Kleinwort Benson North America Services LLC and TD Securities (USA) Inc.

"Code" means the Internal Revenue Code of 1986, as amended.

"Collateral" means all real and personal property which is subject or is intended to become subject to the security interests or liens granted by any of the Collateral Documents.

"Collateral Documents" means the Deeds of Trust, the Depositary Agreement, the Credit Agreement, the Borrower Security Agreement, the Development Company Security Agreement, the CCFC II Equipment Finance Company Security Agreement, the Pledge Agreements (Pledged Equity Interests), the Project/Turbine Owner Security Agreements, the Equipment Finance Company Security Agreements, the Consents, the Equity Documents, the Affiliated Subordination Agreements, the Debt Subordination Agreements, any security agreements granting security interests in the Operating Accounts and any financing statements, notices and the like filed, recorded or delivered in connection with the foregoing.

"Commercial Operation" means, with respect to a Project, that such Project is able to operate and produce electrical energy for commercial sale in accordance with the Prudent Utility Practices and applicable laws.

"Commitment Fee" has the meaning given in Section 2.4.2 of the Credit Agreement.

"Commitments" means, with respect to each Bank, such Bank's Loan Commitment, Turbine Purchase Loan Commitment and Letter of Credit Commitment, and with

respect to all Banks, the Total Loan Commitment, the Total Turbine Purchase Loan Commitment and the Total Letter of Credit Commitment.

"Committed Equity Funds" means Contributions required pursuant to Section 5.17.1 of the Credit Agreement and guaranteed by Calpine pursuant to Section 1 of the Project Completion Guaranty or otherwise irrevocably and unconditionally committed by Calpine to fund Project Costs pursuant to documentation in form and substance reasonably satisfactory to the Required Banks.

"Completion" means, with respect to each Project, that (i) all work under the applicable Major Construction Contracts (other than "punchlist" items and work which is to be done after the Project has passed its "acceptance tests" or "performance tests") has been completed substantially in accordance with the applicable Plans and Specifications and the requirements of all Applicable Permits, (ii) all necessary facilities for the transportation of natural gas to such Project have been completed, (iii) all necessary electrical interconnection facilities sufficient to transmit all power generated by such Project have been completed, (iv) all necessary facilities for the procurement, transportation and discharge of water to or from such Project have been completed, (v) the "acceptance tests" or "performance tests" (however defined) under the applicable Prime Construction Contract and the applicable Power Island Supply Contract have been performed and the Project has achieved the minimum levels specified in such contracts for such "acceptance tests" or "performance tests," (vi) such "acceptance tests" or "performance tests" either (A) have been successfully completed as provided in the Prime Construction Contract and the Power Island Supply Contract, or (B) performance liquidated damages as provided in such contracts have been paid by the applicable Contractor under the applicable Major Construction Contract and/or by Calpine under the Project Completion Guaranty in an amount which, in the aggregate, is equal to the lesser of (1) the amount of performance liquidated damages required to be paid in order to be deemed to have successfully completed such "acceptance tests" or "performance tests" under the applicable Major Construction Contracts, without regard to any limitations of liability in such contracts, or (2) the EPC Equivalent Damages for such Project, and (vii) all real estate rights necessary for the completion of the foregoing and the continued operation of such Project shall have been obtained, in each case other than clause (vii) above, as satisfactorily certified by the Independent Engineer to Administrative Agent in its reasonable discretion.

"Completion Date" means, with respect to a Project, the date on which Completion of such Project occurs.

"Confirmation of Interest Period Selection" has the meaning given in Section 2.1.3(b)(ii) of the Credit Agreement.

"Consents" means the third-party consents required pursuant to the Credit Agreement in substantially the form of Exhibit E-1 to the Credit Agreement and any other third party consents to the assignments contemplated by the Credit Documents.

"Construction Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Construction Contracts" means, collectively, for each Project, the Prime Construction Contract, the Construction Management Agreement, the Power Island Supply Contract and the Engineering Contract for such Project and any other contract or agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, the Project Owner with respect to such Project with a Contractor for the construction of all or any portion of such Project, or the supply or provision of any goods or services relating to the construction of such Project.

"Construction Credit Event" has the meaning given in Section 3.4 of the Credit Agreement.

"Construction Drawdown Certificate" means a certificate delivered to Administrative Agent substantially in the form of Exhibit C-6 to the Credit Agreement.

"Construction Loan" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"Construction Management Agreement" means, collectively, for each Project, the contract or agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, the Project Owner with respect to such Project for the provision of construction management services for such Project.

"Construction Manager" means any wholly-owned subsidiary of Calpine or any other Person approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as construction manager under a Construction Management Agreement.

"Construction Period" means, with respect to any Project, the period from the commencement of construction of such Project through the Completion Date of such Project.

"Construction Sub-Account" has the meaning given in Section 7.1.1 of the Credit Agreement.

"Contractors" means, collectively, each Construction Manager, each Prime Contractor, each Project Engineer, and any other Person who is providing goods or services to a Project pursuant to a Construction Contract.

"Contribution" means either (i) a cash equity contribution or (ii) a subordinated loan made pursuant to a Debt Subordination Agreement, or a combination thereof (other than with respect to Portfolio Entity Debt) and, for purposes of Section 6.6 of the Credit Agreement only, in-kind amounts considered to be Contributions, in each case as permitted pursuant to the Credit Agreement. At such time as a Project to which a Turbine has been assigned (as set forth in Exhibit G-3 to the Credit Agreement) becomes a Funded Project, Contributions with respect to such Turbine shall be deemed Contributions with respect to such Project.

"Controlled Group" means all members of a controlled group of corporations and all trades or businesses (whether or not incorporated) under common control which, together

with a Portfolio Entity, are treated as a single employer under Sections 414(b), (c), (m) or (o) of the Code.

"Corporate Portfolio Entities" means, collectively, CPN Freestone, Inc. and Calpine Freestone, Inc.

"Corpus - Phase I Project" means the Initial Project titled "Corpus Christi Energy Center 1" set forth on Exhibit G-1 to the Credit Agreement.

"Costs" means, collectively, Project Costs and Turbine Costs.

"Co-Syndication Agents" means each of The Bank of Nova Scotia, Banc of America Securities LLC and ING (U.S.) Capital LLC.

"Credit Agreement" means the Credit Agreement dated as of October 16, 2000 by and among Borrower, Administrative Agent, Lead Arrangers, Arrangers, LC Bank, Co-Documentation Agents, Co-Syndication Agents, Bookrunner and the Banks.

"Credit Documents" means the Credit Agreement, the Notes, the Portfolio Entity Notes, the Collateral Documents, the Letters of Credit and any other loan or security agreements or letter agreement or similar document, entered into by Administrative Agent and one or more Major Project Participants in connection with the transactions contemplated by the Credit Documents.

"Date Certain" means the fourth anniversary of the Closing Date, provided, however, that the Date Certain may be extended up to the fifth anniversary of the Closing Date in accordance with Section 2.11 of the Credit Agreement.

"Debt" of any Person at any date means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments, (c) all obligations of such Person to pay the deferred purchase price of property or services, except trade accounts payable arising in the ordinary course of business, (d) all obligations of such Person under leases which are or should be, in accordance with GAAP, recorded as capital leases in respect of which such Person is liable, (e) all obligations of such Person to purchase securities (or other property) which arise out of or in connection with the sale of the same or substantially similar securities (or property), (f) all deferred obligations of such Person to reimburse any bank or other Person in respect of amounts paid or advanced under a letter of credit or other instrument, (g) all Debt of others secured by a Lien on any asset of such Person, whether or not such Debt is assumed by such Person, (h) all Debt (or other obligations) of others guaranteed directly or indirectly by such Person or as to which such Person has an obligation substantially the economic equivalent of a guaranty and (i) obligations in respect of Hedge Transactions.

"Debt Service" means all fees of Administrative Agent and the Banks, interest (including all interest accrued during the subject period) and principal, Reimbursement Obligations and interest thereon and any other payments due in connection with Letters of Credit, Liquidation Costs, Hedge Breaking Fees, and net payments pursuant to Hedge Transactions.

"Debt to Capitalization Ratio" means the ratio of (x) the aggregate outstanding principal amount of Debt of the Portfolio Entities (except (a) Debt consisting of Contributions made in the form of subordinated loans and (b) Portfolio Entity Debt) at a given time to (y) the sum of the Capitalization of the Portfolio Entities at such time (excluding, for purposes of clause (y), Turbine Purchase Loans then outstanding and the aggregate amount of progress payments made on the Turbines), all calculated in accordance with Section 5.10(c) of the Credit Agreement.

"Debt Subordination Agreement" means a Subordination Agreement executed by the Member or Calpine, Borrower and Administrative Agent in substantially the form of Exhibit D-7 to the Credit Agreement and otherwise in form and substance satisfactory to Administrative Agent.

"Decatur Energy Center Project" means the Initial Project titled "Decatur Energy Center" set forth on Exhibit G-1 to the Credit Agreement.

"Declined Commitment" has the meaning given in Section 2.11.2 of the Credit Agreement.

"Deeds of Trust" means, collectively, each of the deeds of trust or mortgages encumbering the Sites and/or Easements related to the Projects as security for the Obligations, each in substantially the form of Exhibit D-3 to the Credit Agreement with such changes as may be appropriate or necessary under the laws of the jurisdiction in which the respective Project is located.

"Deemed Interest" means interest accruing at an interest rate equal to 9% per annum; provided, however, that with respect to Contributions made for a Project or a Turbine prior to Completion of such Project or the Project to which such Turbine is assigned (as set forth in Exhibit G-3 to the Credit Agreement), Deemed Interest thereon shall accrue but not be payable until Completion of the relevant Project, at which time such accrued interest shall be added to, and be considered part of, the principal amount of such Contribution.

"Default Rate" means the interest rate per annum equal to the interest rate then applicable plus two percent. Interest computed with reference to the Default Rate shall be adjusted and calculated in the same manner as interest computed with reference to the Base Rate.

"Delta Energy Center Project" means the Initial Project titled "Delta Energy Center" set forth on Exhibit G-1 to the Credit Agreement.

"Delta Energy Center Project Owner" means the Project Owner with respect to the Delta Energy Center Project.

"Depository Agent" means The Bank of New York, in its capacity as depository agent under the Depository Agreement.

"Depository Agreement" means the Depository Agreement dated as of October 16, 2000 in substantially the form of Exhibit D-1 to the Credit Agreement among Borrower, Administrative Agent and Depository Agent.

"Designated Project" means the Delta Energy Center Project and any Subsequent Project that is owned (a) 50% by a wholly-owned direct or indirect Subsidiary of Borrower and (b) 50% by a wholly-owned direct or indirect Subsidiary of Bechtel Corporation.

"Determination Date" means, with respect to any action to be taken by the Required Banks under the Credit Documents, including, without limitation, supplemental agreements with Borrower adding, modifying or waiving any provisions to the Credit Documents or changing in any manner the rights of the Banks or Borrower hereunder or waiving any Inchoate Default or Event of Default under Section 3.12 or 10.9 of the Credit Agreement, a date established by Administrative Agent by which the Banks disapproving such action must notify Administrative Agent of the same, such date to allow the Banks a reasonable time period to consider the action being so requested and in any event not less than 10 Banking Days after the later of (a) the date Borrower or Administrative Agent notifies the Banks of such proposed action and (b) the date the Banks receive all documentation and other information which the Technical Committee considers reasonably necessary for the Banks' consideration of such proposed action and such additional documentation and other information that a Bank may reasonably request within five Banking Days after receipt of the documentation and other information originally provided by the Technical Committee under this clause (b).

"Development Company" means Calpine CCFC II Development Company, LLC, a Delaware limited liability company.

"Development Company Security Agreement" means the Development Company Security Agreement dated as of October 16, 2000 in substantially the form of Exhibit D-4C to the Credit Agreement as executed by Development Company in favor of Administrative Agent.

"Disbursement Requisition" means a request for disbursement of funds submitted by Borrower to Administrative Agent in the form of Exhibit C-10 to the Credit Agreement.

"Diversification Requirements" means, with respect to any Subsequent Project, that the fraction determined by dividing (A) the projected net capacity of such Subsequent Project plus the net capacity of all other Initial Projects and Funded Subsequent Projects located within the same NERC Region as such Subsequent Project by (B) the aggregate net capacity of all Initial Projects and Funded Subsequent Projects (including such Subsequent Project) is less than .50.

"Dollars" and "\$" means United States dollars or such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts in the United States of America.

"Drawdown Certificate" means a Construction Drawdown Certificate or a Turbine Purchase Drawdown Certificate, as appropriate.

"Drawing Date" has the meaning given in Section 2.2.4 of the Credit Agreement.

"Drawing Payment" means any payment by LC Bank honoring a drawing under a Letter of Credit.

"Easements" means the easements appurtenant, easements in gross, license agreements and other rights running in favor of a Project Owner and/or appurtenant to any Site, including without limitation those certain easements and licenses described in the Title Policies.

"EBITDA" means, for any period, Project Operating Revenues for such period minus Senior O&M Costs (excluding payments under Equipment Leases) for such period.

"Eligible Facility" means an eligible facility within the meaning of **PUHCA**.

"Eminent Domain Proceeds" has the meaning given in Section 7.6 of the Credit Agreement.

"Engineering Contracts" means, collectively, for each Project, the contract or agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, the Project Owner with respect to such Project for the supply of engineering or design services for such Project.

"Environmental Claim" means any and all liabilities, losses, administrative, regulatory or judicial actions, suits, demands, decrees, claims, liens, judgments, warning notices, notices of noncompliance or violation, investigations, proceedings, removal or remedial actions or orders, or damages (foreseeable and unforeseeable, including consequential and punitive damages), penalties, fees, out-of-pocket costs, expenses, disbursements, attorneys' or consultants' fees, relating in any way to any Hazardous Substance Law or any Permit issued under any such Hazardous Substance Law (hereafter "Claims"), including (a) any and all Claims by Governmental Authorities for enforcement, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Hazardous Substance Law, and (b) any and all Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief resulting from Hazardous Substances or arising from alleged injury or threat of injury to health, safety or the environment.

"Environmental Reports" means, collectively, for each Project, the environmental reports delivered to Administrative Agent in accordance with Section 3.2.13, 3.3.14 or 3.3.41, as the case may be, of the Credit Agreement with respect to such Project.

"EPC Equivalent Damages" means [\*].

"Equipment" has the meaning given in the granting clause of the Deeds of Trust.

"Equipment Finance Company" means a direct or indirect wholly-owned Subsidiary of Borrower (or, with the consent of the Required Banks, if the relevant Project Owner is a partially-owned Subsidiary of Borrower, a partially-owned Subsidiary of Borrower) that directly owns Turbines or other equipment leased to one or more Project Owners pursuant to one or more Equipment Leases. In the event a Turbine Owner leases Turbines to a Project Owner pursuant to an Equipment Lease, such Turbine Owner shall be deemed an Equipment Finance Company and shall no longer be considered a Turbine Owner.

"Equipment Finance Company Security Agreements" means, collectively, each Equipment Finance Company Security Agreement, in substantially the form of Exhibit D-4E to the Credit Agreement, executed by an Equipment Finance Company pursuant to Section 3.1, 3.2 or 3.3 of the Credit Agreement, as the case may be, with respect to its respective Turbine(s) or other equipment leased to a Project Owner in favor of Administrative Agent. In the event a Turbine Owner becomes an Equipment Finance Company pursuant to the definition of "Equipment Finance Company" or "Turbine Owner" contained herein, the Project/Turbine Owner Security Agreement previously executed by such Turbine Owner, if any, shall be amended at such time as the relevant Project becomes a Funded Project as considered necessary by the Technical Committee to ensure that all rights and assets held by such Equipment Finance Company related to such Project, including the related Equipment Lease, have been pledged to Administrative Agent and the Banks, at which time such Project/Turbine Owner Security Agreement shall be deemed an Equipment Finance Company Security Agreement.

"Equipment Lease" means a lease entered into between an Equipment Finance Company, as lessor, and a Project Owner with respect to a Funded Project, as lessee, pursuant to which such Equipment Finance Company leases to such Project Owner Turbine(s) and/or other equipment to be used or incorporated into such Project Owner's Funded Project, in each case as approved by the Technical Committee pursuant to Section 3.2 or 3.3, as the case may be, of the Credit Agreement; collectively, the "Equipment Leases".

"Equity Documents" means the Project Completion Guaranty, the Turbine Purchase Guaranty, the Project Owner Guaranties, and any other guaranty executed from time to time by a Portfolio Entity, Non-Affiliated Parent, or an Affiliate of Borrower in favor of Administrative Agent and the Banks.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"ERISA Plan" means any employee benefit plan (a) maintained by a Portfolio Entity or any member of the Controlled Group, or to which any of them contributes or is obligated to contribute, for its employees and (b) covered by Title IV of ERISA or to which Section 412 of the Code applies.

"Event of Default" has the meaning given in Article 8 of the Credit Agreement.

"Event of Eminent Domain" means any compulsory transfer or taking by condemnation, eminent domain or exercise of a similar power, or transfer under threat of such compulsory transfer or taking, of any part of the Collateral or any of the real property interests subject to the Deeds of Trust, by any agency, department, authority, commission, board, instrumentality or political subdivision of any state, the United States or another Governmental Authority having jurisdiction.

"Exempt Wholesale Generator" means an exempt wholesale generator within the meaning of PUHCA.

"Expiration Date" has the meaning given in each Letter of Credit.

"Federal Funds Rate" means, for any day, the weighted average of the per annum rates on overnight Federal funds transactions with member banks of the Federal Reserve System arranged by Federal funds brokers as published by the Federal Reserve Bank of New York for such day (or, if such rate is not so published for any day, the average rate charged by Administrative Agent on such day on such transactions as determined by Administrative Agent).

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

"FERC" means the Federal Energy Regulatory Commission and its successors.

"Final Completion" means, with respect to any Project, that all conditions to "Final Completion" shall have been satisfied as provided in Section 3.7 of the Credit Agreement.

"Final Project Cost" means, with respect to any Project, the actual total Project Costs through Final Completion of such Project, as determined by Administrative Agent in consultation with Independent Engineer and Borrower.

"Four-Quarter Portfolio Interest Coverage Ratio" means, as of the last day of each calendar quarter, the ratio of (a) EBITDA for the 12-month period ending on such day for the Projects that have achieved (or, in the case of a projected ratio calculation, are projected to achieve) Commercial Operation before such day to (b) the sum of (x) Borrower's interest expense allocated to such Projects plus (y) interest accruing on all outstanding Turbine Loans to the extent not capitalized or paid for with Contributions in excess of amounts required under Section 5.17.1 of the Credit Agreement, all in accordance with GAAP for such 12-month period. In the event that a given Project achieved (or, in the case of a projected ratio calculation, is projected to achieve) Commercial Operation at any time during such 12-month period, such Project's EBITDA and allocated interest expense shall be calculated beginning on the date Commercial Operation was achieved (or projected to be achieved), all calculated pursuant to Section 5.10(c) of the Credit Agreement.

"FPA" means the Federal Power Act, excluding Sections 1-18, 21-30, 202(c), 210, 211, 212, 305(c) and any necessary enforcement provision of Part III of the Act with regard to the foregoing sections.

"Fuel Consultant" means, for each Project, the Person providing fuel consulting services to the Banks with respect to such Project or their respective successors appointed pursuant to the Credit Agreement.

"Fuel Manager" means any Person approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as fuel manager under a Fuel Management Agreement.

"Fuel Management Agreements" means, collectively, for each Project, the fuel management agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement and entered into by the Project Owner with respect to such Project.

"Fuel Plans" means, collectively, the fuel plans delivered by Borrower pursuant to Sections 3.2.17, 3.3.18 and Section 3.3.41 of the Credit Agreement.

"Fuel Supplier" means any wholly-owned subsidiary of Calpine or any other Person who is supplying fuel and/or related services to a Project pursuant to a Gas Supply Contract.

"Funded Projects" means, collectively, the Projects that have satisfied their initial funding requirements under Section 3.2 or 3.3, as the case may be, of the Credit Agreement.

"Funded Subsequent Projects" means, collectively, the Subsequent Projects that are Funded Projects.

"Funded Turbines" means, collectively, the Turbines that have satisfied their initial funding requirements under Section 3.5 of the Credit Agreement; provided, Funded Turbines do not include Turbines from and after the date that they are assigned or leased to Funded Projects (as set forth on Exhibit G-3 to the Credit Agreement) (regardless of whether such Turbines were Funded Turbines prior to the initial funding of such Project).

"Funding Date" means each date of an initial funding of Loans for a Project pursuant to Section 3.2 or 3.3, as the case may be, of the Credit Agreement.

"GAAP" means generally accepted accounting principles in the United States consistently applied.

"Gas Supply Contracts" means, collectively, the contracts or agreements entered into in accordance with the Credit Agreement by, or on behalf of, a Project Owner with a Fuel Supplier for the supply of fuel and/or related services for a Project.

"Gas Transportation Agreements" means, collectively, the contracts or agreements entered into in accordance with the Credit Agreement by, or on behalf of, a Project Owner with a Gas Transporter for the supply of fuel transportation services for a Project.

"Gas Transporter" means any Person that owns gathering systems and/or transportation systems that are able to move fuel from its source of supply to a point of interconnection that provides such services to a Project pursuant to a Gas Transportation Agreement.

"Governmental Authority" means any national, state or local government (whether domestic or foreign), any political subdivision thereof or any other governmental, quasi-governmental, judicial, public or statutory instrumentality, authority, body, agency, bureau or entity, (including any zoning authority, FERC, the PUC, the FDIC, the Comptroller of the Currency or the Federal Reserve Board, any central bank or any comparable authority) or any arbitrator with authority to bind a party at law.

"Governmental Rule" means any law, rule, regulation, ordinance, order, code interpretation, treaty, judgment, decree, directive, guidelines, policy or similar form of decision of any Governmental Authority.

"Granting Bank" has the meaning given in Section 10.13.2 of the Credit Agreement.

"Hazardous Substances" means (statutory acronyms and abbreviations having the meaning given them in the definition of "Hazardous Substances Laws") substances defined as "hazardous substances," "pollutants" or "contaminants" in Section 101 of the CERCLA; those substances defined as "hazardous waste," "hazardous materials" or "regulated substances" by the RCRA; those substances designated as a "hazardous substance" pursuant to Section 311 of the CWA; those substances defined as "hazardous materials" in Section 103 of the HMTA; those substances regulated as a hazardous chemical substance or mixture or as an imminently hazardous chemical substance or mixture pursuant to Sections 6 or 7 of the TSCA; those substances defined as "contaminants" by Section 1401 of the SDWA, if present in excess of permissible levels; those substances regulated by the Oil Pollution Act; those substances defined as a pesticide pursuant to Section 2(u) of the FIFRA; those substances defined as a source, special nuclear or by-product material by Section 11 of the AEA; those substances defined as "residual radioactive material" by Section 101 of the UMTRCA; those substances defined as "toxic materials" or "harmful physical agents" pursuant to Section 6 of the OSHA; those substances defined as hazardous wastes in 40 C.F.R. Part 261.3; those substances defined as hazardous waste constituents in 40 C.F.R. Part 260.10, specifically including Appendix VII and VIII of Subpart D of 40 C.F.R. Part 261; those substances designated as hazardous substances in 40 C.F.R. Parts 116.4 and 302.4; those substances defined as hazardous substances or hazardous materials in 49 C.F.R. Part 171.8; those substances regulated as hazardous materials, hazardous substances, or toxic substances in 40 C.F.R. Part 1910; in any other Hazardous Substances Laws; and in the regulations adopted and publications promulgated pursuant to said laws, whether or not such regulations or publications are specifically referenced herein.

"Hazardous Substances Law" means any of:

- (i) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. Section 9601 et seq.) ("CERCLA");
- (ii) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.) ("Clean Water Act" or "CWA");
- (iii) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.) ("RCRA");
- (iv) the Atomic Energy Act of 1954 (42 U.S.C. Section 2011 et seq.) ("AEA");
- (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.) ("CAA");
- (vi) the Emergency Planning and Community Right to Know Act (42 U.S.C. Section 11001 et seq.) ("EPCRA");
- (vii) the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. Section 136 et seq.) ("FIFRA");

(viii) the Oil Pollution Act of 1990 (P.L. 101-380, 104 Stat. 486);

(ix) the Safe Drinking Water Act (42 U.S.C. Sections 300f et seq.) ("SDWA");

(x) the Surface Mining Control and Reclamation Act of 1974 (30 U.S.C. Sections 1201 et seq.) ("SMCRA");

(xi) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.) ("TSCA");

(xii) the Hazardous Materials Transportation Act (49 U.S.C. Section 1801 et seq.) ("HMTA");

(xiii) the Uranium Mill Tailings Radiation Control Act of 1978 (42 U.S.C. Section 7901 et seq.) ("UMTRCA");

(xiv) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.) ("OSHA");

(xv) all other Federal Governmental Rules which govern Hazardous Substances; and

(xxi) and all state and local Governmental Rules which govern Hazardous Substances in any state or local jurisdiction in which a Project is located, and the regulations adopted and publications promulgated pursuant to all such foregoing laws.

"Hedge Breaking Fees" means all reasonable costs, fees and expenses incurred by Borrower in connection with any unwinding, breach or termination of the Hedge Transactions, all to the extent provided in and calculated pursuant to the applicable Interest Rate Agreements.

"Hedge Transaction" means any "Transaction" (such as swaps, caps, collars or floors) entered into under an Interest Rate Agreement.

"Improvements" has the meaning given in the granting clause in the Deeds of Trust.

"Inchoate Default" means any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time and/or the giving of notice, would constitute an Event of Default.

"Independent Consultants" means, collectively, the Insurance Consultant, the Fuel Consultant, the Independent Engineer, the Power Marketing Consultant or their successors appointed pursuant to the Credit Agreement.

"Independent Engineer" means R.W. Beck, Inc., or its successor appointed pursuant to the Credit Agreement.

"Information Memorandum" means the descriptive Information Memorandum with respect to the Projects, Turbines and Credit Agreement prepared by Co-Syndication Agents in consultation with Borrower for use in connection with the syndication of the Commitments.

"Initial Contribution" means the Contributions described in Section 3.1.23 of the Credit Agreement.

"Initial Projects" means, collectively, the natural gas-fired power generating plants utilizing commercially accepted technology located on the respective Sites, all as further described in Exhibit G-1 to the Credit Agreement, as such Exhibit may be amended as the result of the replacement of an Initial Project with a Substituted Initial Project (which Substituted Initial Project shall thereafter be considered an Initial Project) together with all buildings, structures or improvements erected on the respective Sites and the respective Easements with respect to such Sites, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all Parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, and all other real and tangible and intangible personal property owned by a Project Owner or by an Equipment Finance Company and leased to a Project Owner and placed upon or used in connection with such natural gas-fired power generating plants, whether located upon the respective Sites and Easements or otherwise; each individually, an "Initial Project."

"Insurance Consultant" means Marsh USA Inc. or its successor appointed pursuant to the Credit Agreement.

"Insurance Proceeds" has the meaning given in Section 7.5.1 of the Credit Agreement.

"Intermediate Parents" means, collectively, each of the wholly-owned Subsidiaries of Borrower that holds a direct or indirect ownership interest in a Project Owner, an Equipment Finance Company or a Turbine Owner, including, without limitation, Development Company and CCFC II Equipment Finance Company.

"Interest Period" means, with respect to any LIBOR Loan, the time period selected by Borrower which commences on the first day of such Loan or the effective date of any conversion (as the case may be) and ends on the last day of such time period, provided that no single day shall be deemed to be a part of two Interest Periods.

"Interest Rate" means the Base Rate or the LIBO Rate, as the case may be.

"Interest Rate Agreements" means any ISDA Master Agreement and the schedules thereto between Borrower and the counterparty(ies) thereto and the transaction confirmations thereunder.

"Inventory" means "inventory," as defined in the UCC, of the Portfolio Entities.

"Joint Venture Agreement" has the meaning given in Section 3.3.2 of the Credit Agreement.

"Joint Venturers" has the meaning given in Section 3.3.2 of the Credit Agreement.

"LC Action" has the meaning given in Section 3.8 of the Credit Agreement.

"LC Bank" means Bayerische Landesbank Girozentrale or, from time to time, the Bank approved by such Bank, Borrower and Administrative Agent that issues the Letters of Credit, in its capacity as such issuer.

"LC Beneficiary" means the account beneficiary under a Letter of Credit, or any assignee or transferee of such beneficiary with respect to the rights of such beneficiary under such Letter of Credit.

"Lead Arrangers" means each of Credit Suisse First Boston, New York Branch and The Bank of Nova Scotia as the lead arrangers of the Commitments.

"Leases" mean all contracts or agreements approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by or on behalf of a Project Owner for the leasing of a Site for a Project.

"Legal Requirements" means, as to any Person, the articles of incorporation, bylaws or other organizational or governing documents of such Person, and any requirement under a Permit, and any Governmental Rule in each case applicable to or binding upon such Person or any of its properties or to which such Person or any of its property is subject.

"Lending Office" means, with respect to any Bank, the office designated as such beneath the name of such Bank on Exhibit H of the Credit Agreement or such other office of such Bank as such Bank may specify from time to time to Administrative Agent and Borrower.

"Letter of Credit" means a letter of credit issued by LC Bank pursuant to Section 2.2 of the Credit Agreement in substantially the format of letters of credit generally issued by LC Bank.

"Letter of Credit Commitment" means, at any time with respect to each Bank, such Bank's Proportionate Share of the Total Letter of Credit Commitment at such time.

"Letter of Credit Fee" has the meaning given in Section 2.5.1 of the Credit Agreement.

"LIBO Rate" means, with respect to any LIBOR Loan for any Interest Period, the rate per annum determined by Administrative Agent at approximately 11:00 a.m. (London time) on the date which is two Business Days prior to the beginning of such Interest Period by reference to the British Bankers' Association Interest Settlement Rates for deposits in Dollars (as set forth by any service selected by Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; provided that, to the extent that an interest

rate is not ascertainable pursuant to the foregoing provisions of this definition the "LIBO Rate" shall be the interest rate per annum determined by Administrative Agent to be the average of the rates per annum at which deposits in Dollars are offered for such Interest Period to major banks in the London interbank market in London, England by Administrative Agent at approximately 11:00 a.m. (London time) on the date which is two Business Days prior to the beginning of such Interest Period. Each determination by Administrative Agent pursuant to this definition shall be conclusive absent manifest error.

"LIBOR Construction Loan" has the meaning given in Section 2.1.1(b)(i) of the Credit Agreement.

"LIBOR Loans" means, collectively, the LIBOR Construction Loans and the LIBOR Turbine Purchase Loans.

"LIBOR Turbine Purchase Loans" has the meaning given in Section 2.1.2(b)(i) of the Credit Agreement.

"Lien" on any asset means any mortgage, deed of trust, lien, pledge, charge, security interest, or easement or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected or effective under applicable law, as well as the interest of a vendor or lessor under any conditional sale agreement, capital lease or other title retention agreement relating to such asset.

"Liquidation Costs" has the meaning given in Section 2.9 of the Credit Agreement.

"Limited Liability Company Agreement" means that certain Limited Liability Company Agreement of CCFC II, LLC, dated as of October 16, 2000 and executed by the Member.

"Loan" means, collectively, the Construction Loans and the Turbine Purchase Loans.

"Loan Availability Period" means the period from the Closing Date to the Loan Maturity Date.

"Loan Commitment" means, at any time with respect to each Bank, such Bank's Proportionate Share of the Total Loan Commitment at such time.

"Loan Maturity Date" means the date that is the earliest to occur of  
(a) the acceleration of the Obligations upon and during the occurrence and continuance of an Event of Default and (b) the Date Certain.

"Los Medanos Energy Center Project" means the Initial Project titled "Los Medanos Energy Center" set forth on Exhibit G-1 to the Credit Agreement.

"Loss Proceeds Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Maintenance Contracts" means, collectively, the contracts or agreements approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, a Project Owner or an Equipment Finance Company for the supply of maintenance services for a Project.

"Maintenance Provider" means any entity approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as maintenance provider under a Maintenance Contract.

"Major Construction Contracts" means, collectively, the Construction Management Agreement, the Prime Construction Contract, the Engineering Contract and the Power Island Supply Contract for the Project to which it relates.

"Major Contractors" means, collectively, with respect to a given Project, the Construction Manager, the Prime Contractor, the Project Engineer and the Power Island Supplier, if any, for such Project.

"Major Fuel Supplier" means the Fuel Supplier under a Major Gas Supply Contract.

"Major Gas Supply Contract" means, collectively, (i) one or more Gas Supply Contracts, with the same Fuel Supplier for the same Project, for more than 17,000 MMBtu/day in the aggregate (calculated on a yearly average basis) for a given Project with a term of more than two years or (ii) any Gas Supply Contract with an Affiliate of Borrower.

"Major Gas Transportation Agreement" means, collectively, (i) one or more Gas Transportation Agreements, with the same Fuel Transporter for the same Project, for more than 17,000 MMBtu/day in the aggregate (calculated on a yearly average basis) for a given Project with a term of more than two years and (ii) any Gas Transportation Agreement with an Affiliate of Borrower.

"Major Gas Transporter" means the Gas Transporter under a Major Gas Transportation Agreement.

"Major Maintenance" means labor, materials and other direct expenses for any overhaul of, or major maintenance procedure for, the Projects which requires significant disassembly or shutdown of any of the Projects pursuant to manufacturers' guidelines or recommendations, engineering or operating considerations or the requirements of any applicable Legal Requirement, including, without limitation, fees payable under the Maintenance Contracts.

"Major Power Purchase Agreement" means one or more Power Purchase Documents, with the same power purchaser for the same Project, for more than 100 MW in the aggregate (calculated on a yearly average basis) of capacity and/or firm energy from a given Project with a term of more than two years.

"Major Power Purchaser" means the Power Purchaser under a Major Power Purchase Agreement.

"Major Project Documents" means, collectively, with respect to a given Project, the Major Construction Contracts, the Project Management Agreement, the Power Marketing Agreement, the Fuel Management Agreement, the Maintenance Contract, any Major Gas Supply Contracts, the Affiliated Party Agreement Guaranty, any guaranty agreements executed by Persons other than Calpine in favor of the relevant Project Owner pursuant to Sections 3.2.34, 3.3.36 and 6.8 of the Credit Agreement, any Major Gas Transportation Agreements, any Major Power Purchase Agreements, the Lease, if any, of the applicable Site, the O&M Agreement, the Equipment Lease, if any, and any Joint Venture Agreement, if any, for such Project.

"Major Project Participants" means Borrower, the Member, Calpine, and, with respect to each Project, the Project Owner, the Operator, the Project Manager, the Power Marketer, the Fuel Manager, the Maintenance Provider, the lessor under the Lease, if any, of the applicable Site, each Major Contractor, each Major Power Purchaser, each Major Fuel Supplier, each Major Gas Transporter, each guarantor that executes a guaranty agreement (other than Calpine) in favor of a Project Owner pursuant to Sections 3.2.34, 3.3.36 and 6.8 of the Credit Agreement, the Equipment Finance Company, if any, and each Joint Venturer, if any, for such Project.

"Major Subcontractor" means any subcontractor party to a subcontract with a Major Contractor providing for the payment to such subcontractor of \$100,000 or more.

"Mandatory Prepayment" has the meaning specified in Section 2.1.7(c) of the Credit Agreement.

"Material Adverse Effect" means

(a) a material adverse change (i) with respect to Borrower, in the business, property, results of operation or financial condition of Borrower, the other Portfolio Entities, the Initial Projects, the Funded Subsequent Projects, and the Funded Turbines taken as a whole, or Calpine, and (ii) with respect to an individual Initial Project, Funded Subsequent Project or related Project Owner, in the business, property, results of operating or financial condition of such Project and the relevant Project Owner taken as a whole; provided that a change in any Bank's or the Power Marketing Consultant's or Fuel Consultant's view of future price of electricity or gas is not a Material Adverse Effect; or

(b) any event or occurrence of whatever nature (but specifically excluding a change in any Bank's or the Power Marketing Consultant's or the Fuel Consultant's view of the future price of electricity or gas) which could reasonably be expected to materially and adversely affect:

(i) the Portfolio Entities' ability to perform their obligations under the Credit Documents or, with respect to an individual Initial Project, Funded Subsequent Project or Funded Turbine, the ability of such Project, relevant Project Owner, relevant Major Project Participant or relevant Turbine Purchase Contractor to perform its obligations

under a Project Document or Turbine Purchase Contract, as the case may be, where such inability to perform will have a material and adverse effect on the completion of the construction or operation of such Project or the purchase and operation of such Turbine, as the case may be, or

(ii) the Banks' security interests in the Collateral.

"Maturity" or "maturity" means, with respect to any Loan, Borrowing, interest, fee or other amount payable by Borrower under the Credit Agreement or the other Credit Documents, the date such Loan, Borrowing, interest, fee or other amount becomes due, whether upon the stated maturity or due date, upon acceleration or otherwise.

"Maximum Debt to Capitalization Ratio" means [\*].

"Member" means Calpine CCFC II Holdings, Inc., a Delaware corporation.

"Minimum Notice Period" means at least three Banking Days before the date of any Borrowing or conversion of Type of Loan resulting in whole or in part of LIBOR Loans and at least one Banking Day before any Borrowing or conversion of Type of Loan resulting in whole of Base Rate Loans.

"Moody's" means Moody's Investors Service, Inc.

"Mortgaged Properties" has the meaning given in the granting clauses of the Deeds of Trust.

"Multiemployer Plan" means any multiemployer plan (as defined in Section 3(37) of ERISA).

"NERC Region" means one of the ten geographic areas within the United States, Canada and a portion of Baja California Norte designated as a "region" by the North American Electric Reliability Counsel.

"Net Worth" means, at any time, the aggregate net equity of the Portfolio Entities set forth in the balance sheet of the Portfolio Entities, prepared in accordance with GAAP.

"Non-Advancing Bank" has the meaning given in Section 10.12 of the Credit Agreement.

"Non-Affiliated Parents" means, collectively, each Person other than Borrower or a wholly-owned Subsidiary of Borrower who directly owns equity interests in a Project Owner.

"Non-Fundamental Project Default" with respect to any Initial Project or Funded Subsequent Project means the occurrence of any of the following events with respect to such Project:

(a) Breach of Project Documents.

(i) Portfolio Entities. Any of the relevant Portfolio Entities shall be in breach of any term, condition, provision, covenant, representation, warranty or obligation, or in default, under a Project Document relating to such Project, and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days; provided that if (A) such breach cannot be cured within such 30 day period, (B) such breach is susceptible of cure within 90 days, (C) the relevant Portfolio Entity is proceeding with diligence and in good faith to cure such breach, (D) the existence of such breach has not had and could not after considering the nature of the cure, be reasonably expected to give rise to termination by the counterparty to the Project Document which is subject to breach or to otherwise have a Material Adverse Effect on such Project and (E) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer of Borrower to the effect of clauses (A), (B), (C) and (D) above and stating what action such Portfolio Entity is taking to cure such breach, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Portfolio Entity diligently to cure such breach.

(ii) Third Party. A party other than the relevant Portfolio Entities shall be in breach of, or in default under, a Project Document relating to such Project or any Consent, or any Equity Document (other than the Project Completion Guaranty), such breach could reasonably be expected to have a Material Adverse Effect on such Project, and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days; provided that if (A) such breach cannot be cured within such 30 day period, (B) such breach is susceptible of cure within 90 days, (C) the breaching party is proceeding with diligence and in good faith to cure such breach, and (D) the existence of such breach has not had and could not after considering the nature of the cure, be reasonably expected to have a Material Adverse Effect on such Project then, such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such third party diligently to cure such breach; provided further that, no Event of Default shall be declared as a result of any such action if the relevant Portfolio Entity obtains a Replacement Obligor for the affected party within the 90 day cure period referred to in this paragraph (or within the 30 day cure period, if no extension is given) and such action has not had and does not have prior to so obtaining such Replacement Obligor a Material Adverse Effect on such Project.

(iii) Termination. Any material provision in any Project Document relating to such Project shall for any reason cease to be valid and binding on any party thereto (other than the relevant Portfolio Entities) except upon fulfillment of such party's obligations thereunder (or any such party shall so state in writing), or shall be declared null and void, or the validity or enforceability thereof shall be contested by any party thereto (other than Administrative Agent and the Banks) or any Governmental Authority, or any such party shall deny that it has any liability or obligation thereunder, except upon fulfillment of its obligations thereunder, and such occurrence could reasonably be expected to have a Material Adverse Effect on such Project; provided that no Event of Default shall occur as a result of such breach or default if the relevant Portfolio Entity obtains a Replacement Obligor for the affected party within 90 days thereafter and, such breach or default has not had and does not have prior to so obtaining such Replacement Obligor, a Material Adverse Effect on such Project.

(b) Breach of Covenants. Borrower or the relevant Project Owner under its respective Project Owners Guaranty shall fail to perform or observe any of the covenants (in the case of the relevant Project Owner, as if such covenants were fully set forth and incorporated in its respective Project Owners Guaranty) set forth in Section 5.2.2, 5.3, 5.4 (if the event with respect to which notice is required to be given relates to such Project), 5.5 (if the party whose financial statements were not properly delivered is not a Calpine Affiliate), 5.6 (with respect to books, records and accounts of such Project), 5.7 (if the failure to comply with the Legal Requirement relates to such Project), 5.8, 5.9(b), (c), (d), (e) or (f), 5.13, 5.14, 5.15, 5.16.1, 5.16.3, 5.21, 5.22, 5.23, 6.14, 6.20 or 6.23 and such failure shall continue unremedied for a period of 30 days after Borrower becomes aware thereof or receives written notice thereof from Administrative Agent provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure, (iii) the relevant Project Owner is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and cannot after considering the nature of the cure be reasonably expected to have a Material Adverse Effect on such Project and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer of Borrower to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action the relevant Project Owner is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for such Project Owner diligently to cure such failure.

(c) Material Adverse Effect. The occurrence of any event or circumstance having a Material Adverse Effect on such Project.

(d) Omissions. Any financial statement, representation, warranty or certificate made or prepared by, under the control of or on behalf of a Portfolio Entity and furnished to Administrative Agent, the Lead Arrangers, the Technical Committee or any Bank pursuant to this Agreement, or in any separate statement or document to be delivered to Administrative Agent or any Bank hereunder or under any other Credit Document, shall contain an untrue or misleading statement of a material fact or shall fail to state a material fact necessary to make the statements therein not misleading as of the date made, in either case, which could reasonably be expected to result in a Material Adverse Effect on such Project.

"Non-Fundamental Project Inchoate Default" means, with respect to any Initial Project or Funded Subsequent Project, any occurrence, circumstance or event, or any combination thereof, which, with the lapse of time or giving of notice, would constitute a Non-Fundamental Project Default with respect to such Project.

"Nonrecourse Persons" has the meaning given in Article 9 of the Credit Agreement.

"Notice of Borrowing" means a Notice of Construction Borrowing or a Notice of Turbine Purchase Borrowing, as appropriate.

"Note" has the meaning given in Section 2.1.4 of the Credit Agreement.

"Notice of Construction Borrowing" has the meaning given in Section 2.1.1(b) of the Credit Agreement.

"Notice of Conversion of Loan Type" has the meaning given in Section 2.1.6 of the Credit Agreement.

"Notice of LC Activity" has the meaning given in Section 2.2.3 of the Credit Agreement.

"Notice of Turbine Purchase Borrowing" has the meaning given in Section 2.1.2(b) of the Credit Agreement.

"O&M Agreement" means the contracts or agreements approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, a Project Owner for the operation or maintenance of a Project.

"O&M Costs" means all actual cash maintenance and operation costs incurred and paid for any Project in any particular calendar or fiscal year or period to which said term is applicable, including payments for fuel, additives or chemicals and transportation costs related thereto, replacement energy, capacity and other products or services required to be obtained by a Project Owner under any Power Purchase Agreement, Major Maintenance costs, local, sales and real estate taxes, income taxes of any Portfolio Entity, insurance, consumables, payments made in connection with the requirements of any Permit or Legal Requirement, payments under any lease (including an Equipment Lease), payments pursuant to the agreements for the management, operation and maintenance of the applicable Project, payments for goods or services, including project management, power marketer and fuel management services, provided or rendered to the owner of such Project, legal, accounting and consulting fees and expenses paid by the owner of such Project in connection with the management, maintenance or operation of Project, fees paid in connection with obtaining, transferring, maintaining or amending any Permits and reasonable general and administrative expenses, but exclusive in all cases of non-cash charges, including depreciation or obsolescence charges or reserves therefor, amortization of intangibles or other bookkeeping entries of a similar nature, and also exclusive of all interest charges and charges for the payment or amortization of principal of indebtedness of the owner of the applicable Project. O&M Costs shall not include (a) distributions of any kind (as opposed to payments for goods or services) to a Project Owner or its Affiliates, (b) depreciation, (c) capital expenditures other than those incurred in an emergency included in and approved as part of an Annual Operating Budget or (d) payments for restoration or repair of such Project from the Loss Proceeds Account in accordance with the terms of the Credit Agreement. In the case of Projects that are not wholly-owned by a Project Owner, O&M Costs shall consist of a pro rata portion (based on such Project Owner's ownership percentage in such Project) of the amounts of costs described above.

"Obligations" means and includes, with respect to any Person, all loans, advances, debts, liabilities, and obligations, howsoever arising, owed by such Person to Administrative Agent, LC Bank, Lead Arrangers, Technical Committee or the Banks of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, pursuant to the terms of the Credit Agreement or any of the other Credit Documents, including all interest, fees, charges, expenses, attorneys' fees and accountants fees chargeable to such Person and payable by such Person hereunder or thereunder.

"Oneta Energy Center Project" means the Initial Project titled "Oneta Energy Center" set forth on Exhibit G-1 to the Credit Agreement.

"Operating Account" has the meaning given in Section 7.3.1 of the Credit Agreement.

"Operation" means, with respect to any Project, the commencement of performance testing with respect to such Project.

"Operative Documents" means the Credit Documents, the Project Documents, the Turbine Purchase Contracts and any Additional Project Documents.

"Operator" means any wholly-owned subsidiary of Calpine or any other Person approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as operator under an O&M Agreement.

"Other Taxes" has the meaning given in Section 2.6.4(a) of the Credit Agreement.

"Outstanding Committed Credit" means, as of a given date, the total of the aggregate principal amount of all Loans then outstanding.

"Parts" means any part, appliance, instrument, appurtenance, accessory or other property of any nature necessary or useful to the operation, maintenance, service or repair of a Project.

"PBGC" means the Pension Benefit Guaranty Corporation or any entity succeeding to any or all of its functions under Title IV of ERISA.

"Performance Tests" means, for any Project, the "acceptance tests" or "performance tests" (however defined) under the Major Construction Contracts for such Project.

"Permit" means any action, approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, right or license of or from a Governmental Authority.

"Permit Schedule" has the meaning given in Section 3.2.18 of the Credit Agreement.

"Permitted Debt" means: (a) indebtedness incurred under the Credit Documents, (b) indebtedness to any party pursuant to the terms of an Operative Document, not more than 90 days past due or being contested in good faith and by appropriate proceedings, (c) trade or other similar indebtedness incurred in the ordinary course of business (but not for borrowed money) (i) not more than 90 days past due, or (ii) being contested in good faith and by appropriate proceedings, (d) contingent liabilities permitted pursuant to Section 6.1 of the Credit Agreement, (e) indebtedness incurred pursuant to a Contribution, (f) Interest Rate Agreements with an aggregate notional amount not to exceed at any time the Outstanding Committed Credit, (g) Contributions in the form of subordinated debt, (h) Portfolio Entity Debt, (i) indebtedness incurred by the Delta Energy Center Project Owner pursuant to the Calpine DEC Credit Agreement, such indebtedness to be subordinated to the indebtedness incurred under the Credit

Documents pursuant to a subordination agreement in form and substance satisfactory to Administrative Agent and (j) rights under Equipment Leases.

"Permitted Encumbrances" means (a) with respect to the Funded Projects, those liens, encumbrances or other exceptions to title satisfactory to the Technical Committee and specified on a Title Policy pursuant to Sections 3.2.28(a), 3.3.30(a) and 3.3.41 of the Credit Agreement, and (b) with respect to the Unfunded Subsequent Projects, those liens, encumbrances, or other exceptions to title which do not result in a Material Adverse Effect on Borrower.

"Permitted Investments" means (i) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality thereof (provided that the full faith and credit of the United States of America is pledged in support thereof) having a maturity not exceeding one year from the date of issuance, (ii) time deposits and certificates of deposit of any Bank or any domestic commercial bank rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's having capital and surplus in excess of \$500,000,000, (iii) commercial paper of any domestic corporation rated at least A-1 or the equivalent thereof by S&P or at least P-1 or the equivalent thereof by Moody's and, in each case, having a maturity not exceeding 90 days from the date of acquisition, (iv) fully secured repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clause (i) above entered into with any bank meeting the qualifications established in clause (ii) above and (v) money market mutual funds.

"Permitted Liens" means (a) the rights and interests of the Banks as provided in the Credit Documents, (b) Liens for any tax, assessment or other governmental charge, either secured by a bond or other security reasonably acceptable to Administrative Agent or not yet due or being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of an Initial Project or a Funded Subsequent Project, or the related Site or any related Easements, or a Funded Turbine, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of such Project, Site or any Easements, or (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any taxes, assessments or other charges determined to be due will be promptly paid in full when such contest is determined, (c) materialmen's, mechanics', workers', repairmen's, employees' or other like Liens, junior in right of payment to the Lien of the Collateral Documents or for which the Banks are otherwise indemnified, arising in the ordinary course of business or in connection with the construction of an Initial Project or a Funded Subsequent Project or the purchase of a Funded Turbine, either for amounts not yet due or for amounts being contested in good faith and by appropriate proceedings, so long as (i) such proceedings shall not involve any substantial danger of the sale, forfeiture or loss of such Project or the related Site or any related Easements or such Turbine, as the case may be, title thereto or any interest therein and shall not interfere in any material respect with the use or disposition of such Project, Site or Easements, or such Turbine, or (ii) a bond or other security reasonably acceptable to Administrative Agent has been posted or provided in such manner and amount as to assure Administrative Agent that any amounts determined to be due will be promptly paid in full when such contest is determined, (d) Liens arising out of judgments or awards so long as an appeal or proceeding for review is being prosecuted in good

faith and for the payment of which adequate reserves, bonds or other security reasonably acceptable to Administrative Agent have been provided or are fully covered by insurance, (e) Permitted Encumbrances, (f) Liens, deposits or pledges to secure statutory obligations or performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or for purposes of like general nature in the ordinary course of its business, not to exceed \$2,000,000 in the aggregate at any time, and with any such Lien to be released as promptly as practicable, (g) other Liens incident to the ordinary course of business that are not incurred in connection with the obtaining of any loan, advance or credit and that do not in the aggregate materially impair the use of the property or assets of the Portfolio Entities or the value of such property or assets for the purposes of such business, (h) involuntary Liens as contemplated by the Operative Documents (including a lien of an attachment, judgment or execution) securing a charge or obligation, on the Portfolio Entities' property, either real or personal, whether now or hereafter owned in the aggregate sum of less than \$1,000,000, (i) with respect to the Delta Energy Center Project, Liens securing indebtedness incurred pursuant to the Calpine DEC Credit Agreement which are subordinated to the Liens under the Credit Documents pursuant to a subordination agreement in form and substance satisfactory to Administrative Agent and (j) rights under any Equipment Lease.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, Governmental Authority or any other entity whether acting in an individual, fiduciary or other capacity.

"Plans and Specifications" means, collectively, the plans and specifications for the construction and design of the Projects, including any document describing the scope of work performed by the Contractors under the Construction Contracts or any other contract for the construction of the Projects and any transmission or other interconnection facilities, all work drawings, engineering and construction schedules, project schedules, project monitoring systems, specifications status lists, material and procurement ledgers, drawings and drawing lists, manpower allocation documents, management and project procedures documents, project design criteria, and any other document referred to in the Construction Contracts or any of the documents referred to in this definition.

"Pledge Agreements (Pledged Equity Interests)" means, collectively, each Pledge Agreement (Pledged Equity Interests), in substantially the form of Exhibit D-9 to the Credit Agreement, executed by the Member, a Portfolio Entity (other than a Project Owner, an Equipment Finance Company or a Turbine Owner (unless such Equipment Finance Company or Turbine Owner is also an Intermediate Parent)) or a Non-Affiliated Parent, as the case may be, pursuant to Section 3.1, 3.2, 3.3 or 3.5, as the case may be, with respect to Pledged Equity Interests held by such Person in favor of Administrative Agent.

"Pledged Equity Interests" means the equity interests of each Portfolio Entity, such equity interests being pledged as security to Administrative Agent by the Member, the Portfolio Entities (other than the Project Owners, the Equipment Finance Companies and the Turbine Owners (unless such Equipment Finance Companies or Turbine Owners are also Intermediate Parents)) or the Non-Affiliated Parents, as the case may be, pursuant to the Pledge Agreements (Pledged Equity Interests).

"Portfolio Entities" means, collectively, Borrower, the Project Owners and their Intermediate Parents, the Equipment Finance Companies and their Intermediate Parents and the Turbine Owners and their Intermediate Parents.

"Portfolio Entity Debt" means collectively, the subordinated loans made by (a) Borrower to Development Company or CCFC II Equipment Finance Company and (b) Development Company or CCFC II Equipment Finance Company (or their successors) to each of the Project Owners, Turbine Owners and Equipment Finance Companies, as applicable, in each case evidenced by the Portfolio Entity Notes in accordance with Section 7.14 of the Credit Agreement.

"Portfolio Entity Notes" means, collectively, each of the promissory notes, in substantially the form of Exhibit D-10 to the Credit Agreement, (a) issued by a Project Owner, a Turbine Owner or an Equipment Finance Company in favor of Development Company or CCFC II Equipment Finance Company and (b) issued by Development Company or CCFC II Equipment Finance Company in favor of Borrower, such Portfolio Entity Notes being pledged as security to Administrative Agent by Development Company, CCFC II Equipment Finance Company and Borrower pursuant to the Development Company Security Agreement, the CCFC II Equipment Finance Company Security Agreement and the Borrower Security Agreement, respectively.

"Power Island Supplier" means the Turbine Purchase Contractor or any entity approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as supplier under one or more Power Island Supply Contracts.

"Power Island Supply Contracts" means, collectively, the contracts or agreements for the purchase or supply of the "power island" (combustion turbines, steam turbine, HRSGs, etc.) for a Project (including any Turbine Purchase Contract related thereto) between the Project Owner, the Turbine Owner or the Equipment Finance Company, if any, and the Power Island Suppliers for such Project and approved by the Technical Committee pursuant to Section 3.2 or 3.3, as the case may be, of the Credit Agreement.

"Power Marketer" means any wholly-owned subsidiary of Calpine or any other Person approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as power marketer under a Power Marketing Agreement.

"Power Marketing Agreement" means, collectively, for each Project, the power marketing agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement and entered into by the Project Owner with respect to such Project.

"Power Marketing Consultants" means for each Project, the nationally recognized independent power marketing consultants providing power marketing consulting services with respect to such Project to the Banks or their representatives.

"Power Marketing Plan" means, collectively, the power marketing plans delivered by Borrower pursuant to Sections 3.2.16, 3.3.17 and 3.3.41 of the Credit Agreement.

"Power Purchase Documents" means, collectively, for each Project, contracts or agreements entered into by, or on behalf of, the Project Owner with respect to such Project in accordance with the Credit Agreement for the sale of electrical and/or steam energy or capacity or any ancillary or other related services, including transmission services, from such Project.

"Power Purchaser" means any Person who is purchasing electrical and/or steam energy or capacity or ancillary or other related services pursuant to any Power Purchase Document.

"Prime Construction Contracts" means, for each Project, the contract or agreement approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, the Project Owner with respect to such Project for either (i) the design and construction of the entire Project on a "turnkey" basis or (ii) the construction of that portion of the Project not included within the scope of the Power Island Supply Contract pursuant to plans or designs prepared by the Project Engineer for such Project.

"Prime Contractor" means any entity approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as prime contractor under a Prime Construction Contract.

"Proceeds" has the meaning given in Section 7.9 of the Credit Agreement.

"Prohibited Transaction" means any transaction set forth in Section 406 of ERISA or Section 4975 of the Code which is not exempt under Section 408 of ERISA or Section 4975 of the Code.

"Project" means an Initial Project or a Subsequent Project; collectively, the "Projects".

"Project Budget" means, collectively, the project budgets delivered by Borrower pursuant to Sections 3.1.14, 3.3.25 and 3.3.41 of the Credit Agreement.

"Project Completion Guaranty" means the Project Completion Guaranty dated as of October 16, 2000 on substantially the form of Exhibit D-2B to the Credit Agreement executed by Calpine in favor of Administrative Agent.

"Project Costs" means, with respect to any Project or any Portfolio Entity, the cost of the development, design, engineering, acquisition, equipping, construction, assembly, inspection, testing, completion, and start-up of a Project, including: (a) all amounts payable under the Construction Contracts, any contractor bonuses, site acquisition and preparation costs, any interconnection and transmission upgrade costs payable by a Project Owner pursuant to the Power Purchase Documents, all steam and water interconnection costs, all costs related to water clarification facilities and/or water treatment facilities and all costs of acquisition and construction of natural gas fuel handling and processing equipment (if any) and interconnection

expenses payable pursuant to the Gas Supply Contracts and the Gas Transportation Agreements after the Closing Date; (b) financing, advisory, legal and other fees; (c) all other costs, including fuel-related costs and prepaid fuel costs, management services fees and expenses and expenses to complete the acquisition, construction and financing of such Project; (d) interest and fees payable on or in respect of any Note or Loan Commitments pursuant to the Credit Agreement prior to Final Completion of such Project; (e) payments and fees under the Interest Rate Agreements; provided, however, that "Project Costs" shall not include any contingency and (f) the initial working capital for a Project as included in the applicable Project Budget. Project Costs with respect to a Funded Project shall include Turbine Costs for Turbines assigned or leased to such Project regardless of whether such Turbine Costs were funded by Turbine Purchase Loans prior to such Project becoming a Funded Project. Except as otherwise set forth in Section 3.3.2 or 3.3.41 of the Credit Agreement, in the case of Projects that are not wholly owned by a Project Owner, Project Costs shall consist of a pro rata portion (based on such Project Owner's ownership percentage in such Project) of the amounts of costs described above.

"Project Documents" means, collectively, agreements or documents relating to the development, construction or operation of any Project, including Turbine Purchase Contracts assigned to a Project Owner, entered into by a Project Owner, a Turbine Owner or an Equipment Finance Company and approved by the Technical Committee in accordance with and to the extent required under Section 3.2 or 3.3, as the case may be, of the Credit Agreement.

"Project Engineer" means any entity approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as project engineer under an Engineering Contract.

"Project Management Agreement" means, collectively, each agreement or document relating to the provision of management services to a Project, entered into by the Project Owner with respect to such Project and approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement.

"Project Manager" means any wholly-owned subsidiary of Calpine or any other Person approved by the Technical Committee in accordance with Section 3.2 or 3.3, as the case may be, of the Credit Agreement in its capacity as project manager under a Project Management Agreement.

"Project Operating Revenues" means all payments received by a Project Owner under the Power Purchase Documents (excluding damages, liquidated damages and certain other payments described in Section 7.7 of the Credit Agreement to the extent deposited in the Loss Proceeds Account), proceeds of any business interruption insurance, income derived from the sale or use of electric or thermal capacity or energy transmitted or distributed by any Project, payments for remarketing of fuel or transportation rights relating thereto, and net payments, if any, received by Borrower under Hedge Transactions, all as determined in conformity with cash accounting principles, and the investment income on amounts in the Accounts (but solely to the extent deposited in the Revenue Account).

"Project Owners" means, collectively, each of the direct or indirect Subsidiaries of Borrower that directly develops and owns all or a portion of an Initial Project or a Funded Subsequent Project in accordance with the Credit Agreement.

"Project Owner Guaranties" means, collectively, each Project Owner Guaranty, in substantially the form of Exhibit D-4A to the Credit Agreement, executed by each Project Owner pursuant to Sections 3.1, 3.2, or 3.3 of the Credit Agreement, as the case may be, with respect to its respective Project, in favor of Administrative Agent.

"Project Revenues" means all income and receipts of the Portfolio Entities (including Equipment Finance Companies pursuant to Equipment Leases (except as provided in Section 6.6(b) of the Credit Agreement)) derived from the ownership or operation of the Projects, including payments received by the Portfolio Entities under the Power Purchase Documents, Construction Contracts and O&M Agreements (including damages, liquidated damages and certain other payments described in Section 7.7 of the Credit Agreement), proceeds of any delay in start up or business interruption or other insurance, income derived from the sale or use of electric or thermal capacity or energy transmitted or distributed by any Project, payments for remarketing of fuel or transportation rights relating thereto, and net payments, if any, received by Borrower under Hedge Transactions, together with any receipts derived from the sale of any property pertaining to any Project or incidental to the operation of any Project, all as determined in conformity with cash accounting principles, the investment income on amounts in the Accounts (but solely to the extent deposited in the Revenue Account), the proceeds of any condemnation awards relating to any Project and proceeds from the Collateral Documents with respect to Projects.

"Projects Five Through Twelve" means, collectively, each of the fifth through twelfth Projects to become a Funded Project.

"Projects One Through Four" means, collectively, each of the first four Initial Projects to become a Funded Project.

"Project Schedules" means, collectively, the project schedules delivered by Borrower pursuant to Sections 3.1.15, 3.2.25, 3.3.26 and 3.3.41 of the Credit Agreement.

"Project/Turbine Owner Security Agreements" means, collectively, each Project/Turbine Owner Security Agreement, in substantially the form of Exhibit D-4A to the Credit Agreement, executed by a Project Owner or a Turbine Owner pursuant to Section 3.1, 3.2, 3.3 or 3.5 of the Credit Agreement, as the case may be, with respect to its respective Projects or Turbine(s), as the case may be, in favor of Administrative Agent.

"Proportionate Share" means, with respect to each Bank, the percentage participation of such Bank in the Total Loan Commitment, the Total Turbine Purchase Loan Commitment or the Total Letter of Credit Commitment, respectively, as set forth on Exhibit H to the Credit Agreement. Upon any transfer by a Bank of all or part of its Commitments, Administrative Agent may revise Exhibit H to reflect the Banks' Proportionate Shares after giving effect to such transfer.

"Prudent Utility Practices" means those practices, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, as are commonly used by gas fired electric generation stations in the state where a Project is located, as applicable, of a type and size similar to the applicable Project as good, safe and prudent engineering practices in connection with the design, construction, operation, maintenance, repair and use of electrical and other equipment, facilities and improvements of such electrical station, with commensurate standards of safety, performance, dependability, efficiency and economy. Prudent Utility Practices does not necessarily mean one particular practice, method, equipment specification or standard in all cases, but is instead intended to encompass a broad range of acceptable practices, methods, equipment specifications and standards.

"PUC" means, with respect to a Project, the Public Utility Commission, Public Service Commission, or equivalent Government Authority in the state where a Project is located.

"PUHCA" means the Public Utility Holding Company Act of 1935 and all rules and regulations adopted thereunder.

"PURPA" means the Public Utility Regulatory Policies Act of 1978 and all rules and regulations adopted thereunder.

"Qualifying Facility" means a qualifying facility within the meaning of PURPA.

"Receivables" means "accounts" and "general intangibles", as such terms are defined in Section 9-106 of the UCC, of the Portfolio Entities and any chattel paper, document or instrument relating to any such account or general intangible and any security agreement, lease or other contract securing any of the foregoing.

"Regulation D" means Regulation D of the Board of Governors of the Federal Reserve System (or any successor).

"Regulatory Change" means any change after the date of the Credit Agreement in federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits, or the adoption or making after such date of any interpretations, directives or requests of or under any federal, state, local or foreign laws, regulations, Legal Requirements or requirements under Applicable Permits (whether or not having the force of law) by any Governmental Authority charged with the interpretation or administration thereof.

"Reimbursement Obligation" means Borrower's obligation to repay Drawing Payments under any of the Letters of Credit as provided in Sections 2.2.4 and 2.2.5 of the Credit Agreement.

"Reimbursement Payment" means a payment made by or on behalf of Borrower in partial or complete satisfaction of a Reimbursement Obligation, including any interest payment obligation in connection therewith.

"Release" means disposing, discharging, injecting, spilling, leaking, leaching, dumping, pumping, pouring, emitting, escaping, emptying, seeping, placing and the like, into or upon any land or water or air, or otherwise entering into the environment.

"Renewal Notice" has the meaning given in Section 2.11.2 of the Credit Agreement.

"Renewing Bank" has the meaning given in Section 2.11.2 of the Credit Agreement.

"Replacement Bank" has the meaning given in Section 2.11.3 of the Credit Agreement.

"Replacement Obligor" means, with respect to any Person party to a Project Document, any Person satisfactory to the Required Banks and having credit, or acceptable credit support, equal to or greater than that of the replaced Person on the date that the applicable Project Document was entered into (or otherwise acceptable to the Required Banks) who, pursuant to any definitive agreement, definitive guaranty or definitive backup arrangement, in each case reasonably satisfactory to the Required Banks, assumes the obligation of providing the services and/or products on terms and conditions no less favorable to Borrower than those which such Person is obligated to provide pursuant to the applicable Project Document.

"Required Banks" means, at any time, Banks having Proportionate Shares which in the aggregate exceed 66.67%.

"Required Contribution Percentage" means the applicable percentage set forth in the column titled "Required Contribution Percentage" on Schedule 1 to the Credit Agreement related to the period in question.

"Reserve Requirement" means, for LIBOR Loans, the maximum rate (expressed as a percentage) at which reserves (including any marginal, supplemental or emergency reserves) are required to be maintained during the Interest Period therefor under Regulation D by member banks of the Federal Reserve System in New York City with deposits exceeding \$1,000,000,000 against "Eurocurrency liabilities" (as such term is used in Regulation D). Without limiting the effect of the foregoing, the Reserve Requirement shall reflect any other reserves required to be maintained by such member banks by reason of any Regulatory Change against (i) any category of liabilities which includes deposits by reference to which the LIBO Rate or LIBOR Loans is to be determined, (ii) any category of liabilities or extensions of credit or other assets which include LIBOR Loans or (iii) any category of liabilities or extensions of credit which are considered irrevocable commitments to lend.

"Responsible Officer" means, as to any Person, its president, chief executive officer, any vice president, treasurer, or secretary or any managing general partner (or any of the preceding with regard to such managing general partner).

"Revenue Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"S&P" means Standard & Poor's Corporation.

"Santa Rosa - Phase I Project" means the Initial Project titled "Santa Rosa Energy Center 1" set forth on Exhibit G-1 to the Credit Agreement.

"Secured Obligations" has the meaning given in the granting clause of the Deed of Trust.

"Senior O&M Costs" means all O&M Costs except Subordinated O&M Costs.

"Settlement Amount" has the meaning given in Section 5.11.6 of the Credit Agreement.

"Site" has the meaning given in the relevant Deed of Trust.

"SPC " has the meaning given in Section 10.13.2 of the Credit Agreement.

"Stated Amount" means with respect to each Letter of Credit, the total amount available to be drawn thereunder at the time in question in accordance with the terms of such Letter of Credit.

"Subject Companies" has the meaning given in Section 4.11 of the Credit Agreement.

"Subordinated O&M Costs" means all of the O&M Costs that are payable to Affiliates of Borrower to the extent such amounts are subordinated pursuant to the applicable Affiliated Subordination Agreements.

"Subsequent Projects" means, collectively, the natural gas-fired power generating plants utilizing commercially accepted technology located on the respective Sites, all as further described in Exhibit G-2 to the Credit Agreement owned or partially owned by a Project Owner, together with all buildings, structures or improvements erected on the respective Sites and the respective Easements with respect to such Sites, all alterations thereto or replacements thereof, all fixtures, attachments, appliances, equipment, machinery and other articles attached thereto or used in connection therewith and all Parts which may from time to time be incorporated or installed in or attached thereto, all contracts and agreements for the purchase or sale of commodities or other personal property related thereto, all leases of real or personal property related thereto, and all other real and tangible and intangible personal property owned by a Project Owner or by an Equipment Finance Company and leased to a Project Owner and placed upon or used in connection with such natural gas-fired power generating plants, whether located upon the respective Sites and Easements or otherwise; each individually, a "Subsequent Project." Borrower may, in its sole discretion and upon written notice to Administrative Agent, amend, modify or supplement Exhibit G-2 to the Credit Agreement in order to add additional Subsequent Projects to such Exhibit.

"Subsidiary" means, with respect to any Person, (i) any corporation, association, or other business entity (other than a partnership) of which 50% or more of the total voting power of shares of capital stock entitled (without regard to the occurrence of any contingency) to

vote in the election of directors, managers or trustees thereof is at the time of determination owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person of a combination thereof and (ii) any partnership or limited liability company of which 50% or more of the partnership's or limited liability company's, as the case may be, capital accounts, distribution rights or general or limited partnership interests or limited liability company membership interests, as the case may be, are owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of that Person or a combination thereof.

"Substituted Initial Project" means a Subsequent Project that (A) has a substantially similar effect on the projected annual Four-Quarter Portfolio Interest Coverage Ratio as the Initial Project for which it is being substituted as determined by the Required Banks, (B) is 100% owned by its respective Project Owner, (C) satisfies the Diversification Requirements, (D) satisfies each condition precedent set forth in Section 3.1 of the Credit Agreement that would have been applicable to such Subsequent Project (or the relevant Portfolio Entities) if such Subsequent Project was an Initial Project as of the Closing Date, including, without limitation, the delivery to Administrative of the relevant Credit Documents, (E) except for a Subsequent Project being substituted for the Delta Energy Center Project, is not a Designated Project and (F) with respect to the relevant Project Owner's Non-Affiliated Parents, if any, satisfies each condition precedent set forth in Section 3.3 of the Credit Agreement related to Non-Affiliated Parents generally, including, without limitation, the delivery to Administrative of the relevant Credit Documents with respect to such Non-Affiliated Parents, if any.

"Taxes" has the meaning given in Section 2.6.4(a) of the Credit Agreement.

"Technical Committee" has the meaning given in Section 10.17 of the Credit Agreement.

"Telerate Screen" means the display designated as Page 3750 on the Dow Jones Market Screen (or such page as may replace such page for the purpose of displaying London Interbank offered rates of major banks, or, if discontinued, any replacement service designated by Administrative Agent).

"Title Insurer" means, with respect to a Project, the title company issuing a Title Policy pursuant to Section 3.2.28, 3.3.30 or 3.3.41 of the Credit Agreement.

"Title Policy" means, collectively, the title policies delivered by Borrower pursuant to Sections 3.2.28, 3.3.30 and 3.3.41 of the Credit Agreement.

"Total Letter of Credit Commitment" has the meaning given in Section 2.3.3 of the Credit Agreement.

"Total Loan Commitment" has the meaning given in Section 2.3.1 of the Credit Agreement.

"Total Turbine Purchase Loan Commitment" has the meaning given in Section 2.3.2 of the Credit Agreement.

"Turbine" means a natural gas-fired combustion turbine generator or a steam turbine generator or rights thereto ordered and allocated by the manufacturer thereof, together with all alterations thereto or replacements thereof, all contracts and agreements relating thereto, including the Turbine Purchase Contract and/or the appropriate Power Island Supply Contract, and all other tangible and intangible personal property, interests or rights in respect thereof, in each case owned by (a) a Turbine Owner and assigned to an Initial Project or a Subsequent Project with a Turbine Delivery Date, in each case as more fully described on Exhibit G-3 to the Credit Agreement, (b) a Project Owner or (c) an Equipment Finance Company and leased to a Project Owner pursuant to an Equipment Lease. Borrower may, in its sole discretion and upon written notice to Administrative Agent, amend, modify or supplement Exhibit G-3 to the Credit Agreement in order to add additional Turbines to such Exhibit. To the extent title to a Turbine has not been transferred to a Turbine Owner, "Turbine" means the rights to such Turbine under the applicable Turbine Purchase Contract. Once a Turbine has been assigned to a Funded Project or leased to a Project, reference to such Turbine shall be removed from Exhibit G-3 to the Credit Agreement.

"Turbine Costs" means, with respect to any Turbine owned by a Turbine Owner, the sum of (a) all amounts payable under the associated Turbine Purchase Contract; plus (b) interest and fees payable on or in respect of any Note or Loan Commitments pursuant to the Credit Agreement prior to the date such Turbine has been assigned to a Funded Project or is no longer part of the Collateral. Notwithstanding the foregoing, at such time as a Project to which a Funded Turbine has been assigned (as set forth in Exhibit G-3 to the Credit Agreement) becomes a Funded Project, Turbine Costs with respect to such Turbines shall be deemed Project Costs with respect to the corresponding Project and shall thereafter no longer be considered Turbine Costs.

"Turbine Delivery Date" means, with respect to any Turbine, the earliest date upon which such Turbine (or portion thereof) is scheduled to be physically delivered to Turbine Owner or otherwise deemed to be in Turbine Owner's control pursuant to the associated Turbine Purchase Contract, such date being set forth on Exhibit G-3 to the Credit Agreement with respect to each Turbine.

"Turbine Funding Date" means each date of an initial funding of Turbine Purchase Loans for a Turbine pursuant to Section 3.5 of the Credit Agreement.

"Turbine Owners" means, collectively, Borrower and/or each of the direct or indirect Subsidiaries of Borrower that directly owns (a) a Turbine or rights to a Turbine assigned to an Initial Project (as set forth in Exhibit G-3 to the Credit Agreement) or (b) a Funded Turbine or rights to a Funded Turbine. In the event a Turbine Owner leases Turbines to a Project Owner pursuant to an Equipment Lease, such Turbine Owner shall be deemed an Equipment Finance Company and shall no longer be considered a Turbine Owner.

"Turbine Purchase Contractor" means Siemens Westinghouse Power Corporation, a Delaware corporation, or General Electric Company, a New York corporation or, with respect to steam Turbines only, any other Person approved by the Technical Committee.

"Turbine Purchase Contracts" means, collectively, each of the contracts or agreements for the purchase or supply of the Turbines entered into by a Turbine Owner and approved by the Technical Committee pursuant to Section 3.5 of the Credit Agreement.

"Turbine Purchase Credit Event" has the meaning given in Section 3.6 of the Credit Agreement.

"Turbine Purchase Drawdown Certificate" means a certificate delivered to Administrative Agent substantially in the form of Exhibit C-8 to the Credit Agreement.

"Turbine Purchase Guaranty" means the Turbine Purchase Guaranty dated as of October 16, 2000 on substantially the form of Exhibit D-2C to the Credit Agreement executed by Calpine in favor of Administrative Agent, on behalf of the Banks.

"Turbine Purchase Loan" has the meaning given in Section 2.1.2(a) of the Credit Agreement.

"Turbine Purchase Loan Commitment" means, at any time with respect to each Bank, such Bank's Proportionate Share of the Total Turbine Purchase Loan Commitment at such time.

"Turbine Purchase Sub-Accounts" has the meaning given in Section 7.1.1 of the Credit Agreement.

"Type" means the type of Loan, whether a Base Rate Loan or LIBOR Loan.

"UCC" means the Uniform Commercial Code of the jurisdiction the law of which governs the document in which such term is used.

"Unfunded Projects" means, collectively, the Projects other than the Funded Projects.

"Unfunded Subsequent Projects" means, collectively, the Subsequent Projects other than the Funded Subsequent Projects.

"Waterfall Level" has the meaning given in Section 7.2.1 of the Credit Agreement.

"Working Capital Reserve Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Working Capital Reserve Requirement" means an amount equal to the anticipated O&M Costs (including fuel costs) for all Initial Projects and Funded Subsequent Projects then in operation for a 30-day period.

## **RULES OF INTERPRETATION**

1. The singular includes the plural and the plural includes the singular.
2. "or" is not exclusive.
3. A reference to a Governmental Rule includes any amendment or modification to such Governmental Rule, and all regulations, rulings and other Governmental Rules promulgated under such Governmental Rule.
4. A reference to a Person includes its permitted successors and permitted assigns.
5. Accounting terms have the meanings assigned to them by GAAP, as applied by the accounting entity to which they refer.
6. The words "include," "includes" and "including" are not limiting.
7. A reference in a document to an Article, Section, Exhibit, Schedule, Annex or Appendix is to the Article, Section, Exhibit, Schedule, Annex or Appendix of such document unless otherwise indicated. Exhibits, Schedules, Annexes or Appendices to any document shall be deemed incorporated by reference in such document. In the event of any conflict between the provisions of the Credit Agreement (exclusive of the Exhibits, Schedules, Annexes and Appendices thereto) and any Exhibit, Schedule or Annex thereto, the provisions of this Credit Agreement shall control. A reference to any Exhibit, Schedule, Annex or Appendix of the Credit Agreement shall mean such Exhibit, Schedule, Annex or Appendix as, amended, modified or supplemented from time to time in accordance with the Credit Agreement; provided, that no Exhibit, Schedule, Annex or Appendix may be amended, modified or supplemented by Borrower except to the extent specifically permitted in the Credit Agreement.
8. References to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.
9. The words "hereof," "herein" and "hereunder" and words of similar import when used in any document shall refer to such document as a whole and not to any particular provision of such document.
10. References to "days" shall mean calendar days, unless the term "Banking Days" shall be used. References to a time of day shall mean such time in New York, New York, unless otherwise specified.
11. The Credit Documents are the result of negotiations between, and have been reviewed by the Portfolio Entities, Administrative Agent, Lead Arrangers, Arrangers, Co-Documentation Agents, LC Bank, Co-Syndication Agents, Bookrunner each Bank and their respective counsel. Accordingly, the Credit Documents shall be deemed to be the product of all

parties thereto, and no ambiguity shall be construed in favor of or against the Portfolio Entities, Administrative Agent, Lead Arrangers, Arrangers, LC Bank, Co-Documentation Agents, Co-Syndication Agents, Bookrunner or any Bank solely as a result of any such party having drafted or proposed the ambiguous provision.

**EXHIBIT B**  
**to Credit Agreement**

**Note No. \_\_**  
**FORM OF NOTE**

**\$ \_\_\_\_\_ New York, New York**

For value received, the undersigned CALPINE CONSTRUCTION FINANCE COMPANY II, LLC, a Delaware limited liability company ("Borrower"), promises to pay to \_\_\_\_\_ (the "Bank"), or order, at the office of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch as Administrative Agent, located at \_\_\_\_\_, Attn: Manager, Project Finance, in lawful money of the United States of America and in immediately available funds, the principal amount of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or if less, the aggregate unpaid and outstanding principal amount of Loans advanced by the Bank to Borrower pursuant to that certain Credit Agreement, dated as of October 16, 2000 (the "Credit Agreement"), by and among Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, as the same may be amended from time to time, and all other amounts owed by Borrower to the Bank hereunder.

This is one of the Notes referred to in the Credit Agreement and is entitled to the benefits thereof and is subject to all terms, provisions and conditions thereof. Capitalized terms used and not defined herein shall have the meanings set forth in the Credit Agreement.

This Note is made in connection with and is secured by, among other instruments, the provisions of the Collateral Documents. Reference is hereby made to the Credit Agreement and the Collateral Documents for the provisions, among others, with respect to the custody and application of the Collateral, the nature and extent of the security provided thereunder, the rights, duties and obligations of Borrower and the rights of the holder of this Note.

The principal amount hereof is payable in accordance with the Credit Agreement, and such principal amount may be prepaid solely in accordance with the Credit Agreement, including without limitation any prepayment fees and premiums provided for therein.

Borrower further agrees to pay, in lawful money of the United States of America and in immediately available funds, interest from the date hereof on the unpaid and outstanding principal amount hereof until such unpaid and outstanding principal amount shall become due and payable (whether at stated maturity, by acceleration or otherwise) at the rates of interest and at the times set forth in the Credit Agreement and Borrower agrees to pay other fees and costs as stated in the Credit Agreement.

If any payment on this Note becomes due and payable on a date which is not a Banking Day, such payment shall be made on the first succeeding, or next preceding, Banking Day, in accordance with the terms of the Credit Agreement.

All Loans made by the Bank pursuant to the Credit Agreement and other Credit Documents, and all payments and prepayments made on account of the principal balance hereof shall be recorded by the Bank on the grid attached hereto, provided that failure to make such a notation shall not affect or diminish Borrower's obligation to repay all amounts due on this Note, as and when due.

Upon the occurrence of any one or more Events of Default, all amounts then remaining unpaid on this Note may become or be declared to be immediately due and payable as provided in the Credit Agreement and other Credit Documents, without notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor, or notices or demands of any kind, all of which are expressly waived by Borrower.

Recourse under this Note shall be limited as provided in Article 9 of the Credit Agreement.

Borrower agrees to pay costs and expenses, including without limitation attorneys' fees, incurred in connection with the interpretation or enforcement of this Note, in accordance with the Credit Agreement.

**[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

This Note has been executed and delivered in and shall be construed and interpreted in accordance with and governed by the laws of the State of New York, without reference to conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

Date

Advance

Prepayment or  
Repayment

Outstanding  
Balance

---

**EXHIBIT C-1  
to Credit Agreement**

**FORM OF NOTICE OF CONSTRUCTION BORROWING**

(Delivered pursuant to Section 2.1.1(b)

**of the Credit Agreement)**

[Date]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II Projects

This Notice of Construction Borrowing is delivered to you pursuant to Section 2.1.1(b) of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

This Notice of Borrowing constitutes a request for a Borrowing of Construction Loans as set out below:

1. The requested date of the Borrowing is \_\_\_\_\_, \_\_\_\_\_, which is a Banking Day.
2. The total amount of the requested Construction Loans is \$\_\_\_\_\_.
3. Borrower requests the following funding options:
  - a. Base Rate Loans amount: \$\_\_\_\_\_.
  - b. LIBOR Loans:

Amount Requested	Initial Interest Period
\$ _____	_____ months
\$ _____	_____ months
\$ _____	_____ months

The undersigned further confirms and certifies to Administrative Agent and each Bank that (i) the requested Construction Loans, when added to all other Construction Loans outstanding as of the date hereof do not exceed the Total Loan Commitment minus the sum of (x) the aggregate principal amount of all Turbine Purchase Loans outstanding as of the date hereof, (y) the aggregate Stated Amount of all Letters of Credit outstanding as of the date hereof, (z) the aggregate amount of all Reimbursement Obligations outstanding as of the date hereof, and (ii) the conditions precedent to the Borrowing hereby requested set forth in Article 3 of the Credit Agreement have been satisfied or waived in accordance with the terms thereof.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**EXHIBIT C-2  
to Credit Agreement**

**FORM OF NOTICE OF TURBINE PURCHASE BORROWING**  
(Delivered pursuant to Section 2.1.2(b)  
**of the Credit Agreement)**

[Date]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II ("Turbines")

This Notice of Turbine Purchase Borrowing is delivered to you pursuant to Section 2.1.2(b) of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

This Notice of Borrowing constitutes a request for a Borrowing of Turbine Purchase Loans as set out below:

1. The requested date of the Borrowing is \_\_\_\_\_, \_\_\_\_\_, which is a Banking Day.
2. The total amount of the requested Turbine Purchase Loans is \$\_\_\_\_\_.
3. Borrower requests the following funding options:
  - a. Base Rate Loans amount: \$\_\_\_\_\_.
  - b. LIBOR Loans:

Amount	Requested	Initial Interest Period
\$_____		_____ months
\$_____		_____ months
\$_____		_____ months

The undersigned further confirms and certifies to Administrative Agent and each Bank that (i) the requested Turbine Purchase Loans, when added to all other Turbine Purchase Loans outstanding as of the date hereof shall not exceed the lesser of (x) the Total Turbine Purchase Loan Commitment and (y) an amount equal to the excess, if any, of (A) the amount of the Total Loan Commitment as of the date hereof over (B) the aggregate principal amount of all Loans outstanding as of the date hereof plus the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations outstanding as of the date hereof, and (ii) the conditions precedent to the Borrowing hereby requested set forth in Article 3 of the Credit Agreement have been satisfied or waived in accordance with the terms thereof.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

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

Name:  
Title:

**EXHIBIT C-3  
to Credit Agreement**

**FORM OF CONFIRMATION OF INTEREST PERIOD SELECTION**

(Delivered pursuant to Section 2.1.3(b)(ii)

**of the Credit Agreement)**

[Date]

Credit Suisse First Boston  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II Project

This Confirmation of Interest Period Selection is delivered to you pursuant to Section 2.1.3(b)(ii) of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

This Confirmation of Interest Period Selection relates to \$ \_\_\_\_\_ of the LIBOR Loans with an Interest Period ending on \_\_\_\_\_. This Confirmation of Interest Period Selection constitutes a confirmation that effective \_\_\_\_\_ (which shall be the last day of an Interest Period), the requested Interest Period for \_\_\_\_\_ of such LIBOR Loans shall be \_\_\_ months. [SPECIFY WHETHER CONSTRUCTION/TURBINE PURCHASE LOANS, IF NECESSARY]

This notice shall be effective only if delivered to Administrative Agent as a Confirmation of Interest Period Selection made pursuant to Section 2.1.3(b)(ii) of the Credit Agreement.

The undersigned confirms and certifies to each Bank that as of the date of this Confirmation of Interest Period Selection, no Event of Default or Inchoate Default exists under the Credit Agreement.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

The undersigned acknowledges receipt of a copy of this

Confirmation of Interest Period Selection:

CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH,  
as Administrative Agent for the Banks

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

By:

-----

Name:  
Title:

By:

-----

Name:  
Title:

**FORM OF NOTICE OF CONVERSION OF LOAN TYPE**

(Delivered pursuant to Section 2.1.6  
of the Credit Agreement)

[Date]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II Projects

1. Reference is hereby made to that certain Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

2. Pursuant to Section 2.1.6 of the Credit Agreement, Borrower hereby notifies Administrative Agent: [SPECIFY WHETHER CONSTRUCTION/TURBINE PURCHASE LOANS, IF NECESSARY]]

(a) the conversion of \$ \_\_\_\_\_ of such Loans from a [BASE RATE/LIBOR] Loan to a [LIBOR/BASE RATE] Loan;

(b) that the effective date of the conversion shall be \_\_\_\_\_, which is a Banking Day and which shall be the first day after the last day of an Interest Period if converting from LIBOR Loans;

(c) if converting to LIBOR Loans, the following Interest Periods are selected:

Amount	Requested Initial Interest Period
\$ _____	_____ months
\$ _____	_____ months
\$ _____	_____ months

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Borrower has executed this Notice of Conversion of Loan Type on the date set forth above.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

The undersigned acknowledges receipt of a copy of this Notice of Conversion of Loan Type:

CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH,  
as Administrative Agent for the Banks

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

By:

-----

Name:

Title:

By:

-----

Name:

Title:

**EXHIBIT C-5  
to Credit Agreement**

**FORM OF NOTICE OF LC ACTIVITY**

(Delivered pursuant to Section 2.2.3  
of the Credit Agreement)

[Date]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II Project

This Notice of LC Activity is delivered to you pursuant to Section 2.2.3 of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

1. We request that a/the [SPECIFY LETTER OF CREDIT] be [ISSUED] [EXTENDED] [INCREASED] as provided below.

2. The Letter of Credit relates to the \_\_\_\_\_ Project.

3. The issue date of the Letter of Credit is \_\_\_\_\_, and the [EXTENDED] Expiration Date of the Letter of Credit is \_\_\_\_\_, neither of which is later than the Loan Maturity Date.

4. [THE STATED AMOUNT OF THE LETTER OF CREDIT IS \$\_\_\_\_\_] or [WE REQUEST THAT THE STATED AMOUNT OF THE LETTER OF CREDIT BE INCREASED FROM \$\_\_\_\_\_ TO \$\_\_\_\_\_] which, together with the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations thereunder, does not exceed the lesser of (i) the Total Letter of Credit Commitment and (ii) an amount equal to the excess, if any, of (a) the amount of the Total Loan Commitment as of the date hereof over (b)

the aggregate principal amount of all Loans then outstanding plus the Aggregate LC Stated Amount and all outstanding Reimbursement Obligations.

5. The Available Construction Funds, after taking into effect the issuance of the Letter of Credit requested hereby, will be equal to or exceed the remaining Project Costs of all Initial Projects and Funded Subsequent Projects then under construction.

6. Administrative Agent is instructed to deliver the [LETTER OF CREDIT] [NOTICE OF EXTENSION] [NOTICE OF INCREASE IN STATED AMOUNT] to \_\_\_\_\_, [THE LC BENEFICIARY] [BORROWER], at [ADDRESS].

The undersigned further confirms and certifies to Administrative Agent and each Bank that the Letter of Credit requested hereby shall only be used in the manner and for the purposes specified and permitted by the Credit Agreement, and that, as of the date of the issuance of such Letter of Credit, the conditions set forth in Section 3.8 of the Credit Agreement have all been satisfied or waived in accordance with the terms thereof.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**EXHIBIT C-6  
to Credit Agreement**

**FORM OF CONSTRUCTION DRAWDOWN CERTIFICATE**

(Delivered pursuant to Section 3.4.3  
of the Credit Agreement)

Date: [\_\_\_\_\_, \_\_\_\_]

Drawdown Date: [\_\_\_\_\_, \_\_\_\_]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Ladies and Gentlemen:

1. This Construction Drawdown Certificate is delivered to you pursuant to Section 3.4.3 of that certain Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement.

2. We have read the provisions of the Credit Agreement which are relevant to the furnishing of this Construction Drawdown Certificate. To the extent that this Construction Drawdown Certificate evidences, attests or confirms compliance with any covenants or conditions precedent provided for in the Credit Agreement, we have made such examination or investigation as was, in our opinion, necessary to enable us to express an informed opinion as to whether such covenants or conditions have been complied with. This Construction Drawdown Certificate relates to a Borrowing or other disbursement to take place on the Drawdown Date.

3. This Construction Drawdown Certificate relates to the \_\_\_\_\_ Project (the "Project").

4. BORROWER HEREBY CERTIFIES THAT, as of the date hereof:

4.1 The Project Costs for the Project incurred through the immediately preceding Drawdown Date by or on behalf of the appropriate Portfolio Entities and for which a Construction Drawdown Certificate has previously been submitted by Borrower are \$\_\_\_\_\_, segregated by major categories as described in Column A of Appendix I hereto. The Project Costs for the Project paid during the previous month from funds in the Project's Operating Account as permitted pursuant to Section 7.1.2(c) of the Credit Agreement are as follows:

\_\_\_\_\_.

4.2 The Project Costs for the Project to be paid with the funds requested by this Construction Drawdown Certificate for the current month are \$\_\_\_\_\_, segregated by major categories as described in Column B of Appendix I hereto. Of such Project Costs, \$\_\_\_\_\_ will be paid through the application of Contributions pursuant to Section 3.10 of the Credit Agreement, \$\_\_\_\_\_ will be paid through the application of Contributions pursuant to Section 5.17.1 of the Credit Agreement, \$\_\_\_\_\_ will be paid through the application of Additional Borrower Equity and \$\_\_\_\_\_ will be paid through the application of Construction Loans. All items shown in Column B represent work that has been satisfactorily performed in a good and workmanlike manner and in conformance with the Project's Construction Contracts or materials that have been supplied and delivered to the Project's Site prior to the date of this Certificate, or Borrower's best estimate of fuel and other O&M Costs related to startup and testing of the Project which will become due and payable on the Drawdown Date or within thirty (30) days thereafter.

4.3 The estimated dates of Completion and Final Completion for the Project are set forth on Appendix II hereto.

4.4 The estimated Project Costs to Final Completion for the Project are \_\_\_\_\_, segregated by major categories and described in Column L of Appendix I hereto. The aggregate amount of Project Costs for the Project (not including financing fees and interest expenses allocated to such Project but not reflected in such Project's Project Budget and other expenses not allocable to a Project) will not exceed 110% of the anticipated aggregate amount of such Project Costs for the Project as set forth in the Project's Project Budget. The aggregate amount of Project Costs for all Initial Projects and Funded Subsequent Projects under construction as of the date hereof will not exceed 105% of the anticipated aggregate amount of Project Costs for such Projects as set forth in such Projects' Project Budgets. [MODIFY THIS CERTIFICATION IF NECESSARY IN ACCORDANCE WITH THE LAST CLAUSE OF SECTION 3.4.3 OF THE CREDIT AGREEMENT.]

4.5 A detailed description of the variances from the estimated Project Costs for the Project as of the date of the Credit Agreement is summarized in Appendix III hereto.

4.6 The Available Construction Funds are sufficient to pay all remaining Project Costs for all Initial Projects and Funded Subsequent Projects under construction as of the date hereof (after giving effect to this and any other Drawdown Certificates delivered as of the date hereof).

- 4.7 There has not occurred any development which materially adversely affects the likelihood of the Project achieving Completion on or before the Loan Maturity Date.
- 4.8 No Event of Default or Inchoate Default or, with respect to the Project, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing.
- 4.9 All proceeds of all Construction Loans and other amounts deposited into the Project's Construction Sub-Account on or prior to the date hereof, except for \$\_\_\_\_\_ remaining in the Project's Construction Sub-Account since the date of the last Construction Drawdown Certificate, have been expended and have been applied to Project Costs for the Project in accordance with the applicable Construction Contracts, the applicable Project Documents or the Credit Agreement.
- 4.10 All insurance required under the Credit Agreement is in place, in good standing and in full force and effect and all premiums due thereon have been paid.
- 4.11 There are no Applicable Permits or Applicable Third Party Permits other than those which have been obtained as of the date hereof.
- 4.12 Each Applicable Permit and Applicable Third Party Permit with respect to the Project has been issued, is in full force and effect and is not subject to any current legal proceedings, or to any unsatisfied condition that could allow modification or revocation and all applicable appeal periods have expired with respect thereto.
- 4.13 To Borrower's knowledge, no facts or circumstances exist which indicate that any Permit will not be timely obtainable at a cost consistent with the Project's Project Budget without material difficulty or delay by Borrower or the applicable Major Project Participant, respectively, prior to the time that it becomes an Applicable Permit or an Applicable Third Party Permit, as applicable.
- 4.14 All of the Operative Documents executed and delivered with respect to the Project on or prior to the date of the Borrowing requested by this Drawdown Certificate are in full force and effect without change or amendment since the respective dates of their execution and delivery in a form which was approved by Administrative Agent, except as consented to in writing by Administrative Agent to the extent required under the Credit Agreement or as otherwise permitted by the Credit Agreement. No Portfolio Entity is in default under any term of any Project Document with respect to the Project and, to the best of Borrower's knowledge, no other party to such a Project Document is in default thereunder except, in either case, where such default could not reasonably be expected to have a Material Adverse Effect on the Project.
- 4.15 The Project has not been abandoned or terminated.
- 4.16 No Portfolio Entity with respect to the Project has incurred or permitted to exist any Liens (other than Permitted Liens) on the Project or the Mortgaged Property with respect to the Project or any part thereof or on any other assets of such Portfolio Entity, except as permitted under the Credit Agreement. No Liens, claims of Lien, attachments or similar claims (including without limitation mechanic's and materialman's liens) have been recorded or filed with respect to the Project or the Mortgaged Property with respect to the Project or any part thereof, except Permitted

Liens or Permitted Encumbrances, as the case may be, and such Liens, claims of Lien, attachments or similar claims as will be released, removed and discharged from the funds requested by this Construction Drawdown Certificate and the corresponding Notice of Construction Borrowing.

4.17 There are no pending or, to the best knowledge of Borrower, threatened actions or proceedings of any kind, including actions or proceedings of or before any Governmental Authority, to which Borrower or any other Portfolio Entity with respect to the Project, the Member, Calpine, any Affiliated Major Project Participant or, to the best knowledge of Borrower, any other Major Project Participant with respect to the Project, or by which any of them or any of their properties or the Project are bound, which if adversely determined to or against Borrower or any other such Portfolio Entity, the Member, Calpine, any other such Major Project Participant or the Project could reasonably be expected to have a Material Adverse Effect on Borrower or the Project, except as permitted pursuant to the terms of the Credit Agreement.

4.18 No Portfolio Entity with respect to the Project has waived performance or released from liability any party to any Operative Document with respect to the Project except with the consent of Administrative Agent or as otherwise permitted by the Credit Agreement.

4.19 Attached to this Construction Drawdown Certificate as Appendix IV are complete and accurate listings of all material contracts entered into by the Portfolio Entities with respect to the Project from the last day of the month preceding the date of the last Construction Drawdown Certificate to the last day of the month preceding the date hereof with respect to the Project.

4.20 Borrower has obtained and is delivering to Administrative Agent concurrently herewith a dated endorsement to the Title Policy with respect to the Project to the date the Construction Loans requested hereby are to be made, extending the coverage of Title Policy to such date, including all Borrowings and extensions of credit made to and including such date, insuring that the Lien of the Deed of Trust with respect to the Project on the Mortgaged Property with respect to the Project is prior to any liens, encumbrances or other matters except Permitted Encumbrances and Permitted Liens described in clauses (a), (b) or (c) of the definition thereof.

4.21 All property, rights and assets acquired for the Project are free and clear of all encumbrances except for Permitted Liens or as otherwise permitted by the Credit Agreement.

4.22 All of the representations of Borrower and the other Portfolio Entities with respect to the Project contained in the Credit Documents (in each case with respect to itself or the Project) are true and correct to the extent provided therein on and as of the Construction Drawdown Date with the same effect as if given on the date hereof (except to the extent such representations and warranties relate to a prior date).

4.23 A list of all approved, pending and proposed change orders to the Construction Contracts since the previous Construction Drawdown Certificate pertaining to the Project, together with copies of all such change orders not previously delivered to the Administrative Agent, is attached hereto as Appendix V.

4.24 Attached hereto (if funds are being requested with respect to any Construction Contract) as Attachment A and delivered herewith is a duly executed and completed Contractor's

Certificate and a copy of the information delivered to the relevant Portfolio Entity pursuant to [INSERT PROVISIONS OF APPLICABLE CONSTRUCTION CONTRACT], including the Monthly Progress Report prepared thereunder for the month to which this Drawdown Certificate relates.

4.25 The conditions set forth in Section 3.4 of the Credit Agreement are satisfied or have been waived in writing by Administrative Agent as of the date hereof and as of the date of the requested draw.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Borrower has executed this Construction Drawdown Certificate as of the date hereof.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**CALPINE - PROJECT XXXXXXXXXXXX  
PROJECT COSTS AS OF**

**X/XX/XX**

	PRIOR EXPENDITURES (DEBT&EQUITY)	THIS DRAW REQUEST	TOTAL EXPENDITURES TO DATE	BUDGETED TOTAL EXPENDITURES	VARIANCE	CLOSING BUDGET	CURRENT BANK APPROVED BUDGET
	A	B	C=(A+B)	D	E=(C-D)	F	G
LAND							
DEVELOPMENT COSTS							
CONSTRUCTION							
POWER ISLAND							
INSURANCE							
EPC							
PROJECT ENHANCEMENTS							
SALES TAX							
CONSTRUCTION							
MANAGEMENT							
STARTUP (COMMISSIONING)							
PENDING CHG. ORDERS							
TITLE INSURANCE							
					-		-
SUBTOTAL	0	-	-	-	-	-	-
INTEREST EXPENSE							
COMMITMENT FEES							
INDEPENDENT ENGINEER							
TOTAL:	0	-	-	-	-	-	-

	PRIOR EQUITY REQUEST	EQUITY THIS MONTH	CUMULATIVE EQUITY	CURRENT ESTIMATE OF TOTAL PROJECT COSTS	EXPECTED BALANCE TO COMPLETION
	H	I	J=(H+I)	K	L=(K-C)
LAND					
DEVELOPMENT COSTS					
CONSTRUCTION					
POWER ISLAND					
INSURANCE					
EPC					
PROJECT ENHANCEMENTS					
SALES TAX					
CONSTRUCTION					
MANAGEMENT					
STARTUP (COMMISSIONING)					
PENDING CHG. ORDERS					
TITLE INSURANCE					
			-	-	-
SUBTOTAL	-	-	-	-	-
INTEREST EXPENSE					
COMMITMENT FEES					
INDEPENDENT ENGINEER					
TOTAL:	-	-	-	-	-

**Appendix II**

**to Exhibit C-6**

**Estimated Dates of Completion and Final Completion**

Completion: \_\_\_\_\_

Final Completion: \_\_\_\_\_

## Appendix III

### to Exhibit C-6

Summary description of variances from estimated Project Costs.

	Variation	Amount
	0	0
TOTAL		\$0

**Appendix IV**

**to Exhibit C-6**

Material Contracts entered into by Project Owner with respect to the Project and property, rights and assets acquired from date of previous Construction Drawdown Certificate to the date hereof.

IV-1

**Appendix V**  
**to Exhibit C-6**  
**List of Change Orders**

V-1

**ATTACHMENT A TO**

**BORROWER'S CONSTRUCTION DRAWDOWN CERTIFICATE**

**CONTRACTOR'S CERTIFICATE**

Pursuant to Section \_\_\_\_ of that certain \_\_\_\_\_ Contract (the "Contract") by and between Calpine Construction Finance Company II, LLC, a Delaware limited liability company, and \_\_\_\_\_ ("Contractor"), Contractor hereby certifies, to the Contractor's knowledge as of the date hereof, that (all capitalized terms have the meanings ascribed in the Contract unless otherwise indicated):

1. This attachment refers to the \_\_\_\_\_ Project (the "Project").
2. The Work performed to date has, unless otherwise stated by Contractor, been performed in all material respects in accordance with the Contract and the Contract schedule in effect on the date hereof as referenced in Article \_\_\_\_ of the Contract.
3. To the Contractor's knowledge, no event currently exists with respect to the Contract which reasonably could be expected to delay the [INSERT PROPER TERMINOLOGY USED IN CONTRACT WITH RESPECT TO COMPLETION OF SCOPE OF WORK UNDER SUCH CONTRACT].
4. Contractor has been paid all amounts due to it under the Contract and all Subcontractor/Suppliers engaged or employed by Contractor have been paid to the extent that such amounts are due or such payment (or a portion thereof) is subject to a good faith contest which is being diligently pursued by the Contractor (in each case, other than amounts to be paid with the proceeds of the drawdown related to this certificate).

By furnishing this Contractor's Certificate, Contractor assumes no independent liability to recipients of the same. Any liability of the undersigned arising from this Contractor's Certificate shall be governed exclusively by the terms of the Contract including any limitations of liability and exclusive remedy provisions therein.

IN WITNESS WHEREOF, the undersigned have executed this Contractor's Certificate as of the \_\_\_\_ of \_\_\_\_\_, \_\_\_\_.

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

Its:

A-1

**EXHIBIT C-7  
to Credit Agreement**

**FORM OF ENGINEER'S CONSTRUCTION CERTIFICATE**

**[LETTERHEAD OF [R.W. BECK, INC.]]**

(Delivered pursuant to Section 3.4.3)

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

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

Re: Calpine Construction Finance Company II Projects

Ladies and Gentlemen:

R.W. Beck, Inc. ("Independent Engineer"), pursuant to Section 3.4.3 of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, hereby makes the following statements, with respect to the \_\_\_\_\_ Project (the "Project") as of \_\_\_\_\_.

1. We have read the provisions of Section 3.4.3 of the Credit Agreement as it identifies the responsibilities of the Independent Engineer related to providing this Independent Engineer's Construction Certificate.
2. All defined terms set forth in this Independent Engineer's Construction Certificate shall have respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein.
3. We have reviewed the material and data made available to us by the Contractors with respect to the Project and the relevant Portfolio Entities since the date of the last Construction Drawdown Certificate with respect to the Project, consisting of: the Construction Drawdown Certificate with respect to the Project, dated \_\_\_\_\_, and the Appendices and other items attached thereto; drawings and specifications prepared by \_\_\_\_\_ and \_\_\_\_\_; and work progress documents consisting of \_\_\_\_\_. We have also observed the status of construction progress and startup activities at the Project's Site (the "Site"). Our review and observations were performed in accordance with generally accepted consulting

practices consisting of a walk-through of such Site conducted on \_\_\_\_\_, \_\_\_\_\_, observation of installed equipment and material, observation of work procedures, review of "QA" and "QC" reports as made available by the Contractors with respect to the Project and attendance of the construction monthly progress review meeting with respect to the Project. We have reviewed paragraphs 4.1 through 4.7, 4.9, 4.11 through 4.13 and 4.15 of the Construction Drawdown Certificate with respect to the Project (the "Current Construction Drawdown Certificate"), dated \_\_\_\_\_ (the "Drawdown Date"), and we have previously reviewed the corresponding paragraphs of all previous Construction Drawdown Certificates with respect to the Project. We have also reviewed the materials attached to the Current Construction Drawdown Certificate as Attachment A, including each monthly progress report submitted pursuant to each Construction Contract with respect to the Project (the "Current Contractor Certificates"), and we have reviewed the contractor certificates submitted with all previous Construction Drawdown Certificates with respect to the Project. We have also reviewed the following additional material:

\_\_\_\_\_.

4. To the extent practical, we have periodically reviewed the progress of engineering, procurement and construction for the Project and in the course of this review we have not discovered any errors or omissions in the claims for materials that have been procured and work performed under this and all previous Borrowings.

5. Based on our review of the aforementioned information, and of data provided to us by others which we have not independently verified, we are of the opinion that, as of Drawdown Date:

a. The estimated Project Costs to Final Completion

[ARE/ARE NOT] as set forth in the Current Construction Drawdown Certificate. [IF NOT, CONTINUE

AS FOLLOWS: IN OUR OPINION, THE ESTIMATED PROJECT COSTS TO FINAL COMPLETION VARY FROM THE ESTIMATED PROJECT COSTS SET FORTH IN THE CURRENT CONSTRUCTION DRAWDOWN CERTIFICATE BECAUSE: [(STATE REASONS)];

b. The aggregate amount of Project Costs for the Project (not including financing fees and interest expenses allocated to such Project but not reflected in such Project's Project Budget and other expenses not allocable to a Project) will not exceed 110% of the anticipated aggregate amount of such Project Costs for the Project as set forth in the Project's Project Budget.

c. The aggregate amount of Project Costs for all Initial Projects and Funded Subsequent Projects under construction as of the date hereof will not exceed 105% of the anticipated aggregate amount of Project Costs for all such Projects as set forth in such Projects' Project Budgets.

**[IF THE AGGREGATE AMOUNT OF PROJECT COSTS FOR THE PROJECT EXCEEDS 110% OF THE ANTICIPATED AGGREGATE AMOUNT OF SUCH PROJECT COSTS, THEN CONTINUE AS FOLLOWS:]**

**[\_\_\_. WE CONFIRM THAT THE COST OVERRUNS WITH RESPECT TO THE PROJECT ARE NOT REASONABLY LIKELY TO EXCEED \$ \_\_\_\_\_.]**

**[\_\_\_. THE AGGREGATE AMOUNT OF PROJECT COSTS FOR ALL INITIAL PROJECTS AND FUNDED SUBSEQUENT PROJECTS UNDER CONSTRUCTION AS OF THE DATE HEREOF, AFTER GIVING**

EFFECT TO ANY FURTHER CONTEMPLATED OVERRUNS WITH RESPECT TO THE PROJECT, WILL NOT EXCEED 105% OF THE ANTICIPATED AGGREGATE AMOUNT OF PROJECT COSTS FOR ALL SUCH PROJECTS AS SET FORTH IN SUCH PROJECTS' PROJECT BUDGETS.]

d. Completion with respect to the Project will occur on or before the Date Certain.

e. Our scope of review [HAS/HAS NOT] brought to our actual attention any errors in the information contained in the paragraphs of the Current Construction Drawdown Certificate or in the Current Contractor Certificate referred to in paragraph 3 of this Independent Engineer's Construction Certificate.

**[IF ANY PARAGRAPH IN THE CURRENT DRAWDOWN CERTIFICATE  
OR INFORMATION IN THE CURRENT CONTRACTOR CERTIFICATE  
IS INCORRECT, LIST AND SPECIFY REASONS.]**

f. Except as disclosed in the Permit Schedule applicable to the Project, to our knowledge, no other Permits or governmental authorizations are required in connection with the construction and operation of the Project;

g. The quality of construction performed with respect to the Project during the period covered by this Independent Engineer's Construction Certificate is [SATISFACTORY/UNSATISFACTORY] and [APPEARS TO HAVE BEEN/DOES NOT APPEAR TO HAVE BEEN] performed in a good and workmanlike manner and in conformance with the Construction Contracts with respect to the Project; [IF UNSATISFACTORY, SPECIFY REASONS.]

h. The work accomplished with respect to the Project during the period covered by this Independent Engineer's Construction Certificate [IS/IS NOT] in accordance with the Project's Project Schedule; and [IF NOT IN ACCORDANCE WITH SCHEDULE, SPECIFY REASONS.]

i. After giving effect to the Borrowings requested by the Current Construction Drawdown Certificate, we estimate Available Construction Funds to be sufficient to pay remaining Project Costs for all Initial Projects and Funded Subsequent Projects under construction as of the date hereof (after giving effect to any other Drawdown Certificates delivered to Administrative Agent as of the date hereof).

6. To the best of our knowledge, there are no approved or material proposed change orders which are not listed on Appendix V to the Current Construction Drawdown Certificate or that have not been listed in a previous Construction Drawdown Certificate.

7. Without having specifically reviewed the matter, the undersigned does not know of any pending or proposed changes in any codes or regulations affecting the design, construction or use of the Project which would affect completion of the Project or the ability to obtain any certificates or permits necessary for the use and operation of the Project.

Except as specified above, the undersigned has not discovered any error in the matters set forth in the Current Construction Drawdown Certificate or Current Contractor Certificate that are within its scope of work.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

The information contained herein is for the benefit of Administrative Agent and the Banks and may be relied upon for the purposes of making Loans pursuant to the Credit Agreement.

R.W. BECK, INC., a Washington corporation

By:  
Name:

Title:

**EXHIBIT C-8  
to Credit Agreement**

**FORM OF TURBINE PURCHASE DRAWDOWN CERTIFICATE**

(Delivered pursuant to Section 3.6.3  
of the Credit Agreement)

Date: [\_\_\_\_\_, \_\_\_\_]

Drawdown Date: [\_\_\_\_\_, \_\_\_\_]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Ladies and Gentlemen:

1. This Turbine Purchase Drawdown Certificate is delivered to you pursuant to Section 3.6.3 of that certain Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Unless otherwise defined herein, all capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement.

2. We have read the provisions of the Credit Agreement which are relevant to the furnishing of this Turbine Purchase Drawdown Certificate. To the extent that this Turbine Purchase Drawdown Certificate evidences, attests or confirms compliance with any covenants or conditions precedent provided for in the Credit Agreement, we have made such examination or investigation as was, in our opinion, necessary to enable us to express an informed opinion as to whether such covenants or conditions have been complied with. This Turbine Purchase Drawdown Certificate relates to a Borrowing or other disbursement to take place on the Drawdown Date.

3. This Turbine Purchase Drawdown Certificate relates to the Turbine(s) identified by serial #\_\_\_\_ (as set forth on Exhibit G-3 to the Credit Agreement) (the "Turbine(s)") and assigned to the \_\_\_\_ Project.

4. BORROWER HEREBY CERTIFIES THAT, as of the date hereof:

4.1 The Turbine Costs for the Turbine(s) incurred through the immediately preceding Drawdown Date by or on behalf of Borrower and for which a Turbine Purchase Drawdown Certificate has previously been submitted by Borrower are \$\_\_\_\_\_.

4.2 The Turbine Costs for the Turbine(s) to be paid with the funds requested by this Turbine Purchase Drawdown Certificate for the current month are \$\_\_\_\_\_. Of such Turbine Costs, \$\_\_\_\_\_ will be paid through the application of Contributions pursuant to Section 3.10 of the Credit Agreement, \$\_\_\_\_\_ will be paid through the application of Contributions pursuant to Section 5.17.1 of the Credit Agreement and \$\_\_\_\_\_ will be paid through the application of Turbine Purchase Loans.

4.3 The Turbine Delivery Date of the Turbine(s) is \_\_\_\_\_.

4.4 The remaining Turbine Costs for the Turbine(s) are \_\_\_\_\_.

4.5 The technology and size of the Turbine(s) is appropriate for the Project to which it has been assigned.

4.6 No Event of Default or Inchoate Default has occurred and is continuing.

4.7 All proceeds of all Turbine Purchase Loans and other amounts deposited into the Turbine Purchase Sub-Account with respect to the Turbine(s) on or prior to the date hereof, except for \$\_\_\_\_\_ remaining in such Turbine Purchase Sub-Account since the date of the last Turbine Purchase Drawdown Certificate, have been expended and have been applied to Turbine Costs for the Turbine(s) in accordance with the applicable Turbine Purchase Contract or the Credit Agreement.

4.8 All insurance required under the Credit Agreement with respect to the Turbine(s) is in place, in good standing and in full force and effect and all premiums due thereon have been paid.

4.9 The Turbine Purchase Contract executed and delivered with respect to the Turbine(s) is in full force and effect without change or amendment since the date of its execution and delivery in a form which was approved by Administrative Agent, except as consented to in writing by Administrative Agent to the extent required under the Credit Agreement or as otherwise permitted by the Credit Agreement. The Turbine Owner with respect to the Turbine(s) is not in material default under the Turbine Purchase Contract with respect to the Turbine(s) and, to the best of Borrower's knowledge, no other material defaults have occurred with respect to the Turbine Purchase Contract.

4.10 The Turbine Owner with respect to the Turbine(s) has not incurred or permitted to exist any Liens (other than Permitted Liens) on the Turbine(s) or any part thereof or on any other assets of such Turbine Owner, except as permitted under the Credit Agreement. No Liens, claims of Lien, attachments or similar claims (including without limitation mechanic's and materialman's liens) have been recorded or filed with respect to the Turbine(s) or any part thereof, except Permitted Liens and such

Liens, claims of Lien, attachments or similar claims as will be released, removed and discharged from the funds requested by this Turbine Purchase Drawdown Certificate and the corresponding Notice of Turbine Purchase Borrowing.

4.11 All of the representations of Borrower and the relevant Turbine Owner contained in the Credit Documents are true and correct to the extent provided therein on and as of the Turbine Purchase Drawdown Date with the same effect as if given on the date hereof (except to the extent such representations and warranties relate to a prior date).

4.12 The conditions set forth in Section 3.6 of the Credit Agreement are satisfied or have been waived in writing by Administrative Agent as of the date hereof and as of the date of the requested draw.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Borrower has executed this Turbine Purchase Drawdown Certificate as of the date hereof.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

4

**EXHIBIT C-9  
to Credit Agreement**

**FORM OF ENGINEER'S TURBINE PURCHASE CERTIFICATE**

**[LETTERHEAD OF [R.W. BECK, INC.]]**

(Delivered pursuant to Section 3.6.3)

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

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

Re: Calpine Construction Finance Company II Turbines

Ladies and Gentlemen:

R.W. Beck, Inc. ("Independent Engineer"), pursuant to Section 3.6.3 of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, hereby makes the following statements, with respect to the Turbine (s) identified by serial #\_\_\_\_ (as set forth on Exhibit G-3 to the Credit Agreement) (the "Turbine(s)") and assigned to the \_\_\_\_\_ Project as of \_\_\_\_\_.

1. We have read the provisions of Section 3.6.3 of the Credit Agreement as it identifies the responsibilities of the Independent Engineer related to providing this Independent Engineer's Turbine Purchase Certificate.
2. All defined terms set forth in this Independent Engineer's Turbine Purchase Certificate shall have respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein.
3. We have reviewed the material and data made available to us by Borrower since the date of the last Turbine Purchase Drawdown Certificate with respect to the Turbine(s), consisting of the Turbine Purchase Drawdown Certificate with respect to the Turbine(s), if any, dated \_\_\_\_\_. We have reviewed paragraphs 4.1 through 4.7 of the Turbine Purchase Drawdown Certificate with respect to the Turbine (s) (the "Current Turbine Purchase Drawdown Certificate"), dated \_\_\_\_\_ (the "Drawdown Date"), and we have previously reviewed the corresponding paragraphs of all previous Turbine Purchase Drawdown Certificates

with respect to the Turbine(s). We have also reviewed the following additional material: \_\_\_\_\_.

4. Based on our review of the aforementioned information, and of data provided to us by others which we have not independently verified, we are of the opinion that, as of Drawdown Date:

a. The payments to the Turbine Purchase Contractor with respect to the Turbine have been made.

b. Our scope of review [HAS/HAS NOT] brought to our actual attention any errors in the information contained in the paragraphs of the Current Turbine Purchase Drawdown Certificate. [IF ANY PARAGRAPH IN THE CURRENT TURBINE PURCHASE DRAWDOWN CERTIFICATE IS INCORRECT, LIST AND SPECIFY REASONS.]

Except as specified above, the undersigned has not discovered any error in the matters set forth in the Current Turbine Purchase Drawdown Certificate that are within its scope of work.

The information contained herein is for the benefit of Administrative Agent and the Banks and may be relied upon for the purposes of making Loans pursuant to the Credit Agreement.

R.W. BECK, INC., a Washington corporation

By:

Name:

Title:

**EXHIBIT C-10  
to Credit Agreement**

**FORM OF DISBURSEMENT REQUISITION**

(Delivered pursuant to Section 7.2.2 [AND SECTION 7.2.3] of the Credit Agreement)

[Date]

Credit Suisse First Boston  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II Projects

This Disbursement Requisition is delivered to you pursuant to Section 7.2.2 [AND SECTION 7.2.3] of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance II Company, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

This Disbursement Requisition constitutes, with respect to the \_\_\_\_\_ Project (the "Project"), [(a) a request for a transfer of Senior O&M Costs from the Revenue Account to the Operating Account as described in Section 7.2.2 of the Credit Agreement [AND (b) A REQUEST FOR PAYMENT OF SUBORDINATED O&M COSTS AS DESCRIBED IN SECTION 7.2.3 OF THE CREDIT AGREEMENT], [EACH] as further described below:

1. DISBURSEMENT DATE

1.1 [IF THE DISBURSEMENT REQUISITION IS FOR SENIOR O&M COSTS ONLY, INSERT: THE DISBURSEMENT DATE IS [LAST BANKING DAY OF EACH MONTH].]

**[IF THE DISBURSEMENT REQUISITION INCLUDES PAYMENT OF**

**SUBORDINATED O&M COSTS, INSERT: [THE DISBURSEMENT DATE IS THE LAST DAY OF A CALENDAR QUARTER].]**

2. AMOUNT

2.1 Amount of Senior O&M Costs to be transferred to the Project's Operating Sub-Account: \$\_\_\_\_\_.

2.2 [AMOUNT OF SUBORDINATED O&M COSTS: \$\_\_\_\_\_.]

3. BORROWER HEREBY CONFIRMS AND CERTIFIES THAT, as of the date hereof:

3.1 The O&M Costs with respect to the Project incurred during the present fiscal year of Borrower through the immediately preceding date of disbursement from the Revenue Account pursuant to Sections 7.2.2 [AND 7.2.3] of the Credit Agreement by or on behalf of Borrower are \$\_\_\_\_\_, segregated by major categories as described in Column 1 on Appendix I hereto.

3.2 The O&M Costs with respect to the Project expected to be paid with this disbursement are \$\_\_\_\_\_, segregated by major categories as described in Column 5 on Appendix I hereto. All items shown in Column 5 represent Borrower's best estimate of O&M Costs with respect to the Project which have become, or are anticipated to become, due and payable during the calendar month to which this Disbursement Requisition relates. [OF THE AMOUNTS SHOWN IN COLUMN 5, ALL REPRESENT WORK OR AMOUNTS INCLUDED IN THE PROJECT'S ANNUAL OPERATING BUDGET/\$\_\_\_\_\_ REPRESENT WORK OR AMOUNTS NOT INCLUDED IN THE PROJECT'S ANNUAL OPERATING BUDGET].

3.3 No Event of Default or Inchoate Default or, with respect to the Project, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing or will occur upon giving effect to the application of the disbursement requested hereby.

3.4 Except as specified below, all proceeds of all disbursements from the [REVENUE ACCOUNT] [PROJECT'S REVENUE SUB-ACCOUNT] made prior to the date hereof for O&M Costs with respect to the Project have been expended and have been applied to O&M Costs with respect to the Project in accordance with the Credit Agreement. [LIST ANY EXCEPTIONS] [TO DISCUSS WHETHER SEPARATE REVENUE SUB-ACCOUNTS ARE APPROPRIATE]

3.5 Attached to this Disbursement Requisition as Appendix II are true, complete and correct listings of all Additional Project Documents with respect to the Project and all material property, rights and assets acquired by Borrower with respect to the Project since the date of the last Disbursement Requisition with respect to the Project to the date hereof.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has executed and delivered this Disbursement Requisition on the date shown above.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**APPENDIX I  
To Exhibit C-10**

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,  
a Delaware limited liability company**

Disbursement Request for the month of \_\_\_\_\_, 200\_\_ with respect to the \_\_\_\_\_ Project

	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
				O&M		the	(5)+(1)	(2+4)	(7)-(8)	
[Example Only -	EXPENDITURES	DISBURSEMENTS		BUDGET	CURRENT	lesser of	TOTAL		O&M	
Actuals to Conform	TO LAST	TO LAST	REMAINING	AMOUNT	MONTH'S	4 or 5-3	O&M		OVER	%
to Categories Set	DISBURSEMENT	DISBURSEMENT	RESIDUAL/	FOR	EXPENDITURES	(=/(4))* NET	COSTS	TOTAL	(UNDER)	OVER/
Forth in Operating	DATE	DATE	(SHORTFALL)	CURRENT	DUE AND	DISBURSEMENT	TO	O&M	(UNDER)	OVER/
Budget]				MONTH	PAYABLE	REQUEST	DATE	BUDGET	RUN	(UNDER)
Land										
Development Costs										
Construction										
Power Island										
Insurance										
EPC										
Project										
Enhancements										
Sales Tax										
Construction										
Management										
Startup										
(Commissioning)										
Pending Change										
Orders										
Title Insurance										
Subtotal										
Interest Expense										
Commitment Fees										
Independent										
Engineer										
TOTAL										

\* Subject to variation as permitted under Section [5.15.2] of the Credit Agreement.

**APPENDIX II  
to Exhibit C-10**

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

Additional Project Documents with respect to the \_\_\_\_\_ Project to be executed from date of previous disbursement request to the date hereof.

Item	Cost
TOTAL	\$ [ _____ ]

**EXHIBIT C-11  
to Credit Agreement**

**FORM OF RESERVE ACCOUNT DISBURSEMENT REQUISITION**

(Delivered pursuant to Section 7.8.3 of the Credit Agreement)

[Date]

Credit Suisse First Boston,  
New York Branch  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company II Projects

This Reserve Account Disbursement Requisition is delivered to you pursuant to Section 7.8.3 of the Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. All capitalized terms used herein shall have the respective meanings specified in Exhibit A to the Credit Agreement unless otherwise defined herein or unless the context requires otherwise.

This Reserve Account Disbursement Requisition relates to the \_\_\_\_\_ Project (the "Project").

Borrower hereby requests a withdrawal from the Working Capital Reserve Account in the amount of \$ \_\_\_\_\_ for the payment of Senior O&M Costs that have become due and payable for the Project as described and to the Persons specified on Schedule 1 attached hereto.

Borrower hereby confirms and certifies that, as of the date hereof:

(a) Insufficient amounts are available in the Revenue Account and the Project's Operating Account for the payment of Senior O&M Costs with respect to the Project;

**[CHOOSE ONE ALTERNATIVE (b) BELOW, AS APPLICABLE]**

**[(b) THE AMOUNT REQUESTED DOES NOT, TOGETHER WITH ALL SENIOR**

O&M COSTS WITH RESPECT TO THE PROJECT PREVIOUSLY PAID DURING THE SAME CALENDAR YEAR AS THE DATE OF THIS REQUISITION, EXCEED 115% OF THE AMOUNTS OF SENIOR O&M COSTS (OTHER THAN FUEL COSTS) SPECIFIED FOR THE PROJECT IN THE PROJECT'S ANNUAL OPERATING BUDGET FOR SUCH CALENDAR YEAR.]

**[(b) ADMINISTRATIVE AGENT, AS EVIDENCED BY ITS SIGNATURE BELOW, CONSENTS TO SUCH WITHDRAWAL.]**

(c) No Event of Default or Inchoate Default or, with respect to the Project, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and is continuing or will occur upon giving effect to the application of the withdrawal requested hereby; and

(d) Except as specified below, all proceeds of all withdrawals from the Working Capital Reserve Account made prior to the date hereof have been expended and have been applied in accordance with the Credit Agreement. [LIST ANY EXCEPTIONS].

The undersigned hereby certifies that the undersigned is an officer of Borrower and, as such, is authorized to execute this Reserve Account Disbursement Requisition on behalf of Borrower.

IN WITNESS WHEREOF, the undersigned has executed and delivered this Reserve Account Disbursement Requisition on the date shown above.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

The undersigned acknowledges receipt of a copy of this Reserve Account Disbursement Requisition:

CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH  
as Administrative Agent for the Banks

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

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

Description of Payees and Uses of Funds Withdrawn From the Working Capital Reserve Account

**EXHIBIT D-1  
to the Credit Agreement**

**FORM OF DEPOSITARY AGREEMENT**

dated as of October 16, 2000

among

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company,

as Borrower,

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch

as Administrative Agent for the Banks,

and

**THE BANK OF NEW YORK,**

as Depositary Agent

THIS DEPOSITARY AGREEMENT (this "Agreement"), dated as of October 16, 2000, is among CALPINE CONSTRUCTION FINANCE COMPANY II, LLC, a Delaware limited liability company ("Borrower"), CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, acting in its capacity as Administrative Agent ("Administrative Agent") for the Banks under the Credit Agreement (as defined below), and THE BANK OF NEW YORK, acting in its capacity as Depositary Agent (the "Depositary Agent").

### **RECITALS**

A. Borrower has entered into that certain Credit Agreement, dated as of October 16, 2000 (as the same may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, whereby the Banks have agreed to advance to Borrower certain loans to finance the construction and operation by Borrower of the Projects and the purchase of the Turbines.

B. In order to give effect to (a) the security interest in the Accounts (as defined herein) granted by Borrower to Administrative Agent and (b) the deposit of funds into the Accounts and the application of funds in connection with the construction and operation of the Projects and the purchase of the Turbines, each as contemplated in the Credit Agreement, the parties have agreed that all amounts to be paid over to Administrative Agent for deposit into, and disbursement from, the Accounts under of the Credit Agreement shall be paid to Depositary Agent, as agent for Administrative Agent, to be held by Depositary Agent in pledge as collateral security for Borrower's obligations under the Credit Agreement and distributed by Depositary Agent as provided herein.

C. Depositary Agent has agreed to act as depositary agent for Administrative Agent pursuant to the terms of this Agreement.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained in this Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE 1

### Definitions; Rules of Interpretation

Section 1.1 Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Credit Agreement. The following terms when used herein shall have the following meanings:

"Accounts" shall mean the collective reference to the Construction Account, the Revenue Account, the Loss Proceeds Account, the Working Capital Reserve Account and any and all other accounts hereinafter established under the Credit Agreement and/or this Agreement, including any sub-accounts within such accounts but excluding any Operating Account held in the name of any Project Owner.

"Account Withdrawal Certificate" shall mean a certificate of an Authorized Representative of Borrower countersigned by Administrative Agent substantially in the form of Exhibit A hereto, stating (i) the specific amount requested to be withdrawn from a specific Account and transferred, applied or paid over to another Account or Person, (ii) the purpose for which such payment shall be made, (iii) that no Event of Default and, with respect to withdrawals from the Construction Account or the Loss Proceeds Account of the Project to which such withdrawal relates, no Non-Fundamental Project Default shall have occurred and be continuing or will occur after giving effect to the withdrawal of funds so requested and (iv) that all other conditions to distributions from such account set forth in the Credit Agreement have been satisfied.

"Construction Account" shall mean, collectively, the special account designated by that name established by the Depository Agent pursuant to Section 2.5, the Construction Sub-Accounts, including the Turbine Purchase Sub-Accounts and all other sub-accounts therein.

"Disbursement Instruction" shall mean a notice from Administrative Agent, substantially in the form of Exhibit B hereto, instructing Depository Agent to transfer a specific amount of funds from any of the Accounts to such other account or recipient identified by Administrative Agent in accordance therewith.

"Loss Proceeds Account" shall mean collectively the special account designated by that name established by Depository Agent pursuant to Section 2.5 and all sub-accounts therein.

"Revenue Account" shall mean the special account designated by that name established by the Depository Agent pursuant to Section 2.5 and all sub-accounts therein.

"UCC" shall mean the Uniform Commercial Code as adopted in the State of New York.

"Working Capital Reserve Account" shall mean the special account designated by that name established by the Depository Agent pursuant to Section 2.5 and all sub-accounts therein.

Section 1.2 Rules of Interpretation. The rules of interpretation set forth in Exhibit A to the Credit Agreement shall apply to this Agreement.

## **ARTICLE 2**

### **Appointment of Depositary Agent;**

#### **Establishment of Accounts**

Section 2.1 Appointment of Depositary Agent. Depositary Agent is hereby appointed by Borrower and by Administrative Agent as depositary agent hereunder, and Depositary Agent hereby agrees to act as such and to accept all cash, payments, other amounts and Permitted Investments to be delivered to or held by Depositary Agent pursuant to the terms of this Agreement. Depositary Agent shall hold and safeguard the Accounts (and the cash, instruments and securities on deposit therein) during the term of this Agreement and shall treat the cash, instruments, and securities in the Accounts as funds, instruments and securities pledged by Borrower to Administrative Agent for the ratable benefit of the Banks, to be held by Depositary Agent, as agent of Administrative Agent, in trust in accordance with the provisions hereof.

Section 2.2 Security Interest; Control. In order to secure the performance by Borrower of all of its covenants, agreements and obligations under the Credit Agreement and the other Credit Documents and the payment and performance by Borrower of all Obligations, this Agreement is intended to create, and Borrower hereby pledges to and creates in favor of Administrative Agent, for the benefit of the Banks, a security interest in and to, the Accounts, all cash, cash equivalents, instruments, investments and other securities at any time on deposit in the Accounts, and all proceeds of any of the foregoing (collectively, the "Collateral"). All moneys, cash equivalents, instruments, investments and securities at any time on deposit in any of the Accounts shall constitute collateral security for the payment and performance by Borrower of the Obligations, and shall at all times be subject to the control of Administrative Agent, acting through Depositary Agent in respect of the Accounts and shall be held in the custody of Depositary Agent in trust for the purposes of, and on the terms set forth in, this Agreement.

Section 2.3 Accounts Maintained as UCC "Securities Accounts." Depositary Agent hereby agrees and confirms that it has established the Accounts as set forth and defined in this Agreement. Each of Depositary Agent and Borrower agrees that (i) Depositary Agent is acting as "securities intermediary" (within the meaning of Section 8-102(14) of the UCC) with respect to the Accounts and the "financial assets" (within the meaning of Section 8-102(a)(9) of the UCC, the "Financial Assets") credited to the Accounts; (ii) each such Account established by Depositary Agent is and will be maintained as a "securities account" (within the meaning of Section 8-501 of the UCC); (iii) Borrower is an "entitlement holder" (within the meaning of Section 8-102(a)(7) of the UCC) in respect of the Financial Assets credited to such Accounts and with respect to such Accounts and Depositary Agent shall so note in its records pertaining to such Financial Assets and Accounts; and (iv) all Financial Assets in registered form or payable to or to order of and credited to any such Account shall be registered in the name of, payable to or to the order of, or specially endorsed to, Depositary Agent or in blank, or credited to another securities account maintained in the name of Depositary Agent, and in no case will any Financial

Asset credited to any such Account be registered in the name of, payable to or to the order of, or endorsed to, Borrower except to the extent the foregoing have been subsequently endorsed by Borrower to Depository Agent or in blank. Each item of property (including a security, security entitlement, investment property, instrument or obligation, share, participation, interest or other property whatsoever) credited to any Account shall be treated as a Financial Asset. Until this Agreement shall terminate in accordance with the terms hereof, Administrative Agent shall have "control" (within the meaning of Section 8-106(d)(2) of the UCC) of Borrower's "security entitlements" (within the meaning of Section 8-102 (a)(17) of the UCC, "Security Entitlements") with respect to the Accounts and the Financial Assets credited to the Accounts. All property delivered to Depository Agent pursuant to this Agreement will be promptly credited to the Accounts and shall be treated as Financial Assets. If at any time Depository Agent shall receive from Administrative Agent any "entitlement order" (within the meaning of Section 8-102(8) of the UCC, an "Entitlement Order") relating to the Accounts or Financial Assets credited to the Accounts, Depository Agent shall comply with such Entitlement Order without further consent by Borrower or any other Person. In the event that Depository Agent receives conflicting Entitlement Orders relating to the Accounts or Financial Assets credited to the Accounts from Administrative Agent and any other Person (including, without limitation, Borrower), Depository Agent shall comply with the Entitlement Orders originated by Administrative Agent. Each of Borrower and Depository Agent agrees that it has not and will not execute and deliver, or otherwise become bound by, any agreement under which it agrees with any Person other than Administrative Agent to comply with Entitlement Orders originated by such Person relating to the Accounts or Financial Assets credited to the Accounts. Except for the claims and interests of Administrative Agent and Borrower in the Accounts and the Financial Assets credited to the Accounts, neither Depository Agent nor Borrower knows of any claim to, or interest in, any Account or Financial Assets credited to the Accounts. If either Depository Agent or Borrower obtains knowledge that any Person has asserted a lien, encumbrance or adverse claim against any or the Accounts or Financial Assets credited to the Accounts, such party will promptly notify Administrative Agent thereof. In the event that the Depository Agent has or subsequently obtains by agreement, operation of law or otherwise a Lien or security interest in any Account, any Security Entitlement carried therein or credited thereto or any Financial Asset that is the subject of any such Security Entitlement, Depository Agent agrees that such Lien or security interest shall be subordinate to the Lien and security interest of the Administrative Agent. The Financial Assets standing to the credit of the Accounts will not be subject to deduction, set-off, banker's lien or any other right, and Depository Agent shall not grant, permit or consent to any other right or interest in such Financial Assets, in favor of any Person (including the Depository Agent) other than Administrative Agent.

Section 2.4 Borrower's Rights. Borrower shall not have any rights or powers with respect to any amounts in the Accounts or any part thereof except (i) as provided in Article 5 hereof and (ii) the right to have such amounts applied in accordance with the provisions hereof and of the Credit Agreement.

Section 2.5 Creation of Accounts. Depository Agent hereby establishes at its office located in New York, New York, the following special, segregated and irrevocable money collateral accounts and sub-accounts within such accounts which shall be maintained at all times

until the termination of this Agreement, unless earlier termination is otherwise provided for herein or in the Credit Agreement:

- (1) The Construction Account (Acc. # 050451);
- (2) The Construction Sub-Account (Los Medanos) (Acc. # 050452);
- (3) The Construction Sub-Account (Baytown) (Acc. # 050453);
- (4) The Construction Sub-Account (Carville) (Acc. # 050454);
- (5) The Construction Sub-Account (Panda) (Acc. # 050455);
- (6) The Construction Sub-Account (Santa Rosa) (Acc. # 050456);
- (7) The Construction Sub-Account (Delta) (Acc. # 050457);
- (8) The Construction Sub-Account (Freestone) (Acc. # 050458);
- (9) The Construction Sub-Account (Broad River) (Acc. # 050459);
- (10) The Construction Sub-Account (Channel) (Acc. # 050460);
- (11) The Construction Sub-Account (Corpus Christi) (Acc. # 050461);
- (12) The Construction Sub-Account (Decatur) (Acc. # 050462);
- (13) The Construction Sub-Account (Morgan) (Acc. # 050463);
- (14) The Turbine Purchase Sub-Account (Acc. # 050464);
- (15) The Revenue Account (Acc. # 050465);
- (16) The Revenue Sub-Account (Los Medanos) (Acc. # 050491);
- (17) The Revenue Sub-Account (Baytown) (Acc. # 050490);
- (18) The Revenue Sub-Account (Carville) (Acc. # 050489);
- (19) The Revenue Sub-Account (Panda) (Acc. # 050488);
- (20) The Revenue Sub-Account (Santa Rosa) (Acc. # 050487);
- (21) The Revenue Sub-Account (Delta) (Acc. # 050486);
- (22) The Revenue Sub-Account (Freestone) (Acc. # 050485);
- (23) The Revenue Sub-Account (Broad River) (Acc. # 050484);

- (24) The Revenue Sub-Account (Channel) (Acc. # 050483);
- (25) The Revenue Sub-Account (Corpus Christi) (Acc. # 050482);
- (26) The Revenue Sub-Account (Decatur) (Acc. # 050481);
- (27) The Revenue Sub-Account (Morgan) (Acc. # 050480);
- (28) The Loss Proceeds Account (Acc. # 050466);
- (29) The Loss Proceeds Sub-Account (Los Medanos) (Acc. # 050479);
- (30) The Loss Proceeds Sub-Account (Baytown) (Acc. # 050478);
- (31) The Loss Proceeds Sub-Account (Carville) (Acc. # 050477);
- (32) The Loss Proceeds Sub-Account (Panda) (Acc. # 050476);
- (33) The Loss Proceeds Sub-Account (Santa Rosa) (Acc. # 050475);
- (34) The Loss Proceeds Sub-Account (Delta) (Acc. # 050474);
- (35) The Loss Proceeds Sub-Account (Freestone) (Acc. # 050473);
- (36) The Loss Proceeds Sub-Account (Broad River) (Acc. # 050472);
- (37) The Loss Proceeds Sub-Account (Channel) (Acc. # 050471);
- (38) The Loss Proceeds Sub-Account (Corpus Christi) (Acc. # 050470);
- (39) The Loss Proceeds Sub-Account (Decatur) (Acc. #050469);
- (40) The Loss Proceeds Sub-Account (Morgan) (Acc. # 050468);
- (41) The Working Capital Reserve Account (Acc. # 050467);
- (42) The Working Capital Sub-Account (Los Medanos) (Acc. # 050598);
- (43) The Working Capital Sub-Account (Baytown) (Acc. # 050597);
- (44) The Working Capital Sub-Account (Carville) (Acc. # 050596);
- (45) The Working Capital Sub-Account (Panda) (Acc. # 050595);
- (46) The Working Capital Sub-Account (Santa Rosa) (Acc. # 050594);
- (47) The Working Capital Sub-Account (Delta) (Acc. # 050593);
- (48) The Working Capital Sub-Account (Freestone) (Acc. # 050592);

- (49) The Working Capital Sub-Account (Broad River) (Acc. # 050591);
- (50) The Working Capital Sub-Account (Channel) (Acc. # 050590);
- (51) The Working Capital Sub-Account (Corpus Christi) (Acc. # 050589);
- (52) The Working Capital Sub-Account (Decatur) (Acc. # 050588); and
- (53) The Working Capital Sub-Account (Morgan) (Acc. # 050587).

All moneys, investments and securities at any time on deposit in any of the Accounts shall constitute trust funds to be held in the custody of Depository Agent for the purposes and on the terms set forth in this Agreement.

### **ARTICLE 3**

#### **Deposits into Accounts**

Section 3.1 Deposits. Each of Borrower and Administrative Agent covenants and agrees that all amounts required by the Credit Agreement or the other Credit Documents to be delivered or deposited in any of the Accounts, shall be paid over to Depository Agent directly for deposit into the appropriate Account. Any deposit made to any Account under this Agreement shall be irrevocable and the amount of such deposit and any instrument or security held in such Account and all income or gain earned on such deposits shall be held in trust by Depository Agent and applied solely as provided in this Agreement. In the event Depository Agent receives monies without adequate instruction with respect to the source or proper Account into which such monies are to be deposited, Depository Agent shall deposit such monies into the Revenue Account and notify Borrower and Administrative Agent of the receipt and the source of such monies.

### **ARTICLE 4**

#### **Payments from Accounts**

Section 4.1 Withdrawals by Administrative Agent. As soon as practicable, and in all events within three Banking Days after receipt of a Disbursement Instruction, executed by Administrative Agent, Depository Agent shall distribute or apply monies on deposit in the Accounts specified in such notice, in the manner, in the amount and to the Person or Account specified in such Disbursement Instruction. Notwithstanding anything to the contrary in this Agreement, from and after Depository Agent's receipt of notice from Administrative Agent or Borrower that an Event of Default exists until such time as Depository Agent receives notice from Administrative Agent that such Event of Default no longer exists, Depository Agent shall only withdraw or transfer amounts in the Construction Account or the Loss Process Account at the direction of Administrative Agent. Notwithstanding anything to the contrary in this Agreement, from and after Depository Agent's receipt of notice from Administrative Agent or Borrower that a Non-Fundamental Project Default exists until such time as Depository Agent receives notice from Administrative Agent that such Non-Fundamental Project Default no longer

exists, Depository Agent shall only withdraw or transfer amounts in the Construction Account or the Loss Proceeds Account for the Project to which such Non-Fundamental Project Default relates at the direction of Administrative Agent. In the event that funds on deposit in any Account exceed the amounts required to be deposited therein, and such excess funds are required to be transferred to the Revenue Account pursuant to the Credit Agreement, Administrative Agent shall, as soon as practicable, deliver a Disbursement Instruction to the Depository Agent requesting that such excess funds be transferred to the Revenue Account.

**Section 4.2 Withdrawals from Construction Account.** On the same Banking Day on which Depository Agent receives an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Construction Account or a sub-account therein, Depository Agent shall distribute or apply monies on deposit in the Construction Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate; provided, however, that in the event that Depository Agent receives such Account Withdrawal Certificate after 12:00 p.m. eastern standard time of any Banking Day, then Depository Agent may take the actions specified therein on the next Banking Day.

**Section 4.3 Withdrawals from the Revenue Account.** As soon as practicable and in all events within three Banking Days after receipt of an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Revenue Account or a sub-account therein, Depository Agent shall distribute or apply monies on deposit in the Revenue Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate.

**Section 4.4 Withdrawals from the Loss Proceeds Account.** As soon as practicable, and in all events within three Banking Days after receipt of an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Loss Proceeds Account or a sub-account therein, Depository Agent shall distribute or apply monies on deposit in the Loss Proceeds Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate.

**Section 4.5 Withdrawals from the Working Capital Reserve Account.** As soon as practicable, and in all events within three Banking Days after receipt of an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Working Capital Reserve Account or a sub-account therein, Depository Agent shall distribute or apply monies on deposit in the Working Capital Reserve Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate.

## ARTICLE 5

### Investment

Section 5.1 Permitted Investments. Depository Agent shall invest any money held in any Account in such Permitted Investments as directed in writing by Borrower from time to time (or, if Administrative Agent shall have notified Depository Agent that Administrative Agent is exercising its power of attorney to direct investments, by and at the discretion of Administrative Agent). In the event that Depository Agent has not received any such written directions, Depository Agent shall invest all available funds in a money market mutual fund selected by Borrower. Any income or gain realized as a result of any such investment shall be held as part of the applicable Account and reinvested as provided in this Agreement until released in compliance with Article 4. Any income tax payable on account of any such income or gain shall be paid by Borrower. Depository Agent shall have no liability for any loss resulting from any such investment other than solely by reason of its willful misconduct or gross negligence or bad faith or from failure to exercise such care in the custody of any such investments as it does for accounts held by other customers or in the custody of its own investments. Any such investment may be sold (without regard to maturity date) by Depository Agent whenever necessary to make any distribution required by this Agreement. In addition, if an Event of Default has occurred and is continuing, any investment shall be liquidated and sold by Depository Agent if so directed in writing by Administrative Agent.

## ARTICLE 6

### Depository Agent

Section 6.1 Rights, Duties, etc. The acceptance by Depository Agent of its duties under this Agreement is subject to the following terms and conditions which the parties to this Agreement hereby agree shall govern and control with respect to Depository Agent's rights, duties, liabilities and immunities:

- (a) Depository Agent shall act as an agent only and shall not be responsible or liable in any manner for soliciting any funds or for the sufficiency, correctness, genuineness or validity of any funds or securities deposited with or held by it, except as set forth in Section 6.1(c) hereof;
- (b) Depository Agent shall be protected in acting or refraining from acting upon any written notice, certificate, instruction, request or other paper or document, as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information contained therein, which Depository Agent in good faith believes to be genuine;
- (c) Depository Agent shall not be liable for any error of judgment or for any act done or step taken or omitted except in the case of its gross negligence, willful misconduct or bad faith;

(d) Depository Agent may consult with and obtain advice from counsel in the event of any dispute or question as to the construction of any provision of this Agreement;

(e) Depository Agent shall have no duties as Depository Agent except those which are expressly set forth in this Agreement and in any modification or amendment hereof; provided, however, that no such modification or amendment shall affect Depository Agent's duties unless Depository Agent shall have given its prior written consent to such modification or amendment;

(f) Depository Agent may execute or perform any duties under this Agreement either directly or through agents or attorneys;

(g) Depository Agent may engage or be interested in any financial or other transactions with any party to this Agreement and may act on, or as depositary, trustee or agent for, any committee or body of holders of obligations of such Persons as freely as if it were not Depository Agent hereunder; and

(h) Depository Agent shall not be obligated to take any action which in its reasonable judgment would involve it in expense or liability unless it has been furnished with reasonable indemnity.

#### Section 6.2 Resignation or Removal.

(a) Depository Agent may at any time resign by giving notice to each other party to this Agreement, such resignation to be effective upon the appointment of a successor Depository Agent as provided below.

(b) Administrative Agent may remove Depository Agent at any time by giving notice to each other party to this Agreement, such removal to be effective upon the appointment of successor Depository Agent as provided below.

(c) In the event of any resignation or removal of Depository Agent, a successor Depository Agent, which shall be a bank or trust company organized under the laws of the United States America or of the State of New York, having a corporate trust office in New York and a capital and surplus of not less than \$50,000,000, shall be appointed by Administrative Agent after consultation with Borrower. If a successor Depository Agent shall not have been appointed and accepted its appointment as Depository Agent within 45 days after such notice of resignation of Depository Agent or such notice of removal of Depository Agent, Depository Agent, Administrative Agent or Borrower may apply to any court of competent jurisdiction to appoint a successor Depository Agent to act until such time, if any, as a successor Depository Agent shall have accepted its appointment as provided above. A successor Depository Agent so appointed by such court shall immediately and without further act be superseded by any successor Depository Agent appointed by Administrative Agent as provided above. Any such successor Depository Agent shall be capable of acting as a "securities intermediary" (within the meaning of Section 8-102(14) of the UCC) and shall deliver to each party to this Agreement a written instrument accepting such appointment and thereupon such

successor Depositary Agent shall succeed to all the rights and duties of Depositary Agent under this Agreement and shall be entitled to receive the Accounts from the predecessor Depositary Agent.

## **ARTICLE 7**

### **Determinations**

Section 7.1 Sales of Permitted Investments. Depositary Agent will use its best efforts to sell Permitted Investments so that actual money is available, on each date on which a distribution is to be made pursuant to this Agreement, for Depositary Agent to make such distribution in money on such date.

Section 7.2 Available Cash. In determining the amount of deposit or available money in any Account at any time, in addition to any money then on deposit in such Account, Depositary Agent shall treat as on deposit or as available money the net amount which would have been received by Depositary Agent on such day if Depositary Agent had liquidated all the Permitted Investments (at then prevailing market prices) then on deposit in such Account.

## **ARTICLE 8**

### **Miscellaneous**

Section 8.1 Fees and Indemnification of Depositary Agent. Borrower agrees to pay the fees of Depositary Agent as compensation for its services under this Agreement. In addition, Borrower and Administrative Agent hereby agree that (a) Depositary Agent, its directors, officers, employees and agents (each such Person being called a "Depositary Agent Indemnitee") are released from any and all liabilities to Borrower and Administrative Agent arising from the terms or in connection with this Agreement and the compliance of any Depositary Agent Indemnitee with the terms hereof, except to the extent that such liabilities arise from the negligence or willful misconduct of any Depositary Agent Indemnitee, and (b) Borrower, Administrative Agent and their respective successors and assigns shall at all times indemnify and save harmless the Depositary Agent Indemnitees from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of any Depositary Agent Indemnitee with the terms hereof, whether or not any Depositary Agent Indemnitee is a party thereto, except to the extent that such claims, actions or suits arise from the negligence or willful misconduct of any Depositary Agent Indemnitee, and from and against any and all liabilities, losses, damages, costs, charges, reasonable counsel fees and other expenses of every nature and character arising by reason of the same. The provisions of this Section 8.1 shall survive the termination of this Agreement and the resignation or removal of Depositary Agent. All payments made by Borrower hereunder shall be made without setoff or counterclaim.

Section 8.2 Waiver of Right of Set-Off. Depositary Agent waives, with respect to all of its existing and future claims against Borrower or any Affiliate thereof, all existing and future rights of set-off and banker's liens against the Accounts and all items (and proceeds thereof) that come into its possession in connection with the Accounts.

Section 8.3 Termination. Subject to Section 8.1, the provisions of this Agreement shall terminate on the date on which all Obligations shall have been paid in full and the Credit Documents have terminated in accordance with their terms. The termination of this Agreement shall have been deemed to have occurred upon receipt by Depository Agent of a certificate to such effect executed by Administrative Agent. Promptly after receipt of such certificate by Depository Agent, Depository Agent shall distribute all amounts contained in the Accounts to the Borrower and shall be discharged of all obligations hereunder.

Section 8.4 Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to this Agreement to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements of this Agreement and shall in no way affect the validity of the remaining provisions.

Section 8.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which taken together shall constitute but one and the same instrument.

Section 8.6 Amendments This Agreement may not be modified or amended without the prior written consent of each of the parties to this Agreement.

Section 8.7 Applicable Law. This Agreement and any instrument or agreement required hereunder (to the extent not expressly provided for therein) shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

Section 8.8 Notices, etc.. Except as otherwise provided in this Agreement, notices and other communications under this Agreement shall be in writing and shall be delivered, or mailed by first-class mail, postage prepaid, to the following addresses:

(a) If to Administrative Agent:

Credit Suisse First Boston, New York Branch  
Eleven Madison Avenue  
New York, New York 10010 Attention: Portfolio Management Telephone Number: (212) 325-9126 Telecopier Number: (212) 325-8321

(b) If to Borrower:

Calpine Construction Finance Company II, LLC c/o Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: General Counsel

Telephone No.: (408) 995-5115 Telecopier No.: (408) 995-0505

and

6700 Knoll Center Parkway, Suite 200 Pleasanton, California 94566 Attention: Corporate Asset Management Telephone Number: (925) 600-2000 Telecopier Number: (925) 600-8926

(c) If to Depositary Agent:

The Bank of New York

101 Barclay Street, Floor 2100 New York, New York 10286 Attention: Corporate Trust Administrator Telephone Number: (212) 815-5939 Telecopier Number: (212) 815-5915

All notices or other communications required or permitted to be delivered hereunder, shall be in writing and shall be considered as properly delivered (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, Emery, DHL, Air Borne and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telegram, or by telecopy confirmed by telephone. Notice so delivered shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively delivered on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

Section 8.9 Further Information. Depositary Agent shall promptly provide Administrative Agent and Borrower with any information reasonably requested by Administrative Agent or Borrower concerning balances in the Accounts and payments from such Accounts.

Section 8.10 Benefit of Agreement. This Agreement shall inure to the benefit of, and be enforceable by, the parties to this Agreement and their respective successors and permitted assigns.

Section 8.11 Account Balance Statements. Depositary Agent shall on a monthly basis, and at such other times as Administrative Agent or Borrower may from time to time reasonably request, provide Administrative Agent and Borrower account balance statements in respect of each of the Accounts. Such balance statements shall also include deposits and transfers to, withdrawals from and the net investment income or gain received and collected from each Account.

Section 8.12 Authorized Officer of Administrative Agent. All written directions and instructions (which may be provided by facsimile transmission) by Administrative Agent to Depositary Agent pursuant to this Agreement shall be executed by an authorized signatory of Administrative Agent. No person shall be deemed to be an authorized signatory of Administrative Agent unless named on a certificate of incumbency of such person delivered to Depositary Agent on the Closing Date.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have each caused this Depositary Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH,**  
as Administrative Agent for the Banks

By:

Name:

Title:

By:

Name:

Title:

**THE BANK OF NEW YORK, as Depositary Agent**

By:

Name:

Title:

**Exhibit A**

**Form of Account Withdrawal Certificate**

**[LETTERHEAD OF [BORROWER] [AUTHORIZED REPRESENTATIVE OF BORROWER]]**

**[DATE]**

**[THE LANGUAGE IN BRACKETS REPRESENTS ALTERNATIVE DRAWING EVENTS AND THE**

**CERTIFICATE PRESENTED SHOULD RECITE ONLY THE APPLICABLE ALTERNATIVE.]**

Dear Sirs:

Reference is made to that certain Depositary Agreement (the "Depositary Agreement") dated as of October 16, 2000, among Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), The Bank of New York, as Depositary Agent ("Depositary Agent"), and Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks named in that certain Credit Agreement dated as of October 16, 2000, among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Capitalized terms used herein without definition shall have the respective meanings specified in the Depositary Agreement.

Please liquidate investments held in the [NAME OF ACCOUNT] under the Depositary Agreement in an amount sufficient to yield proceeds of \$\_\_\_\_\_, to be used for the payment of [\_\_\_\_\_ COSTS] as set forth in the [CONSTRUCTION DRAWDOWN CERTIFICATE] [TURBINE PURCHASE DRAWDOWN CERTIFICATE] **[DISBURSEMENT REQUISITION] [SPECIFY ANY OTHER PURPOSES FOR THE WITHDRAWAL],** attached hereto as Schedule 1. Please [PAY] [TRANSFER] such amounts [BY **[OFFICIAL BANK CHECK] [WIRE TRANSFER]]** to **[THE \_\_\_\_\_ ACCOUNT(S)] [THE PERSON(S) SPECIFIED ON SCHEDULE 2 ATTACHED HERETO AT THE ADDRESSES SET FORTH THEREIN].**

The undersigned hereby certifies that:

- (a) the undersigned is an officer of the [BORROWER] [AUTHORIZED REPRESENTATIVE OF BORROWER] and, as such, is authorized to execute this Account Withdrawal Certificate on behalf of [BORROWER] [AUTHORIZED REPRESENTATIVE OF BORROWER];
- (b) the amounts paid or applied pursuant to this Account Withdrawal Certificate shall be used for the purpose(s) set forth on Schedule 1 attached hereto;

**Exhibit A**

(c) no Event of Default and, with respect to withdrawals from the Construction Account or the Loss Proceeds Account for the Project to which such withdrawal relates, no Non-Fundamental Project Default has occurred and is continuing or will occur after giving effect to the withdrawal of funds requested by this Account Withdrawal Certificate; and

(d) all other conditions to distributions from the [NAME OF ACCOUNT] set forth in the Credit Agreement have been satisfied.

Very truly yours,

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**ACKNOWLEDGED AND AGREED:**

**CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH,**  
as Administrative Agent for the Banks

By:

Name:

Title:

By:

Name:

Title:

**Exhibit A**

**Schedule 1 to Account Withdrawal Certificate**

**Use of Proceeds of Withdrawal from [NAME OF ACCOUNT]**

**Exhibit A - Schedule 1**

**Schedule 2 to Account Withdrawal Certificate**

**Payees of Proceeds of Withdrawal from [NAME OF ACCOUNT]**

**Exhibit A - Schedule 2**

**Exhibit B**

**Form of Disbursement Instruction**

**[LETTERHEAD OF ADMINISTRATIVE AGENT]**

[DATE]

**[THE LANGUAGE IN BRACKETS REPRESENTS ALTERNATIVE DRAWING EVENTS AND THE**

**CERTIFICATE PRESENTED SHOULD RECITE ONLY THE APPLICABLE ALTERNATIVE.]**

Dear Sirs:

Reference is made to that certain Depositary Agreement (the "Depositary Agreement") dated as of October 16, 2000, among Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), The Bank of New York, as Depositary Agent ("Depositary Agent"), and Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks named in that certain Credit Agreement dated as of October 16, 2000, among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Capitalized terms used herein without definition shall have the respective meanings specified in the Depositary Agreement.

Please liquidate investments held in the [NAME OF ACCOUNT] under the Depositary Agreement in an amount sufficient to yield proceeds of \$\_\_\_\_\_. Please [PAY] [TRANSFER] such amounts [BY [OFFICIAL BANK CHECK] [WIRE TRANSFER]] to [THE \_\_\_\_\_ ACCOUNT(S)] [THE PERSON(S) SPECIFIED ON SCHEDULE 1 ATTACHED HERETO AT THE ADDRESSES SET FORTH THEREIN].

The undersigned hereby certifies that the undersigned is an officer of the Administrative Agent and, as such, is authorized to execute this Disbursement Instruction on behalf of Administrative Agent.

Very truly yours,

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent for the Banks**

By:

Name:

Title:

By:

Name:

Title:

**Exhibit B**

**Schedule 1 to Disbursement Instruction**

**Payees of Proceeds of Withdrawal from [NAME OF ACCOUNT]**

**Exhibit B -- Schedule 1**

TABLE OF CONTENTS

ARTICLE 1 Definitions; Rules of Interpretation..... 1  
    Section 1.1 Definitions..... 1  
    Section 1.2 Rules of Interpretation..... 2

ARTICLE 2 Appointment of Depository Agent; Establishment of Accounts..... 2  
    Section 2.1 Appointment of Depository Agent..... 2  
    Section 2.2 Security Interest; Control..... 2  
    Section 2.3 Accounts Maintained as UCC "Securities Accounts"..... 2  
    Section 2.4 Borrower's Rights..... 3  
    Section 2.5 Creation of Accounts..... 3

ARTICLE 3 Deposits into Accounts..... 6  
    Section 3.1 Deposits..... 6

ARTICLE 4 Payments from Accounts..... 6  
    Section 4.1 Withdrawals by Administrative Agent..... 6  
    Section 4.2 Withdrawals from Construction Account..... 7  
    Section 4.3 Withdrawals from the Revenue Account..... 7  
    Section 4.4 Withdrawals from the Loss Proceeds Account..... 7  
    Section 4.5 Withdrawals from the Working Capital Reserve Account... 7

ARTICLE 5 Investment..... 8  
    Section 5.1 Permitted Investments..... 8

ARTICLE 6 Depository Agent..... 8  
    Section 6.1 Rights, Duties, etc..... 8  
    Section 6.2 Resignation or Removal..... 9

ARTICLE 7 Determinations..... 10  
    Section 7.1 Sales of Permitted Investments..... 10  
    Section 7.2 Available Cash..... 10

ARTICLE 8 Miscellaneous..... 10  
    Section 8.1 Fees and Indemnification of Depository Agent..... 10  
    Section 8.2 Waiver of Right of Set-Off..... 10  
    Section 8.3 Termination..... 11  
    Section 8.4 Severability..... 12  
    Section 8.5 Counterparts..... 11  
    Section 8.6 Amendments..... 11  
    Section 8.7 Applicable Law..... 11  
    Section 8.8 Notices, etc..... 11  
    Section 8.9 Further Information..... 12  
    Section 8.10 Benefit of Agreement..... 12  
    Section 8.11 Account Balance Statements..... 13  
    Section 8.12 Authorized Officer of Administrative Agent..... 13

**AFFILIATED PARTY AGREEMENT GUARANTY**

This AFFILIATED PARTY AGREEMENT GUARANTY (this "Guaranty") dated as of \_\_\_\_\_, 200\_ is made by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor of [NAME OF PROJECT OWNER] a Delaware [TYPE OF ENTITY] ("Project Owner").

**RECITALS**

A. \_\_\_\_\_, a \_\_\_\_\_ ("\_\_\_\_\_"), and Project Owner are parties to that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 2000 (the "\_\_\_\_\_"), that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 2000 (the "\_\_\_\_\_") and that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 2000 (the "\_\_\_\_\_"). \_\_\_\_\_, a \_\_\_\_\_ ("\_\_\_\_\_"), and Project Owner are parties to that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 2000 (the "\_\_\_\_\_"), that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 2000 (the "\_\_\_\_\_") and that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 2000 (the "\_\_\_\_\_"). Collectively, the \_\_\_\_\_, the \_\_\_\_\_, the \_\_\_\_\_, and the \_\_\_\_\_ are referred to as the "Relevant Documents". Collectively, \_\_\_\_\_, \_\_\_\_\_ and \_\_\_\_\_ are referred to as the "Affiliated Parties". [RELEVANT DOCUMENTS TO INCLUDE, IF APPLICABLE, CONSTRUCTION MANAGEMENT AGREEMENT, PROJECT MANAGEMENT AGREEMENT, O&M AGREEMENT, FUEL MANAGEMENT AGREEMENT, FUEL SUPPLY AGREEMENT AND POWER MARKETING AGREEMENT.]

B. Guarantor owns, either directly or indirectly, more than 50% of the outstanding capital stock or other equity interests of each of the Affiliated Parties; and

C. Project Owner has agreed to enter into the Relevant Documents on the condition that Guarantor guarantee certain of the Affiliated Parties' obligations thereunder as provided herein; and

D. Guarantor acknowledges that it will benefit, directly and indirectly, if Project Owner enters into the Relevant Documents; and

E. The obligations of Guarantor hereunder are being incurred concurrently with the obligations of the Affiliated Parties under the Relevant Documents; and

F. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to that certain Credit Agreement dated as of October 16, 2000 among Calpine Construction Finance Company II, LLC, a Delaware limited liability company as ("Borrower"), the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston,

acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. The Rules of Interpretations contained in said Exhibit A shall apply hereto.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as an inducement to Project Owner to enter into the Relevant Documents with the Affiliated Parties, Guarantor hereby consents and agrees as follows:

### **1. Guaranty.**

(a) The undersigned Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to Project Owner payment and performance when due, whether by acceleration or otherwise, of any and all obligations and liabilities of each of the Affiliated Parties under the Relevant Documents, together with all expenses incurred by Project Owner in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel (collectively, the "Obligations"), and agrees that if for any reason any of the Affiliated Parties shall fail to pay or perform when due any of such Obligations, Guarantor will pay or perform the same forthwith (it being understood that Guarantor's liability hereunder shall be subject to the same limitations of liability as the Affiliated Parties' liability under the Relevant Documents). Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment, notice of dishonor or non-payment, protest, notice of protest, of any such obligations, suit or taking other action by Project Owner against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Guarantor).

(b) This Guaranty is a primary obligation of the Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and performance and not of collectibility and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part any of the Affiliated Parties' liabilities and obligations to Project Owner. If any of the Affiliated Parties shall fail to pay or perform any of the Obligations to Project Owner as and when they are due, Guarantor shall forthwith pay or perform, as applicable, such Obligations. Any and all payments by Guarantor hereunder shall be in immediately available funds. Each failure by any of the Affiliated Parties to pay or perform any Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) Project Owner may, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Guarantor, except such notice as may be required by the Relevant Documents or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or performance or change or extend the time of payment of, renew, or alter any Obligation, or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of the Relevant Documents, any documents, instruments or agreements executed in connection therewith, in each case with the consent of the relevant Affiliated Parties, if required by the Relevant Documents, and the guaranty herein made shall apply to the Obligations, changed, extended, renewed, modified, amended, supplemented or altered in any manner; (ii) exercise or refrain from exercising any rights against any of the Affiliated Parties or others (including Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder; (iv) settle or compromise any Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment of all or any part thereof to the payment of any obligations and liabilities which may be due to Project Owner or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of any of the Affiliated Parties to Project Owner under the Relevant Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, the Relevant Documents or otherwise amend, modify or supplement (with the consent of the relevant Affiliated Parties, if required by the Relevant Documents) the Relevant Documents or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Guarantor of its right to subrogation against any of the Affiliated Parties to recover full indemnity for any payments made pursuant to this Guaranty or of its right of contribution against any other party.

(d) No invalidity, irregularity or unenforceability of the obligations or liabilities hereby guaranteed shall affect, impair, or be a defense to this Guaranty, which is a primary obligation of Guarantor.

(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 1(a) hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by Project Owner of written notice of revocation signed by Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Obligations (i) arising prior to receipt by Project Owner of written notice of such revocation or termination and the sole effect of revocation and termination hereof shall be to exclude from this Guaranty Obligations thereafter arising which are

unconnected with Obligations theretofore arising or transactions theretofore entered into or (ii) arising as a result of a default under the Relevant Documents occurring by reason of the revocation or termination of this Guaranty.

(f) (i) Except as otherwise required by law, each payment required to be made by Guarantor to Project Owner hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Guarantor shall, upon notice thereof from Project Owner, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the 60th day after payment of such amount, forward to Project Owner an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to Project Owner such additional amount as may be necessary to ensure that the net amount actually received by Project Owner is free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that Project Owner would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than any income, franchise or similar tax imposed upon the gross or net income of Project Owner by the United States or any State or any jurisdiction where Project Owner is organized and/or the jurisdiction in which is located.

2. Representations and Warranties. Guarantor makes the representations and warranties set forth below to Project Owner as of the date hereof:

(a) Guarantor is duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) Guarantor has taken all necessary corporate action to authorize the execution and delivery of this Guaranty and the performance of its obligations hereunder.

(c) All governmental authorizations and actions necessary in connection with the execution and delivery by Guarantor of this Guaranty and the performance of its obligations hereunder have been obtained or performed and remain valid and in full force and effect.

(d) This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

(e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Guarantor's certificate of incorporation or bylaws,

or any law, rule, regulation, order, judgment or decree applicable to or binding on Guarantor or any of its Affiliates or properties; (ii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected; and (iii) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.

(f) There is no pending or, to the best of Guarantor's knowledge, threatened action or proceeding affecting Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty.

(g) Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for it to own its properties, conduct its businesses and perform its obligations under this Guaranty.

(h) Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and is not subject to, or is exempt from, regulation under the Public Utility Holding Company Act of 1935 and the Federal Power Act.

(i) Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of each of the Affiliated Parties and their respective properties on a continuing basis, and Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of each of the Affiliated Parties and their respective properties.

(j) (i) Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay and (iii) Guarantor's property remaining after the delivery and performance of this Guaranty will not constitute unreasonably small capital.

3. Covenants. So long as any Obligations are outstanding, Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any that may become necessary in the future;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(c) Promptly, and in any event within 30 Banking Days after the General Counsel of Guarantor obtains knowledge thereof, Guarantor will give to Project Owner notice of the occurrence of any event or of any litigation or governmental proceeding pending (i) against Guarantor or any of its Affiliates which could affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor so as to materially and adversely affect the ability of Guarantor to perform its obligations hereunder or (ii) with respect to this Guaranty, which event or pending proceeding is likely to materially and adversely affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor and its Affiliates taken as a whole;

(d) It will deliver such other documents and other information reasonably requested by Project Owner; and

(e) It will comply in all material respects with its certificate of incorporation.

4. Waiver. Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Project Owner to proceed against any of the Affiliated Parties or any other person or to proceed against or exhaust any security held by Project Owner at any time or to pursue any other remedy in Project Owner's power before proceeding against Guarantor, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of any of the Affiliated Parties or any other Person or the failure of Project Owner to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any of the Affiliated Parties or any other Person, (c) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of any of the Affiliated Parties, Project Owner, any endorser or creditor of any of the Affiliated Parties or Guarantor or on the part of any other person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Project Owner as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Project Owner, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against any of the Affiliated Parties for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of any of the Affiliated Parties or the failure by any of the Affiliated Parties to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Relevant Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by any of the Affiliated Parties against Project Owner or any other Person under the Relevant Documents, (i) any duty on the part of Project Owner to disclose to Guarantor any facts Project Owner may now

or hereafter know about any of the Affiliated Parties, regardless of whether Project Owner have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of any of the Affiliated Parties and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect interest in any of the Affiliated Parties, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Relevant Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Relevant Documents, (l) any defense arising because of Project Owner's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

5. Subordination. Except as otherwise specifically provided in this Guaranty, all existing and future indebtedness of any of the Affiliated Parties to Guarantor (except to the extent such indebtedness is incurred in the ordinary course of business and relates to costs of materials or services provided pursuant to or consistent with the Relevant Documents) and the right of Guarantor to withdraw any capital invested by Guarantor in any of the Affiliated Parties, is hereby subordinated to all obligations and liabilities hereby guaranteed. Without the prior written consent of Project Owner or Administrative Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Guarantor accept any payment of or on account of any such indebtedness or as a withdrawal of capital while this Guaranty is in effect. Any payment by any of the Affiliated Parties in violation of this Guaranty shall be received by Guarantor in trust for Project Owner, and Guarantor shall cause the same to be paid to Project Owner immediately upon demand by Project Owner on account of the relevant Affiliated Parties' obligations and liabilities hereby guaranteed. Guarantor shall not assign all or any portion of such indebtedness while this Guaranty remains in effect except upon prior written notice to Project Owner by which the assignee of any such indebtedness agrees that the assignment is made subject to the terms of this Guaranty, and that any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

6. Subrogation. Until the Obligations have been paid in full,

(a) Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which Project Owner now have or may hereafter have against any of the Affiliated Parties, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Project Owner from any of the Affiliated Parties and (b) Guarantor waives any claim, right or remedy which Guarantor now has or hereafter acquire against any of the Affiliated Parties that arises hereunder and/or from the performance by the Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of Project Owner against any of the Affiliated Parties, or any security which Project Owner now has or may hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

## 7. Bankruptcy.

(a) So long as any of the Obligations are owed to Project Owner, Guarantor shall not, without the prior written consent of Project Owner, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against any of the Affiliated Parties. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of any of the Affiliated Parties, or by any defense which any of the Affiliated Parties may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) So long as any Obligations are owed to Project Owner, to the extent of such Obligations, Guarantor shall file, in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law, all claims which Guarantor may have against any of the Affiliated Parties relating to any indebtedness of any of the Affiliated Parties to Guarantor, and hereby assigns to Project Owner all rights of Guarantor thereunder. If Guarantor does not file any such claim, Project Owner, is hereby authorized to do so in the name of Guarantor or, in Project Owner's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of Project Owner's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Project Owner or its nominee shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to Project Owner to the extent of any Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Guarantor hereby assigns to Project Owner all of Guarantor's rights to all such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Project Owner receives cash by reason of any such payment or distribution. If Project Owner receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

## 8. Successions or Assignments.

(a) This Guaranty shall inure to the benefit of the successors or assigns of Project Owner who shall have, to the extent of its interest, the rights of Project Owner hereunder.

(b) This Guaranty is binding upon Guarantor and its successors and assigns. Guarantor is not entitled to assign its obligations hereunder to any other person without the written consent of Project Owner and Administrative Agent, and any purported assignment in violation of this provision shall be void.

9. Waivers.

(a) No delay on the part of Project Owner in exercising any of its rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by Project Owner, with or without notice to Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN GUARANTOR AND Project Owner THAT IS BEING ESTABLISHED. GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT Project Owner HAS RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT Project Owner WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

10. Interpretation. The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

11. Notices. All notices in connection with this Guaranty shall be given by telex or cable or by notice in writing hand-delivered or sent by facsimile transmission or by certified mail return-receipt requested (airmail, if overseas), postage prepaid. All such notices shall be sent to the appropriate telex or telecopier number or address, as the case may be, set forth in Section 15 below or to such other number or address as shall have been subsequently specified by written notice to the other party, and shall be sent with copies, if any, as indicated below. All such notices shall be effective upon receipt, and confirmation by answerback of any such notice so sent by telex shall be sufficient evidence of receipt thereof.

12. Amendments. This Guaranty may be amended only with the written consent of the parties hereto.

13. Jurisdiction; Governing Law.

(a) Any action or proceeding relating in any way to this Guaranty may be brought and enforced in the courts of the State of New York or of the United States for the Southern District of New York. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Project Owner and of the Guarantor shall be governed by and construed in accordance with the law of the State of

New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

14. Integration of Terms. This Guaranty contains the entire agreement between the Guarantor and Project Owner relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

15. Addresses.

(a) The address of Guarantor for notices is:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: General Counsel Telephone Number: (408) 995-5115  
Telecopier Number: (408) 995-0505

and

6700 Koll Center Parkway, Suite 200 Pleasanton, California 94566 Attention: Corporate Asset Optimization Telephone No.: (925) 600-2000  
Telecopy No.: (925) 600-8926

(b) The address of Project Owner for notices is:

**[NAME OF PROJECT OWNER]**  
c/o **[REGIONAL OFFICE]**  
Attention: Asset Optimization and  
Regional Counsel  
Telephone Number:  
Telecopy Number:

and

**[NAME OF PROJECT OWNER]**  
c/o Calpine Corporation  
50 West San Fernando Street  
San Jose, California 95113  
Attention: General Counsel  
Telephone No.: (408) 995-5115  
Telecopy No.: (408) 995-0505

(c) The address of Administrative Agent for notices is:

Credit Suisse First Boston, New York Branch Eleven Madison Avenue New York, New York 10010-3629 Attention: Portfolio Management  
Telephone Number: (212) 325-9126 Telecopier Number: (212) 325-8321

16. Interest; Collection Expenses. Any amount required to be paid by Guarantor pursuant to the terms hereof shall bear interest at the Default Rate or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If Project Owner is required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to Project Owner, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by Project Owner in enforcing this Guaranty.

17. Reinstatement of Guaranty. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of any of the Affiliated Parties or to Project Owner by any of the Affiliated Parties under the Relevant Documents or by Guarantor hereunder is rescinded or must otherwise be returned by Project Owner upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of any of the Affiliated Parties or otherwise, all as though such payment had not been made.

18. Counterparts. The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Guarantor has caused this Guaranty to be duly executed and delivered in San Jose, California as of the day and year first written above.

**CALPINE CORPORATION,**  
a Delaware corporation

By:

Name:

Title:

Agreed and accepted.

**[NAME OF PROJECT OWNER]**  
**a Delaware [TYPE OF ENTITY]**

By:

Name:

Title:

**EXHIBIT D2-B  
to the Credit Agreement**

**PROJECT COMPLETION GUARANTY**

THIS PROJECT COMPLETION GUARANTY (this "Guaranty") dated as of October 16, 2000 is made by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks under that certain Credit Agreement (the "Credit Agreement") dated as of October 16, 2000 among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent.

**RECITALS**

- A. Guarantor owns all the outstanding stock of CCFC II Holdings, Inc., a Delaware corporation, the sole member of Borrower.
- B. Administrative Agent and the Banks have agreed to enter into the Credit Agreement with Borrower on the condition that Guarantor guarantee certain of Borrower's obligations thereunder as provided herein.
- C. Guarantor acknowledges that it will benefit, directly and indirectly, if Administrative Agent and the Banks enter into the Credit Agreement.
- D. The obligations of Guarantor hereunder are being incurred concurrently with the obligations of Borrower under the Credit Agreement.
- E. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Credit Agreement and the Rules of Interpretations contained in said Exhibit A shall apply hereto.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and as an inducement to Administrative Agent and the Banks to enter into the Credit Agreement with Borrower, Guarantor hereby consents and agrees as follows:

## 1. Guaranty.

(a) The undersigned Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to the Banks (i) the performance, when due, of the obligations of Borrower under Section 5.14 of the Credit Agreement to achieve Completion of each of the Initial Projects and the Funded Subsequent Projects (including with respect to any partially owned Projects), (ii) the payment, when due, of the obligations of Borrower under Section 5.17.1, 5.17.2 and 5.17.3(x) of the Credit Agreement and (iii) if Borrower is unable to obtain a disbursement of Loan proceeds under the Credit Agreement for any Project for which the requirements of Section 5.14 of the Credit Agreement have not been waived in accordance with the terms of the Credit Agreement for a period of 60 consecutive days after a request for the same pursuant to a Drawdown Certificate delivered pursuant to Section 3.4 of the Credit Agreement, the prompt payment, when due, of the Project Costs for which funds were requested in such Drawdown Certificate, in each case together with the payment of all expenses incurred by Administrative Agent or the Banks in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel (collectively, the "Obligations"), and agrees that if for any reason Borrower shall fail to pay or perform, as the case may be, when due any of such Obligations, Guarantor will pay or perform, as the case may be, the same forthwith; provided, however, if the default giving rise to the potential exercise of remedies is susceptible of cure and the failure to so exercise remedies could not reasonably be expected to have a Material Adverse Effect on Borrower, Administrative Agent and the Banks shall not exercise any remedies in the nature of foreclosure on or sale of any Collateral, appointment of a receiver, entry into possession of any Project or other remedies under the Credit Documents intended to or having the effect of depriving Borrower or any other Portfolio Entity of the use, possession or enjoyment of any of the Projects as a result of an Event of Default thereunder for 90 days so long as Guarantor is diligently pursuing performance of the Obligations and/or diligently attempting to refinance all outstanding Loans under the Credit Agreement; provided, further, that if the Obligations under clause (i) above have been performed, Guarantor's liability with respect to the Obligations under clause (i) above shall be limited to the excess of the cost of achieving Completion of the applicable Projects over the amounts deposited or contributed pursuant to Section 5.17.3 of the Credit Agreement. Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment or performance, notice of dishonor or non-payment or non-performance, protest, notice of protest, of any such obligations, suit or taking other action by the Banks against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Guarantor).

(b) This Guaranty is a primary obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and performance, as the case may be, of the Obligations and not of collectibility, and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part Borrower's or any other Portfolio Entity's liabilities and obligations to the Banks. If Borrower shall fail to pay or perform, as the case may be, any of the Obligations to the Banks as and when they are due, Guarantor shall forthwith pay or perform, as the case may be, such Obligations immediately (in the case of payment obligations, in immediately available funds). Each failure by Borrower to pay or perform, as the case may be, any Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) The Banks may, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Guarantor, except such notice as may be required by the Credit Documents or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or performance or change or extend the time of payment or performance of, or renew or alter, any Obligation, or any obligations and liabilities (including any of those hereunder)

incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of the Credit Documents (including provisions with respect to the Completion of the Projects), any documents, instruments or agreements executed in connection therewith, in each case with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents, and the guaranty herein made shall apply to the Obligations changed, extended, renewed, modified, amended, supplemented or altered in any manner; (ii) exercise or refrain from exercising any rights against Borrower, any other Portfolio Entity or others (including Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder; (iv) settle or compromise any Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment or performance of all or any part thereof to the payment or performance of any obligations and liabilities which may be due to the Banks or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Portfolio Entity to the Banks under the Credit Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, the Credit Documents (including provisions with respect to the Completion of the Projects) or otherwise amend, modify or supplement (with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents) the Credit Documents (including provisions with respect to the Completion of the Projects) or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Guarantor of its right to subrogation against Borrower to recover full indemnity for any payments or performances made pursuant to this Guaranty or of its right of contribution against any other party.

(d) No invalidity, irregularity or unenforceability of the obligations or liabilities hereby guaranteed shall affect, impair or be a defense to this Guaranty, which is a primary obligation of Guarantor.

(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 1(a) hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by Administrative Agent of written notice of revocation signed by Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Obligations arising prior to receipt by Administrative Agent of written notice of such revocation or termination.

(f) (i) Except as otherwise required by law, each payment required to be made by Guarantor to the Banks hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Guarantor shall, upon notice thereof from Administrative Agent, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the 60th day after payment of such amount, forward to the Banks an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to Administrative Agent for the account of the Banks such additional amount as may be necessary to ensure that the net amount actually received by the Banks is free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that the Banks would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than (A) any income, franchise or similar tax imposed upon the gross or net income of Administrative Agent or any Bank by the United States, New York State, any jurisdiction where Administrative Agent or any Bank is organized and/or the jurisdiction in which is located any office from or at which Administrative Agent or any Bank is making or maintaining any Loans or receiving any payments under any of the Credit Documents and (B) any stamp, registration, documentation or similar tax.

(g) In fulfilling its obligations hereunder with respect to the Obligations set forth in Section 1(a)(i) hereof, but subject to the provisions of Section 5.14 of the Credit Agreement, Guarantor hereby irrevocably and unconditionally guarantees, promises and agrees to perform and comply with Section 5.14 of the Credit Agreement. The words "perform and comply with" are used in their most comprehensive sense and include without limitation

(i) the payment of all costs and expenses with respect to the construction of the Initial Projects and the Funded Subsequent Projects and the construction of such Projects within the time and in the manner set forth in Section 5.14 of the Credit Agreement, (ii) the payment, satisfaction or discharge of all Liens (other than Permitted Liens other than the Liens described in clause (c) of the definition of "Permitted Liens") arising out of or relating to the construction and Completion of, and that are or may be imposed upon or asserted against, the Initial Projects and the Funded Subsequent Projects and (iii) the defense and indemnification of the Banks against all such Liens, whether arising from the furnishing of labor, materials, supplies or equipment, from taxes, assessments, fees or other charges, from injuries or damage to persons or property, or otherwise. Without limiting the generality of the foregoing, Guarantor agrees (A) to cause any and all costs of achieving Completion of each of the Initial Projects and the Funded Subsequent Projects, including without limitation the costs of all labor, materials, supplies and equipment related thereto and any and all costs and cost overruns prior to such Completion, to be funded, paid and satisfied from Guarantor's own resources as the same shall become due and (B) to cause the Completion of each of the Initial Projects and the Funded Subsequent Projects, using Guarantor's own resources, in a timely, good and workmanlike manner, in accordance with the terms of the Credit Documents; provided, however, that Guarantor shall not be required to pay any performance and/or other liquidated damages due and owing from a Contractor (other than a Contractor that is an Affiliate of Guarantor) under a Construction Contract; provided, further, Guarantor's liability with respect to such liquidated damages shall be limited to the amount specified in clause (vi)(B) of the definition of "Completion" less the amount of any such liquidated damages determined to be due and owing from any applicable Contractors.

2. Representations and Warranties. Guarantor makes the representations and warranties set forth below to Administrative Agent and the Banks as of the date hereof:

(a) Guarantor is duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) Guarantor has taken all necessary corporate action to authorize the execution and delivery of this Guaranty and the performance of its obligations hereunder.

(c) All governmental authorizations and actions necessary in connection with the execution and delivery by Guarantor of this Guaranty and the performance of its obligations hereunder have been obtained or performed and remain valid and in full force and effect.

(d) This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in

accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

(e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Guarantor's certificate of incorporation or bylaws, or any law, rule, regulation, order, judgment or decree applicable to or binding on Guarantor or any of its Affiliates or properties; (ii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected; and (iii) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.

(f) There is no pending or, to the best of Guarantor's knowledge, threatened action or proceeding affecting Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty.

(g) All quarterly and annual financial statements heretofore delivered by Guarantor to Administrative Agent are true, correct and complete, do not fail to disclose any material liabilities, whether direct or contingent, fairly present the financial condition of Guarantor as of the date delivered and are prepared in accordance with generally accepted accounting principles consistently applied.

(h) Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for it to own its properties, conduct its businesses and perform its obligations under this Guaranty.

(i) Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and is not subject to, or is exempt from, regulation under the Public Utility Holding Company Act of 1935 and the Federal Power Act.

(j) Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties on a continuing basis, and Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties.

(k) (i) Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay or perform and (iii) Guarantor's property remaining after the delivery and performance of this Guaranty will not constitute unreasonably small capital.

(l) Guarantor is not in default under any material agreement relating to the incurrence of debt to which it is a party.

3. Covenants. So long as any Obligations are outstanding, Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any that may become necessary in the future;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(c) Promptly, and in any event within 30 Banking Days after the General Counsel of Guarantor obtains knowledge thereof, Guarantor will give to Administrative Agent notice of the occurrence of any event or of any litigation or governmental proceeding pending (i) against Guarantor or any of its Affiliates which could affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor so as to materially and adversely affect the ability of Guarantor to perform its obligations hereunder or (ii) with respect to this Guaranty, which event or pending proceeding is likely to materially and adversely affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor and its Affiliates taken as a whole;

(d) It will deliver such other documents and other information reasonably requested by Administrative Agent;

(e) It will comply in all material respects with its certificate of incorporation;

(f) Guarantor will not permit its:

(i) Tangible Net Worth to be less than (A) \$1,474,280,000 plus (B) 50% of the consolidated net income of Guarantor and its Subsidiaries (without giving effect to any losses) for each Fiscal Quarter ending on or after September 30, 2000, plus (C) 100% of the Net Equity Proceeds from any equity offering by Guarantor after June 30, 2000;

(ii) Leverage Ratio to be greater than .85 to 1.00 as of the end of any Fiscal Quarter;

(iii) Interest Coverage Ratio as of the end of any Fiscal Quarter to be less than 1.75 to 1.00 for the 12 month period comprising the four previous Fiscal Quarters; or

(iv) Interest Coverage Ratio (Parent Only) as of the end of any Fiscal Quarter to be less than 1.60 to 1.00 for the 12 month period comprising the four previous Fiscal Quarters.

Guarantor shall furnish, or shall cause to be furnished, to Administrative Agent as soon as possible and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year and within 120 days after the end of each Fiscal Year, a certificate, executed by a Responsible Officer of Guarantor, showing (in reasonable detail and with appropriate calculations and computations in all respects reasonably satisfactory to Administrative Agent) compliance with the covenants set forth in this Section 3(f).

Capitalized terms used in this Section 3(f) and defined in Appendix A attached hereto shall have the meanings given therein.

4. Waiver. Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other remedy in Administrative Agent's or the Banks' power before proceeding against Guarantor, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability

of Borrower or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (c) demand, presentment, protest and notice of any kind except as provided herein, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, the Banks, any endorser or creditor of Borrower or Guarantor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against Borrower for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Portfolio Entity of the failure by Borrower or any other Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment or performance in full of the Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Guarantor any facts Administrative Agent or the Banks may now or hereafter know about Borrower or any other Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower and the other Portfolio Entities and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (j) the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Credit Documents (including provisions with respect to the Completion of the Projects) or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents (including provisions with respect to the Completion of the Projects), (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

5. Subordination. Except as otherwise specifically provided in this Guaranty, all existing and future indebtedness of Borrower or any other Portfolio Entity to Guarantor (except to the extent such indebtedness consists of approved operating expenses or other O&M Costs with respect to materials or services provided consistent with an applicable Annual Operating Budget) and the right of Guarantor to withdraw any capital invested by Guarantor in Borrower or any other Portfolio Entity, is hereby subordinated to all obligations and liabilities hereby guaranteed. Without the prior written consent of Administrative Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Guarantor accept any payment of or on account of any such indebtedness or as a withdrawal of capital while the Credit Agreement is in effect except from distributions permitted under Waterfall Level 8 and 10 of Section 7.2 of the Credit Agreement or as permitted under Section 3.10(b) of the Credit Agreement. Any payment by Borrower in violation of this Guaranty shall be received by Guarantor in trust for Administrative Agent and the Banks, and Guarantor shall cause the same to be paid

to Administrative Agent for the benefit of the Banks immediately upon demand by Administrative Agent on account of Borrower's obligations and liabilities hereby guaranteed. Guarantor shall not assign all or any portion of such indebtedness while the Credit Agreement remains in effect except upon prior written notice to Administrative Agent by which the assignee of any such indebtedness agrees that the assignment is made subject to the terms of this Guaranty, and that any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

6. Subrogation. So long as the Credit Agreement remains in effect, (a) Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which the Banks now have or may hereafter have against Borrower or any other Portfolio Entity, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Administrative Agent or the Banks from Borrower or any other Portfolio Entity and (b) Guarantor waives any claim, right or remedy which Guarantor may now have or hereafter acquire against Borrower or any other Portfolio Entity that arises hereunder and/or from the performance by Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Banks against Borrower or any other Portfolio Entity, or any security which the Banks now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

## 7. Bankruptcy.

(a) So long as the Credit Agreement remains in effect, Guarantor shall not, without the prior written consent of Administrative Agent, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Borrower or any other Portfolio Entity. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of Borrower or any other Portfolio Entity, or by any defense which Borrower or any other Portfolio Entity may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) So long as the Credit Agreement remains in effect, to the extent of any Obligations, Guarantor shall file, in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law, all claims which Guarantor may have against Borrower or any other Portfolio Entity relating to any indebtedness of Borrower or any other Portfolio Entity to Guarantor, and hereby assigns to Administrative Agent on behalf of the Banks all rights of Guarantor thereunder. If Guarantor does not file any such claim, Administrative Agent, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Administrative Agent's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of Administrative Agent's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Administrative Agent or its nominee shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to Administrative Agent to the extent of any Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Guarantor hereby assigns to Administrative Agent all of Guarantor's rights to all such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Administrative Agent receives cash by reason of any such payment or distribution. If Administrative Agent receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

## 8. Successions or Assignments.

(a) This Guaranty shall inure to the benefit of the successors or assigns of the Banks who shall have, to the extent of their interest, the rights of the Banks hereunder; provided, however, that the rights of the Banks hereunder, if any be retained by them, shall have priority over and be senior to the rights of its successors or assigns unless Administrative Agent shall otherwise elect.

(b) This Guaranty is binding upon Guarantor and its successors and assigns. Guarantor is not entitled to assign its obligations hereunder to any other person without the written consent of Administrative Agent, and any purported assignment in violation of this provision shall be void.

## 9. Waivers.

(a) No delay on the part of Administrative Agent or the Banks in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by Administrative Agent or the Banks, with or without notice to Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN GUARANTOR AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT ADMINISTRATIVE AGENT HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT ADMINISTRATIVE AGENT WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

10. Interpretation. The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Bank Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

12. Amendments. This Guaranty may be amended only with the written consent of the parties hereto.

13. Jurisdiction; Governing Law.

(a) Any action or proceeding relating in any way to this Guaranty may be brought and enforced in the courts of the State of New York or of the United States for the Southern District of New York. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Administrative Agent and of Guarantor shall be governed by and construed in accordance with the law of the State of New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

14. Integration of Terms. This Guaranty contains the entire agreement between Guarantor and the Banks relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

15. Addresses.

(a) The address of Guarantor for notices is:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: General Counsel Telephone Number: (408) 995-5115  
Telecopier Number: (408) 995-0505

(b) The address of Administrative Agent for notices is:

Credit Suisse First Boston New York Branch Eleven Madison Avenue New York, New York 10010-3629 Attn: Portfolio Management  
Telephone No.(212) 325-9126 Telecopy No.: (212) 325-8321

16. Interest; Collection Expenses. Any amount required to be paid by Guarantor pursuant to the terms hereof shall bear interest at the Default Rate or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If Administrative Agent or the Banks are required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to Administrative Agent or the Banks, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by Administrative Agent or the Banks in enforcing this Guaranty.

17. Termination; Reinstatement of Guaranty. Upon the indefeasible payment in full of all Obligations owing under the Credit Agreement, this Guaranty shall terminate in its entirety. Notwithstanding the foregoing, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of Borrower or to Administrative Agent by Borrower or any other Person in respect of the Obligations (as such term is defined in the Credit Agreement) or by Guarantor hereunder is rescinded or must otherwise be returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Borrower or any other Portfolio Entity or otherwise, all as though such payment had not been made.

18. Counterparts. The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

19. No Benefit to Borrower. This Guaranty is for the benefit of only Administrative Agent and is not for the benefit of Borrower or any other Portfolio Entity. Notwithstanding that, pursuant to the Credit Agreement, Guarantor may treat any amounts actually paid hereunder as a loan to Borrower, the Guaranty shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of Borrower, in each case within the meaning of Section 365(e) of the Federal Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first written above.

**CALPINE CORPORATION,**  
a Delaware corporation

By:

Name:

Title:

Agreed and accepted.

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

## APPENDIX A TO PROJECT COMPLETION GUARANTY

"Asset Sale" means any sale, transfer, lease or other disposition pursuant to which (a) Guarantor or a Subsidiary receives consideration at the time of such sale, transfer, lease contribution or conveyance at least equal to the fair market value of assets being sold, transferred, leased, contributed or conveyed, (b) at least 60% of the consideration received by Guarantor or such Subsidiary is in the form of cash or cash equivalents and (c) an amount equal to 100% of Net Available Cash is either (x) reinvested in additional assets within 365 days of such asset sale or (y) used by Guarantor to prepay the loans and to permanently reduce the commitments under the Guarantor Credit Agreement.

"Capital Expenditures" means, for any period, the aggregate amount of all expenditures of Guarantor and its Subsidiaries for fixed or capital assets made during such period which, in accordance with GAAP, would be classified as capital expenditures.

"Capitalized Lease Liabilities" means all rental obligations of Guarantor or any of its Subsidiaries under any leasing or similar arrangement which, in accordance with GAAP, would be classified as capitalized leases, where (a) the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and (b) the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"Cogen America" means Cogeneration Corporation of America, a Delaware corporation of which Guarantor owns not less than 50% of the outstanding voting stock.

"Consolidated EBITDA" means, for any period, as applied to Guarantor, the sum of Consolidated Net Income (Loss) (but without giving effect to adjustments, accruals, deductions or entries resulting from purchase accounting, extraordinary losses or gains and any gains or losses from any Asset Sales), plus the following to the extent included in calculating Consolidated Net Income (Loss): (a) Consolidated Income Tax Expense, (b) Consolidated Interest Expense, (c) depreciation expense, (d) amortization expense and (e) all other non-cash items reducing Consolidated Net Income, less all non-cash items increasing Consolidated Net Income, in each case for such period; provided that, if Guarantor has any Subsidiary that is not a Wholly Owned Subsidiary, Consolidated EBITDA shall be reduced (to the extent not otherwise reduced by GAAP) by an amount equal to (A) the consolidated net income (loss) of such Subsidiary (to the extent included in Consolidated Net Income (Loss)) multiplied by (B) the quotient of (1) the number of shares of outstanding common stock of such Subsidiary not owned on the last day of such period by Guarantor or any Wholly Owned Subsidiary divided by (2) the total number of shares of outstanding common stock of such Subsidiary on the last day of such period.

"Consolidated Income Tax Expense" means, for any period, as applied to Guarantor, the provision for local, state, federal or foreign income taxes on a consolidated basis for such period determined in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, as applied to Guarantor, the sum of (a) the total interest expense of Guarantor and its consolidated Subsidiaries for such period as determined in accordance with GAAP, plus (b) all but the principal component of rentals in respect of Capitalized Lease Liabilities paid, accrued, or scheduled to be paid or accrued by Guarantor or its consolidated Subsidiaries, plus (c) one-third of all operating lease obligations paid, accrued, and/or scheduled to be paid by Guarantor and its consolidated Subsidiaries, plus (d) capitalized interest, plus (e) dividends paid in respect of preferred stock of Guarantor or any Subsidiary held by Persons other than Guarantor or a Wholly Owned Subsidiary, including, without limitation, but without duplication of payments by Guarantor to a Trust, all payments by a Trust of dividends and distributions with respect to the

Guaranteed Preferred Securities, plus (f) cash contributions to any employee stock ownership plan to the extent such contributions are used by such employee stock ownership plan to pay interest or fees to any Person (other than Guarantor or a Subsidiary) in connection with loans incurred by such employee stock ownership plan to purchase capital stock of Guarantor.

"Consolidated Net Income (Loss)" means, for any period, as applied to Guarantor, the Consolidated Net Income (Loss) of Guarantor and its consolidated Subsidiaries for such period, determined in accordance with GAAP, adjusted by excluding (without duplication), to the extent included in such net income

(loss), the following: (i) all extraordinary gains or losses; (ii) any net income of any Person if such Person is not incorporated or organized in the United States, a state thereof or the District of Columbia, except that (A) Guarantor's equity in the net income of any such Person for such period shall be included in Consolidated Net Income (Loss) up to the aggregate amount of cash actually distributed by such Person during such period to Guarantor or a Subsidiary incorporated or organized in the United States, a state thereof or the District of Columbia, as a dividend or other distribution and (B) the equity of Guarantor or a Subsidiary in a net loss of any such Person for such period shall be included in determining Consolidated Net Income (Loss); (iii) the net income of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not at the time thereof permitted, directly or indirectly, by operation of the terms of its charter or by-laws or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or its stockholders; (iv) any net income (or loss) of any Person combined with Guarantor or any of its Subsidiaries on a "pooling of interests" basis attributable to any period prior to the date of such combination; (v) any gain (but not loss) realized upon the sale or other disposition of any property, plant or equipment of Guarantor or its Subsidiaries (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (but not loss) realized upon the sale or other disposition by Guarantor or any Subsidiary of any capital stock of any Person, provided that losses shall be included on an after-tax basis; and (vi) the cumulative effect of a change in accounting principles; and further adjusted by subtracting from such net income the tax liability of any parent of Guarantor to the extent of payments made to such parent by Guarantor pursuant to any tax sharing agreement or other arrangement for such period.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall be calculated on a net basis (i.e., after taking into effect agreements, undertakings and other arrangements between the Person whose obligations are being guaranteed and the counterparty to such Person's obligations) and shall (subject to any limitation set forth therein) be deemed to be the outstanding net principal amount (or maximum net principal amount, if larger) of the debt, obligation or other liability guaranteed thereby, or, if the principal amount is not stated or determinable, the maximum reasonably anticipated net liability in respect thereof as determined by the Person in good faith, provided that (y) the amount of any Contingent Liability arising out of any indebtedness, obligation or liability other than the items described in clauses (a), (b) and (c) of the definition of "Indebtedness" (as defined in this Appendix A) and (z) the amount of any Contingent Liability consisting of a "keep-well," "make well" or other similar arrangement shall be deemed to be zero unless and until Guarantor is required to make any payment with respect thereto (and shall thereafter be deemed to be the amount required to be paid).

"Debt" means the outstanding principal amount of all Indebtedness of Guarantor and its consolidated Subsidiaries of the nature referred to in clauses (a), (b), (c) and (f) of the definition of "Indebtedness" (as

defined in this Appendix A), and (without duplication) all Contingent Liabilities in respect of any of the foregoing.

"Facility" means a power generation facility or energy producing facility, including any related fuel reserve.

"Fiscal Quarter" means any period of three consecutive months ending on March 31, June 30, September 30 or December 31 of any year.

"Fiscal Year" means any period of twelve consecutive calendar months ending on December 31.

"Guaranteed Preferred Securities" means the preferred securities issued by one of the Trusts, from time to time, including, without limitation the \$276,000,000 of principal amount of such securities issued in October, 1999, the \$300,000,000 of principal amount of such securities issued in January, 2000 and the \$60,000,000 of principal amount of such securities issued in February, 2000.

"Guarantor EBITDA" means, for any period, the Consolidated EBITDA of Guarantor and its Subsidiaries, minus that portion of Consolidated Interest Expense payable by the consolidating Subsidiaries, minus the principal payments of the consolidating Subsidiaries, minus the consolidated non-discretionary Capital Expenditures (i.e., Capital Expenditures which are expressly required to be made under any agreement, contract, instrument, permit, license, law, regulation, judgment or other arrangement (other than those arrangements and contracts that relate to the performance of the work for which the Capital Expenditure is being made) binding on Guarantor or any Subsidiary) of Guarantor and its Subsidiaries, plus, without duplication, cash and Permitted Investments of Guarantor's Wholly Owned Subsidiaries and Cogen America that are legally and contractually available to each such Subsidiary for the payment of dividends, but only to the extent the source of such cash and Permitted Investments is from that portion of Consolidated EBITDA attributable to such Subsidiary or from repayments to such Subsidiary of loans made by such Subsidiary.

"Guarantor Credit Agreement" means that certain First Amended and Restated Credit Agreement (as amended, amended and restated or otherwise modified from time to time), dated as of May 23, 2000, among Guarantor, certain commercial lending institutions party thereto (the "Guarantor Lenders") and The Bank of Nova Scotia, as agent for the Guarantor Lenders or, if the Guarantor Credit Agreement has been terminated, any replacement thereof.

"Guarantor Interest Expense" means, for any period, as applied to Guarantor, the sum of (a) the total interest expense of Guarantor for such period as determined in accordance with GAAP, including, without limitation, all interest paid by Guarantor under its subordinated debt securities issued to a Trust, plus (b) all but the principal component of rentals in respect of Capitalized Lease Liabilities paid, accrued, or scheduled to be paid or accrued by Guarantor, plus (c) one-third of all operating lease obligations paid, accrued and/or scheduled to be paid by Guarantor, plus (d) capitalized interest, plus (e) dividends paid in respect of preferred stock of Guarantor held by Persons other than Guarantor, plus (f) cash contributions to any employee stock ownership plan to the extent such contributions are used by such employee stock ownership plan to pay interest or fees to any person (other than Guarantor) in connection with loans incurred by such employee stock ownership plan to purchase capital stock of Guarantor.

"Hedging Obligations" means, with respect to any Person, the net liabilities of such Person under (a) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, foreign exchange contracts, currency swap agreements and all other agreements or arrangements designed to protect such Person against fluctuations in interest rates or currency exchange rates and (b) commodity or power swap or exchange agreements.

"Indebtedness" of any Person means, without duplication:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) all obligations, contingent or otherwise, relative to the stated amount of all letters of credit and banker's acceptances issued for the account of such Person (excluding Guarantor's subordinated debt securities issued to a Trust and the Guaranteed Preferred Securities, or any similar securities); provided, however, that if a letter of credit or banker's acceptance has been issued to support or secure any other form of Indebtedness, only the greater of the stated amount of such letter of credit or banker's acceptance or the outstanding principal amount of Indebtedness supported or secured, but not both, will be considered Indebtedness hereunder;
- (c) all obligations of such Person as lessee under leases which have been or should be, in accordance with GAAP, recorded as Capitalized Lease Liabilities;
- (d) all other items other than deferred taxes, deferred revenue and deferred leases which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Indebtedness is to be determined;
- (e) net liabilities of such Person under all Hedging Obligations;
- (f) whether or not so included as liabilities in accordance with GAAP, all net obligations of such Person to pay the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), and indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, but excluding any royalties or similar payments to be made by such Person which are based on production or performance; and
- (g) all Contingent Liabilities of such Person in respect of any of the foregoing.

For all purposes of this Guaranty, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, unless the indebtedness of such partnership or joint venture is expressly nonrecourse to such Person.

"Interest Coverage Ratio" means, for any period of four Fiscal Quarters, the ratio of (x) the Consolidated EBITDA of Guarantor and its Subsidiaries during such period to (y) the Consolidated Interest Expense of Guarantor and its Subsidiaries (excluding from Consolidated Interest Expense for purposes of this clause (y) interest capitalized in connection with the construction of a new Facility which interest is capitalized during the construction of such Facility) incurred during such period.

"Interest Coverage Ratio (Parent Only)" means, for any period of four Fiscal Quarters, the ratio of (x) the Guarantor EBITDA during such period to (y) Guarantor Interest Expense (excluding from Guarantor Interest Expense for purposes of this clause (y) interest capitalized in connection with the construction of a new Facility which interest is capitalized during the construction of such Facility) during such period.

"Leverage Ratio" means the ratio of (a) Debt to (b) Debt plus Tangible Net Worth.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property to secure payment of a debt or performance of an obligation or other priority or preferential arrangement of any kind or nature whatsoever.

"Net Available Cash" means, with respect to any Asset Sale, the cash or cash equivalent payments received by Guarantor or a Subsidiary in connection with such Asset Sale (including any cash received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as or when received and also including the proceeds of other property received when converted to cash or cash equivalents) net of the sum of, without duplication, (i) all reasonable legal, title and recording tax expenses, reasonable commissions, and other reasonable fees and expenses incurred directly relating to such Asset Sale, (ii) all local, state, federal and foreign taxes required to be paid or accrued as a liability by Guarantor or any of its Subsidiaries as a consequence of such Asset Sale, (iii) payments made to repay Indebtedness which is secured by any assets subject to such Asset Sale in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or by applicable law, be repaid out of the proceeds from such Asset Sale and (iv) all distributions required by any contract entered into other than in contemplation of such Asset Sale to be paid to any holder of a minority equity interest in such Subsidiary as a result of such Asset Sale, so long as such distributions do not exceed such minority holder's pro rata portion (based on such minority holder's proportionate equity interest) of the cash or cash equivalent payments described above, net of the amounts set forth in clauses (i)-(iii) above.

"Net Equity Proceeds" means, with respect to any issuance by Guarantor or a Trust of any equity securities (including the Guaranteed Preferred Securities), the gross consideration received by or for the account of Guarantor minus underwriting and brokerage commissions, discounts and fees relating to such issuance that are payable by Guarantor.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

"Subsidiary" means, with respect to any Person, any corporation, partnership or other Person of which more than 50% of the outstanding capital stock or other comparable ownership interest having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

"Tangible Net Worth" means the consolidated net worth of Guarantor and its Subsidiaries, including the aggregate outstanding face amount of the Guaranteed Preferred Securities, after subtracting therefrom the aggregate amount of any intangible assets of Guarantor and its Subsidiaries, including goodwill, franchises, licenses, patents, trademarks, trade names, copyrights, service marks and brand names.

"Trust" means Calpine Capital Trust and Calpine Capital Trust I, each a Delaware business trust.

"Wholly Owned Subsidiary" means a Subsidiary all the capital stock (or other comparable ownership interests) of which (other than directors' qualifying shares) is owned by Guarantor or another Wholly Owned Subsidiary.

## **EXHIBIT D2-C**

### **to the Credit Agreement**

#### **TURBINE PURCHASE GUARANTY**

THIS TURBINE PURCHASE GUARANTY (this "Guaranty") dated as of October 16, 2000 is made by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks under that certain Credit Agreement (the "Credit Agreement") dated as of October 16, 2000 among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent.

#### **RECITALS**

- A. Guarantor owns all the outstanding stock of CCFC II Holdings, Inc., a Delaware corporation, the sole member of Borrower.
- B. Administrative Agent and the Banks have agreed to enter into the Credit Agreement with Borrower on the condition that Guarantor guarantee certain of Borrower's obligations thereunder as provided herein.
- C. Guarantor acknowledges that it will benefit, directly and indirectly, if Administrative Agent and the Banks enter into the Credit Agreement.
- D. The obligations of Guarantor hereunder are being incurred concurrently with the obligations of Borrower under the Credit Agreement.
- E. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Credit Agreement and the Rules of Interpretations contained in said Exhibit A shall apply hereto.

#### **AGREEMENT**

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and as an inducement to Administrative Agent and the Banks to enter into the Credit Agreement with Borrower, Guarantor hereby consents and agrees as follows:

1. Guaranty.

(a) The undersigned Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to the Banks (i) the payment, when due, of the obligations of Borrower under Section 6.4.2(i) of the Credit Agreement, (ii) without duplication of amounts paid pursuant to clause (i) above, the payment, when due, of the obligations of Borrower under Section 5.17.3(y) of the Credit Agreement and (iii) if Borrower is unable to obtain a disbursement of Loan proceeds under the Credit Agreement for any Funded Turbine for a period of 60 consecutive days after a request for the same pursuant to a Drawdown Certificate delivered pursuant to Section 3.6 of the Credit Agreement, the prompt payment, when due, of the Turbine Costs for which funds were requested in such Drawdown Certificate, in each case together with the payment of all expenses incurred by Administrative Agent or the Banks in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel (collectively, the "Obligations"), and agrees that if for any reason Borrower shall fail to pay when due any of such Obligations, Guarantor will pay the same forthwith. Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment or performance, notice of dishonor or non-payment or non-performance, protest, notice of protest, of any such obligations, suit or taking other action by the Banks against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Guarantor).

(b) This Guaranty is a primary obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment of the Obligations and not of collectibility, and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part Borrower's or any other Portfolio Entity's liabilities and obligations to the Banks. If Borrower shall fail to pay any of the Obligations to the Banks as and when they are due, Guarantor shall forthwith pay such Obligations immediately (in the case of payment obligations, in immediately available funds). Each failure by Borrower to pay any Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) The Banks may, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Guarantor, except such notice as may be required by the Credit Documents or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or change or extend the time of payment of, or renew or alter, any Obligation, or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of the Credit Documents, any documents, instruments or agreements executed in connection therewith, in each case with the consent of Borrower or such

other relevant Portfolio Entity, if required by the Credit Documents, and the guaranty herein made shall apply to the Obligations changed, extended, renewed, modified, amended, supplemented or altered in any manner; (ii) exercise or refrain from exercising any rights against Borrower, any other Portfolio Entity or others (including Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder; (iv) settle or compromise any Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment or performance of all or any part thereof to the payment or performance of any obligations and liabilities which may be due to the Banks or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Portfolio Entity to the Banks under the Credit Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, the Credit Documents or otherwise amend, modify or supplement (with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents) the Credit Documents or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Guarantor of its right to subrogation against Borrower to recover full indemnity for any payments or performances made pursuant to this Guaranty or of its right of contribution against any other party.

(d) No invalidity, irregularity or unenforceability of the obligations or liabilities hereby guaranteed shall affect, impair or be a defense to this Guaranty, which is a primary obligation of Guarantor.

(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 1(a) hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by Administrative Agent of written notice of revocation signed by Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Obligations arising prior to receipt by Administrative Agent of written notice of such revocation or termination.

(f) (i) Except as otherwise required by law, each payment required to be made by Guarantor to the Banks hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Guarantor shall, upon notice thereof from Administrative Agent, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the 60th day after payment of such amount, forward to the Banks an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to Administrative Agent for the account of the Banks such additional amount as may be necessary to ensure that the net amount actually received by the Banks is free and clear of such Taxes, including any Taxes on such additional amount, is

equal to the amount that the Banks would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than (A) any income, franchise or similar tax imposed upon the gross or net income of Administrative Agent or any Bank by the United States, New York State, any jurisdiction where Administrative Agent or any Bank is organized and/or the jurisdiction in which is located any office from or at which Administrative Agent or any Bank is making or maintaining any Loans or receiving any payments under any of the Credit Documents and (B) any stamp, registration, documentation or similar tax.

2. Representations and Warranties. Guarantor makes the representations and warranties set forth below to Administrative Agent and the Banks as of the date hereof:

(a) Guarantor is duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) Guarantor has taken all necessary corporate action to authorize the execution and delivery of this Guaranty and the performance of its obligations hereunder.

(c) All governmental authorizations and actions necessary in connection with the execution and delivery by Guarantor of this Guaranty and the performance of its obligations hereunder have been obtained or performed and remain valid and in full force and effect.

(d) This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

(e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Guarantor's certificate of incorporation or bylaws, or any law, rule, regulation, order, judgment or decree applicable to or binding on Guarantor or any of its Affiliates or properties; (ii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected; and (iii) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.

(f) There is no pending or, to the best of Guarantor's knowledge, threatened action or proceeding affecting Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty.

(g) All quarterly and annual financial statements heretofore delivered by Guarantor to Administrative Agent are true, correct and complete, do not fail to disclose any material liabilities, whether direct or contingent, fairly present the financial condition of Guarantor as of the date delivered and are prepared in accordance with generally accepted accounting principles consistently applied.

(h) Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for it to own its properties, conduct its businesses and perform its obligations under this Guaranty.

(i) Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and is not subject to, or is exempt from, regulation under the Public Utility Holding Company Act of 1935 and the Federal Power Act.

(j) Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties on a continuing basis, and Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties.

(k) (i) Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay or perform and (iii) Guarantor's property remaining after the delivery and performance of this Guaranty will not constitute unreasonably small capital.

(l) Guarantor is not in default under any material agreement relating to the incurrence of debt to which it is a party.

3. Covenants. So long as any Obligations are outstanding, Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any that may become necessary in the future;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(c) Promptly, and in any event within 30 Banking Days after the General Counsel of Guarantor obtains knowledge thereof, Guarantor will give to Administrative Agent notice of the occurrence of any event or of any litigation or governmental proceeding pending (i) against Guarantor or any of its Affiliates which could affect the business, operations,

property, assets or condition (financial or otherwise) of Guarantor so as to materially and adversely affect the ability of Guarantor to perform its obligations hereunder or (ii) with respect to this Guaranty, which event or pending proceeding is likely to materially and adversely affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor and its Affiliates taken as a whole;

(d) It will deliver such other documents and other information reasonably requested by Administrative Agent; and

(e) It will comply in all material respects with its certificate of incorporation.

4. Waiver. Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other remedy in Administrative Agent's or the Banks' power before proceeding against Guarantor, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (c) demand, presentment, protest and notice of any kind except as provided herein, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, the Banks, any endorser or creditor of Borrower or Guarantor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against Borrower for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Portfolio Entity of the failure by Borrower or any other Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Guarantor any facts Administrative Agent or the Banks may now or hereafter know about Borrower or any other Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor,

or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower and the other Portfolio Entities and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Credit Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents, (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

5. Subordination. Except as otherwise specifically provided in this Guaranty, all existing and future indebtedness of Borrower or any other Portfolio Entity to Guarantor (except to the extent such indebtedness consists of approved operating expenses or other O&M Costs with respect to materials or services provided consistent with an applicable Annual Operating Budget) and the right of Guarantor to withdraw any capital invested by Guarantor in Borrower or any other Portfolio Entity, is hereby subordinated to all obligations and liabilities hereby guaranteed. Without the prior written consent of Administrative Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Guarantor accept any payment of or on account of any such indebtedness or as a withdrawal of capital while the Credit Agreement is in effect except from distributions permitted under Waterfall Level 8 and 10 of Section 7.2 of the Credit Agreement or as permitted under Section 3.10(b) of the Credit Agreement. Any payment by Borrower in violation of this Guaranty shall be received by Guarantor in trust for Administrative Agent and the Banks, and Guarantor shall cause the same to be paid to Administrative Agent for the benefit of the Banks immediately upon demand by Administrative Agent on account of Borrower's obligations and liabilities hereby guaranteed. Guarantor shall not assign all or any portion of such indebtedness while the Credit Agreement remains in effect except upon prior written notice to Administrative Agent by which the assignee of any such indebtedness agrees that the assignment is made subject to the terms of this Guaranty, and that any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

6. Subrogation. So long as the Credit Agreement remains in effect, (a) Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which the Banks now have or may hereafter have against Borrower or any other Portfolio Entity, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Administrative Agent or the Banks from Borrower or any other Portfolio Entity and (b) Guarantor waives any claim, right or remedy which Guarantor may now have or hereafter acquire against Borrower or any other Portfolio Entity that arises hereunder and/or from the performance by Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Banks against Borrower or any other Portfolio Entity, or any security which the Banks now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

## 7. Bankruptcy.

(a) So long as the Credit Agreement remains in effect, Guarantor shall not, without the prior written consent of Administrative Agent, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Borrower or any other Portfolio Entity. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of Borrower or any other Portfolio Entity, or by any defense which Borrower or any other Portfolio Entity may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) So long as the Credit Agreement remains in effect, to the extent of any Obligations, Guarantor shall file, in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law, all claims which Guarantor may have against Borrower or any other Portfolio Entity relating to any indebtedness of Borrower or any other Portfolio Entity to Guarantor, and hereby assigns to Administrative Agent on behalf of the Banks all rights of Guarantor thereunder. If Guarantor does not file any such claim, Administrative Agent, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Administrative Agent's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of Administrative Agent's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Administrative Agent or its nominee shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to Administrative Agent to the extent of any Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Guarantor hereby assigns to Administrative Agent all of Guarantor's rights to all such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Administrative Agent receives cash by reason of any such payment or distribution. If Administrative Agent receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

## 8. Successions or Assignments.

(a) This Guaranty shall inure to the benefit of the successors or assigns of the Banks who shall have, to the extent of their interest, the rights of the Banks hereunder; provided, however, that the rights of the Banks hereunder, if any be retained by them, shall have priority over and be senior to the rights of its successors or assigns unless Administrative Agent shall otherwise elect.

(b) This Guaranty is binding upon Guarantor and its successors and assigns. Guarantor is not entitled to assign its obligations hereunder to any other person without the written consent of Administrative Agent, and any purported assignment in violation of this provision shall be void.

9. Waivers.

(a) No delay on the part of Administrative Agent or the Banks in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by Administrative Agent or the Banks, with or without notice to Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN GUARANTOR AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT ADMINISTRATIVE AGENT HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT ADMINISTRATIVE AGENT WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

10. Interpretation. The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Bank Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

12. Amendments. This Guaranty may be amended only with the written consent of the parties hereto.

13. Jurisdiction; Governing Law.

(a) Any action or proceeding relating in any way to this Guaranty may be brought and enforced in the courts of the State of New York or of the United States for the Southern District of New York. Any such process or summons in connection with any such

action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Administrative Agent and of Guarantor shall be governed by and construed in accordance with the law of the State of New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

14. Integration of Terms. This Guaranty contains the entire

agreement between Guarantor and the Banks relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

15. Addresses.

(a) The address of Guarantor for notices is:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: General Counsel Telephone Number: (408) 995-5115  
Telecopier Number: (408) 995-0505

(b) The address of Administrative Agent for notices is:

Credit Suisse First Boston, New York Branch Eleven Madison Avenue New York, New York 10010-3629 Attn: Portfolio Management  
Telephone No.(212) 325-9126 Telecopy No.: (212) 325-8321

16. Interest; Collection Expenses. Any amount required to be paid by Guarantor pursuant to the terms hereof shall bear interest at the Default Rate or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If Administrative Agent or the Banks are required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to Administrative Agent or the Banks, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by Administrative Agent or the Banks in enforcing this Guaranty.

17. Termination; Reinstatement of Guaranty. Upon the indefeasible payment in full of all Obligations owing under the Credit Agreement, this Guaranty shall terminate in its entirety. Notwithstanding the foregoing, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of Borrower or to Administrative Agent by Borrower or any other Person in respect of the Obligations (as such term is defined in the Credit Agreement) or by Guarantor hereunder is rescinded or must

otherwise be returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Borrower or any other Portfolio Entity or otherwise, all as though such payment had not been made.

18. Counterparts. The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

19. No Benefit to Borrower. This Guaranty is for the benefit of only Administrative Agent and is not for the benefit of Borrower or any other Portfolio Entity. Notwithstanding that, pursuant to the Credit Agreement, Guarantor may treat any amounts actually paid hereunder as a loan to Borrower, the Guaranty shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of Borrower, in each case within the meaning of Section 365(e) of the Federal Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first written above.

**CALPINE CORPORATION,**  
a Delaware corporation

By:

Name:

Title:

Agreed and accepted.

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

**EXHIBIT D2-D**  
**to the Credit Agreement**

**PROJECT OWNER GUARANTY**

THIS PROJECT OWNER GUARANTY (this "Guaranty") dated as of , 200\_\_ is made by \_\_\_\_\_, a Delaware \_\_\_\_\_ ("Guarantor"), in favor of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks under that certain Credit Agreement (the "Credit Agreement") dated as of October 16, 2000 among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent.

**RECITALS**

- A. Guarantor is a Subsidiary of Borrower and developer and owner of the \_\_\_\_\_ Project (the "Project"). Borrower will loan to Guarantor proceeds of the Loans made by the Banks to Borrower under the Credit Agreement for Guarantor's payment of Project Costs with respect to the Project.
- B. Administrative Agent and the Banks have agreed to enter into the Credit Agreement with Borrower on the condition that Guarantor guarantee certain of Borrower's and the other Portfolio Entities' obligations thereunder as provided herein.
- C. Guarantor acknowledges that it will benefit, directly and indirectly, if Administrative Agent and the Banks enter into the Credit Agreement and the other Credit Documents.
- D. [THE OBLIGATIONS OF GUARANTOR HEREUNDER ARE BEING INCURRED CONCURRENTLY WITH [THE OBLIGATIONS OF BORROWER UNDER THE CREDIT AGREEMENT]][THE INITIAL FUNDING OF LOANS TO BORROWER WITH RESPECT TO THE PROJECT].
- E. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Credit Agreement and the Rules of Interpretations contained in said Exhibit A shall apply hereto.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and as an inducement to Administrative Agent and the Banks to enter into the Credit Agreement with Borrower

and the other Credit Documents with the Portfolio Entities, Guarantor hereby consents and agrees as follows:

1. Guaranty.

(a) The undersigned Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to the Banks the punctual payment when due, whether at stated maturity, by acceleration or otherwise of all of the Obligations of the Portfolio Entities under the Credit Documents, including without limitation the Obligations of Borrower under the Credit Agreement and the other Credit Documents, in each case together with the payment of all expenses incurred by Administrative Agent or the Banks in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel, but expressly excluding any Obligations (including expenses of enforcement and the fees and expenses of legal counsel related thereto) arising out of or attributable to Projects which have achieved Operation prior to the effective date of this Guaranty (collectively, the "Guaranteed Obligations"), and agrees that if for any reason Borrower or any other Portfolio Entity shall fail to pay when due any of such Guaranteed Obligations, Guarantor will pay the same forthwith. Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment or performance, notice of dishonor or non-payment or non-performance, protest, notice of protest, of any such obligations, suit or taking other action by the Banks against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Guarantor).

(b) This Guaranty is a primary obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment of the Guaranteed Obligations and not of collectibility, and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part Borrower's or any other Portfolio Entity's liabilities and obligations to the Banks. If Borrower or any other Portfolio Entity shall fail to pay any of the Guaranteed Obligations to the Banks as and when they are due, Guarantor shall forthwith pay such Guaranteed Obligations immediately (in immediately available funds). Each failure by Borrower or any other Portfolio Entity to pay any Guaranteed Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) The Banks may, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Guarantor, except such notice as may be required by the Credit Documents or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or performance or change or extend the time of payment or performance of, or renew or alter, any Obligation, or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of the Credit Documents, any documents, instruments or agreements executed in connection therewith, in each case with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents, and the guaranty herein made shall apply to the Guaranteed Obligations changed, extended, renewed, modified, amended, supplemented or altered in any manner; (ii) exercise or refrain from exercising any rights against Borrower, any other Portfolio Entity or others (including Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder; (iv) settle or compromise any Guaranteed Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment or performance of all or any part thereof to the payment or performance of any obligations and liabilities

which may be due to the Banks or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Guaranteed Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Portfolio Entity to the Banks under the Credit Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, the Credit Documents or otherwise amend, modify or supplement (with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents) the Credit Documents or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Guarantor of its right to subrogation against Borrower or any other Portfolio Entity to recover full indemnity for any payments or performances made pursuant to this Guaranty or of its right of contribution against any other party.

(d) No invalidity, irregularity or unenforceability of the obligations or liabilities hereby guaranteed shall affect, impair or be a defense to this Guaranty, which is a primary obligation of Guarantor.

(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 1(a) hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by Administrative Agent of written notice of revocation signed by Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Guaranteed Obligations arising prior to receipt by Administrative Agent of written notice of such revocation or termination.

(f) (i) Except as otherwise required by law, each payment required to be made by Guarantor to the Banks hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Guarantor shall, upon notice thereof from Administrative Agent, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the 60th day after payment of such amount, forward to the Banks an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to Administrative Agent for the account of the Banks such additional amount as may be necessary to ensure that the net amount actually received by the Banks is free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that the Banks would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than (A) any income, franchise or similar tax imposed upon the gross or net income of Administrative Agent or any Bank by the United States, New York State, any jurisdiction where Administrative Agent or any Bank is organized and/or the jurisdiction in which is located any office from or at which Administrative Agent or any Bank is making or maintaining any Loans or receiving any payments under any of the Credit Documents and (B) any stamp, registration, documentation or similar tax.

2. Representations and Warranties. Guarantor makes the representations and warranties set forth below to Administrative Agent and the Banks as of the date hereof:

- (a) Guarantor is duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.
- (b) Guarantor has taken all necessary action to authorize the execution and delivery of this Guaranty and the performance of its obligations hereunder.
- (c) All governmental authorizations and actions necessary in connection with the execution and delivery by Guarantor of this Guaranty and the performance of its obligations hereunder have been obtained or performed and remain valid and in full force and effect.
- (d) This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.
- (e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Guarantor's constituent documents, or any law, rule, regulation, order, judgment or decree applicable to or binding on Guarantor or any of its Affiliates or properties; (ii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected; and (iii) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.
- (f) There is no pending or, to the best of Guarantor's knowledge, threatened action or proceeding affecting Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty.
- (g) All of Guarantor's quarterly and annual financial statements heretofore delivered by Borrower to Administrative Agent are true, correct and complete, do not fail to disclose any material liabilities, whether direct or contingent, fairly present the financial condition of Guarantor as of the date delivered and are prepared in accordance with generally accepted accounting principles consistently applied.
- (h) Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for it to own its properties, conduct its businesses and perform its obligations under this Guaranty.
- (i) Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and is not subject to, or is exempt from, regulation under the Public Utility Holding Company Act of 1935 and the Federal Power Act.
- (j) Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties on a continuing basis, and Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties.

(k) (i) Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay or perform and (iii) Guarantor's property remaining after the delivery and performance of this Guaranty will not constitute unreasonably small capital. If, notwithstanding the foregoing, enforcement of the liability of Guarantor under this Guaranty for the full amount of the Guaranteed Obligations would be an unlawful or voidable transfer under any applicable fraudulent conveyance or fraudulent transfer law or any comparable law, then the liability of Guarantor hereunder shall be reduced to the highest amount for which such liability may then be enforced without giving rise to an unlawful or voidable transfer under any such law.

(l) Guarantor is not in default under any material agreement relating to the incurrence of debt to which it is a party.

3. Covenants. So long as any Guaranteed Obligations are outstanding, Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any that may become necessary in the future;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(c) Promptly, and in any event within 30 Banking Days after the General Counsel of Guarantor obtains knowledge thereof, Guarantor will give to Administrative Agent notice of the occurrence of any event or of any litigation or governmental proceeding pending (i) against Guarantor or any of its Affiliates which could affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor so as to materially and adversely affect the ability of Guarantor to perform its obligations hereunder or (ii) with respect to this Guaranty, which event or pending proceeding is likely to materially and adversely affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor;

(d) It will deliver such other documents and other information reasonably requested by Administrative Agent;

(e) It will comply in all material respects with its constituent documents;

(f) It will perform, or cause Borrower to perform, each of the covenants and other agreements contained in Articles 5 and 6 of the Credit Agreement as if such covenants and other agreements were fully set forth in this Guaranty, such agreements and other covenants being incorporated into this Guaranty by reference; provided, however, that performance of such covenants by Borrower or another Portfolio Entity will satisfy Guarantor's obligations hereunder with respect to such covenants.

4. Waiver. Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against Borrower, any other Portfolio Entity or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other

remedy in Administrative Agent's or the Banks' power before proceeding against Guarantor, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of Borrower, any other Portfolio Entity or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower, any other Portfolio Entity or any other Person, (c) demand, presentment, protest and notice of any kind except as provided herein, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, any other Portfolio Entity, Administrative Agent, the Banks, any endorser or creditor of Borrower, any other Portfolio Entity or Guarantor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Guaranteed Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against Borrower or any other Portfolio Entity for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Portfolio Entity of the failure by Borrower or any other Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment or performance in full of the Guaranteed Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Guarantor any facts Administrative Agent or the Banks may now or hereafter know about Borrower or any other Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower and the other Portfolio Entities and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (j) the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Credit Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents, (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

5. Subordination. Except as otherwise specifically provided in this Guaranty, all existing and future indebtedness of Borrower or any other Portfolio Entity to Guarantor (except to the extent such indebtedness consists of approved operating expenses or other O&M Costs with respect to materials or services provided consistent with an applicable Annual Operating Budget) and the right of Guarantor to withdraw any capital invested by Guarantor in Borrower or any other Portfolio Entity, is hereby subordinated to all obligations and liabilities hereby guaranteed. Without the prior written consent of Administrative Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Guarantor accept any payment of or on account of any such indebtedness or as

a withdrawal of capital while the Credit Documents are in effect. Any payment by Borrower or any other Portfolio Entity in violation of this Guaranty shall be received by Guarantor in trust for Administrative Agent and the Banks, and Guarantor shall cause the same to be paid to Administrative Agent for the benefit of the Banks immediately upon demand by Administrative Agent on account of Borrower's and the other Portfolio Entities' obligations and liabilities hereby guaranteed. Guarantor shall not assign all or any portion of such indebtedness while the Credit Documents remain in effect except upon prior written notice to Administrative Agent by which the assignee of any such indebtedness agrees that the assignment is made subject to the terms of this Guaranty, and that any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

6. Subrogation. So long as the Credit Documents remain in effect, (a) Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which the Banks now have or may hereafter have against Borrower or any other Portfolio Entity, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Administrative Agent or the Banks from Borrower or any other Portfolio Entity and (b) Guarantor waives any claim, right or remedy which Guarantor may now have or hereafter acquire against Borrower or any other Portfolio Entity that arises hereunder and/or from the performance by Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Banks against Borrower or any other Portfolio Entity, or any security which the Banks now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

#### 7. Bankruptcy.

(a) So long as the Credit Documents remain in effect, Guarantor shall not, without the prior written consent of Administrative Agent, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Borrower or any other Portfolio Entity. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of Borrower or any other Portfolio Entity, or by any defense which Borrower or any other Portfolio Entity may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) So long as the Credit Documents remain in effect, to the extent of any Guaranteed Obligations, Guarantor shall file, in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law, all claims which Guarantor may have against Borrower or any other Portfolio Entity relating to any indebtedness of Borrower or any other Portfolio Entity to Guarantor, and hereby assigns to Administrative Agent on behalf of the Banks all rights of Guarantor thereunder. If Guarantor does not file any such claim, Administrative Agent, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Administrative Agent's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of Administrative Agent's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Administrative Agent or its nominee shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to Administrative Agent to the extent of any Guaranteed Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Guarantor hereby assigns to Administrative Agent all of Guarantor's rights to all such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Administrative Agent receives cash by reason of any such payment or

distribution. If Administrative Agent receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

#### 8. Successions or Assignments.

(a) This Guaranty shall inure to the benefit of the successors or assigns of the Banks who shall have, to the extent of their interest, the rights of the Banks hereunder; provided, however, that the rights of the Banks hereunder, if any be retained by them, shall have priority over and be senior to the rights of its successors or assigns unless Administrative Agent shall otherwise elect.

(b) This Guaranty is binding upon Guarantor and its successors and assigns. Guarantor is not entitled to assign its obligations hereunder to any other person without the written consent of Administrative Agent, and any purported assignment in violation of this provision shall be void.

#### 9. Waivers.

(a) No delay on the part of Administrative Agent or the Banks in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by Administrative Agent or the Banks, with or without notice to Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN GUARANTOR AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT ADMINISTRATIVE AGENT HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT ADMINISTRATIVE AGENT WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

10. Interpretation. The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Bank Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

12. Amendments. This Guaranty may be amended only with the written consent of the parties hereto.

13. Jurisdiction; Governing Law.

(a) Any action or proceeding relating in any way to this Guaranty may be brought and enforced in the courts of the State of New York or of the United States for the Southern District of New York. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Administrative Agent and of Guarantor shall be governed by and construed in accordance with the law of the State of New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

14. Integration of Terms. This Guaranty contains the entire agreement between Guarantor and the Banks relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

15. Addresses.

(a) The address of Guarantor for notices is:

---

50 West San Fernando Street San Jose, California 95113 Attention: General Counsel Telephone Number: (408) 995-5115 Telecopier Number: (408) 995-0505

(b) The address of Administrative Agent for notices is:

Credit Suisse First Boston, New York Branch Eleven Madison Avenue New York, New York 10010-3629 Attn: Portfolio Management Telephone No.(212) 325-9126 Telecopy No.: (212) 325-8321

16. Interest; Collection Expenses. Any amount required to be paid by Guarantor pursuant to the terms hereof shall bear interest at the Default Rate or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If Administrative Agent or the Banks are required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to Administrative Agent or the Banks, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by Administrative Agent or the Banks in enforcing this Guaranty.

17. Termination; Reinstatement of Guaranty. Upon the indefeasible payment in full of all Guaranteed Obligations owing under the Credit Documents, this Guaranty shall terminate in its entirety. Notwithstanding the foregoing, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of Borrower, the other Portfolio Entities or to Administrative Agent by Borrower, any other Portfolio Entity or any other Person in respect of the

Guaranteed Obligations or by Guarantor hereunder is rescinded or must otherwise be returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Borrower or any other Portfolio Entity or otherwise, all as though such payment had not been made.

18. Counterparts. The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

19. No Benefit to Borrower or other Portfolio Entities. This Guaranty is for the benefit of only Administrative Agent and is not for the benefit of Borrower or any other Portfolio Entity. Notwithstanding that, pursuant to the Credit Documents, Guarantor may treat any amounts actually paid hereunder as a loan to Borrower or the relevant Portfolio Entity, but this Guaranty shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of Borrower, in each case within the meaning of Section 365(e) of the Federal Bankruptcy Code.

20. Scope of Liability. Notwithstanding anything herein to the contrary, recourse against Guarantor, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Guaranty shall be limited to the extent provided in Article 9 of the Credit Agreement.

**[REMINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first written above.

-----, a Delaware

By:

Name:

Title:

Agreed and accepted.

**CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

**Exhibit D-3**

**FORM OF DEED OF TRUST**

This DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT, dated as of \_\_\_\_\_, 200\_\_ (this "Deed of Trust") BY \_\_\_\_\_, a Delaware \_\_\_\_\_ ("Trustor"), whose address is \_\_\_\_\_, to [TITLE COMPANY], as trustee ("Trustee"), whose address is [TC ADDRESS], for the benefit of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent for the Banks (as defined below) (together with its successors and assigns, "Beneficiary"), whose address is Eleven Madison Avenue, New York, New York 10010.

**[FORM DEED OF TRUST INCORPORATES PROVISIONS FOR BOTH FEE AND LEASEHOLD DEED OF TRUST. LOCAL COUNSEL TO SUPPLEMENT AS NECESSARY TO COMPLY WITH LOCAL LAW.]**

**Recitals**

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company (the "Borrower"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, and the financial institutions listed in Exhibit H thereto, (together with their respective successors and assigns, the "Banks") have entered into a Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks have agreed to lend to Borrower Two Billion Five Hundred Million Dollars (\$2,500,000,000) for the purpose of purchasing turbines and purchasing, constructing, owning and operating various power projects. Borrower intends to loan certain proceeds of the Credit Agreement to Trustor for Trustor's payment of project costs associated with the Project (as defined below). Capitalized terms used in this Deed of Trust and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement.

B. Trustor and Administrative Agent on behalf of the Banks have entered into the Project Owner Guaranty dated as of \_\_\_\_\_, 200\_\_ (the "Guaranty") pursuant to which Trustor has guaranteed, among other things, the obligations of each of the other Portfolio Entities under the Credit Documents, including Borrower's obligations under the Credit Agreement and the other Credit Documents to which Borrower is a party.

C. The Banks are willing to make the Loans and make other financial accommodations in accordance with the Credit Documents, but in each case only upon the condition, among others,

that Trustor secure its obligations under the Guaranty and the other Credit Documents with various items of real and personal property owned by Trustor.

D. As set forth more fully below, Trustor intends to secure its payment and performance of its obligations under the Guaranty and the other Credit Documents with the Trust Estate (as defined below), along with various other items of personal and real property owned by Trustor.

### **Agreement**

NOW, THEREFORE, to secure the prompt and complete payment when and as due and payable of all of the obligations and liabilities of Trustor to Beneficiary and the Banks, by acceleration or otherwise, arising out of or in connection with the Credit Agreement, the Guaranty executed by Trustor in favor of Beneficiary, the other Credit Documents and the obligations of Trustor set forth herein (collectively, the "Secured Obligations"; provided, however, the Secured Obligations shall not include any obligations and liabilities of Trustor to Beneficiary and the Banks relating to or arising from Projects (as defined in the Credit Agreement) that have achieved Operation prior to the effective date of this Deed of Trust), and in consideration of the covenants herein contained and in the Guaranty, Trustor, intending to be legally bound, does hereby grant, bargain, sell, convey, warrant, assign, transfer, mortgage, pledge, set over and confirm unto Trustee in trust for Beneficiary as set forth in this Deed of Trust, for the benefit of Beneficiary and the Banks, all of Trustor's estate, right, title, interest, property, claim and demand, now or hereafter arising, in and to the following property and rights (herein collectively called the "Trust Estate"):

(a) Trustor's interest in and to the lands and premises more particularly described in Exhibit A herein (the "Premises") [TRUSTOR'S INTEREST UNDER THE GROUND LEASE (AS MODIFIED, SUPPLEMENTED OR AMENDED FROM TIME TO TIME, THE "GROUND LEASE") EXECUTED ON \_\_\_\_\_ BETWEEN \_\_\_\_\_ AND TRUSTOR, AND THE LEASEHOLD ESTATE CREATED THEREBY AND ALL OTHER RIGHTS OF TRUSTOR UNDER THE GROUND LEASE, WHEREBY TRUSTOR LEASES THE LANDS AND PREMISES MORE PARTICULARLY DESCRIBED IN EXHIBIT A HERETO, (THE "LEASED PREMISES")], together with all and singular the tenements, hereditaments and appurtenances thereto, and also Trustor's rights in and to (i) any land lying within the right-of-way of any streets, open or proposed, adjoining the same, (ii) any easements, natural gas pipelines, rights-of-way and rights used in connection therewith or as a means of access thereto, including, without limitation, the easements described in Exhibit B hereto, all easements for ingress and egress and easements for water and sewage pipelines, running in favor of Trustor, or appurtenant to the [LEASED] Premises, [OR ARISING UNDER THE GROUND LEASE] (collectively, the "Easements"), (iii) any and all sidewalks, alleys, strips and gores of land adjacent thereto or used in connection therewith (the [LEASED] Premises, the Easements and all of the foregoing being hereinafter collectively called the "Site"), [AND (iv) ALL RIGHTS OF TRUSTOR TO EXERCISE ANY ELECTION OR OPTION TO MAKE ANY DETERMINATION OR TO GIVE ANY NOTICE, CONSENT, WAIVER OR APPROVAL OR TO TAKE ANY OTHER ACTION UNDER THE GROUND LEASE];

(b) all buildings, structures, fixtures and other improvements now or hereafter erected on the Site owned by Trustor, including the Project (collectively, the "Improvements");

(c) all machinery, apparatus, equipment, fittings, fixtures, boilers, turbines and other articles of personal property, including all goods and all goods which become fixtures, now owned or hereafter acquired by Trustor and now or hereafter located on, attached to or used in the operation of or in connection with the Site and/or the Improvements, and all replacements thereof, additions thereto and substitutions therefor, to the fullest extent permitted by applicable law (all of the foregoing being hereinafter collectively called the "Equipment");

(d) all raw materials, work in process and other materials used or consumed in the construction of, or now or hereafter located on or used in connection with, the Site, the Improvements and the Equipment, (including, without limitation, fuel and fuel deposits, now or hereafter located on the Site or elsewhere or otherwise owned by Trustor) (the above items, together with the Equipment, being hereinafter collectively called the "Tangible Collateral");

(e) all rights, powers, privileges and other benefits of Trustor (to the extent assignable) now or hereafter obtained by Trustor from any Governmental Authority, including, without limitation, Permits issued in the name of Trustor, governmental actions relating to the ownership, operation, management and use of the Site, the development and financing of the Project, the Improvements and the Equipment, and any improvements, modifications or additions thereto;

(f) all the lands and interests in lands, tenements and hereditaments hereafter acquired by Trustor in connection with or appurtenant to the Site, including (without limitation) all interests of Trustor, whether as lessor or lessee, in any leases of land hereafter made and all rights of Trustor thereunder;

(g) any and all other property in connection with or appurtenant to the Site that may from time to time, by delivery or by writing of any kind, be subjected to the lien hereof by Trustor or by anyone on its behalf or with its consent, or which may come into the possession or be subject to the control of Trustee or Beneficiary pursuant to this Deed of Trust, being hereby collaterally assigned to Beneficiary and subjected or added to the lien or estate created by this Deed of Trust forthwith upon the acquisition thereof by Trustor, as fully as if such property were now owned by Trustor and were specifically described in this Deed of Trust and subjected to the lien and security interest hereof; and Trustee and Beneficiary is hereby authorized to receive any and all such property as and for additional security hereunder; and

(h) all the remainder or remainders, reversion or reversions, rents, revenues, issues, profits, royalties, income and other benefits derived from any of the foregoing, all of which are hereby assigned to Beneficiary, who is hereby authorized to collect and receive

the same, to give proper receipts and acquittances therefor and to apply the same in accordance with the provisions of this Deed of Trust.

**[INCORPORATE PARTICULAR ITEMS OF PROPERTY RELATING TO THE  
PROJECT IN QUESTION INTO COLLATERAL DESCRIPTION]**

TO HAVE AND TO HOLD the said Trust Estate, whether now owned or held or hereafter acquired, unto Beneficiary, its successors and assigns, pursuant to the provisions of this Deed of Trust.

IT IS HEREBY COVENANTED, DECLARED AND AGREED that the lien, security interest or estate created by this Deed of Trust to secure the payment of the Secured Obligations, both present and future, shall be first, prior and superior to any Lien, security interest, reservation of title or other interest heretofore, contemporaneously or subsequently suffered or granted by Trustor, its legal representatives, successors or assigns, except only those, if any, expressly hereinafter referred to and that the Trust Estate is to be held, dealt with and disposed of by Beneficiary, upon and subject to the terms, covenants, conditions, uses and agreements set forth in this Deed of Trust.

PROVIDED ALWAYS, that upon payment in full of the Secured Obligations in accordance with the terms and provisions hereof and of the other Credit Documents and the observance and performance by Trustor of its covenants and agreements set forth herein and therein, then this Deed of Trust and the estate hereby and therein granted shall cease and be void and shall be reconveyed as provided herein below.

**ARTICLE 1 - DEFINITIONS**

1.1 Defined Terms. Capitalized terms used in this Deed of Trust and not otherwise defined herein shall have the meanings assigned to them in the Credit Agreement. Any term defined by reference to an agreement, instrument or other document shall have the meaning so assigned to it whether or not such document is in effect. In addition, for purposes of this Deed of Trust, the following definitions shall apply:

"Credit Agreement" has the meaning ascribed to it in Recital A hereof.

"Easements " has the meaning ascribed to it in the Granting Clauses.

"Equipment" has the meaning ascribed to it in the Granting Clauses.

**["GROUND LEASE" HAS THE MEANING ASCRIBED TO IT IN THE GRANTING  
CLAUSES.]**

"Guaranty" has the meaning ascribed to it in Recital B hereof.

"Improvements" has the meaning ascribed to it in the Granting Clauses.

**["LEASED PREMISES" HAS THE MEANING ASCRIBED TO IT IN THE  
GRANTING CLAUSES.]**

"Premises" has the meaning ascribed to it in the Granting Clauses.

"Proceeds" has the meaning assigned to it under the UCC and, in any event, shall include, without limitation, (i) any and all proceeds of any insurance (including, without limitation, property casualty and title insurance), indemnity, warranty or guaranty payable from time to time with respect to any of the Site; (ii) any and all proceeds in the form of accounts (as such term is defined in the UCC), security deposits, tax escrows (if any), down payments (to the extent the same may be pledged under applicable law), collections, contract rights, documents, instruments, chattel paper, liens and security instruments, guaranties or general intangibles relating in whole or in part to the Site and all rights and remedies of whatever kind or nature Trustor may hold or acquire for the purpose of securing or enforcing any obligation due Trustor thereunder.

"Project" means that certain \_\_\_\_\_MW (approximately) power generating facility located at \_\_\_\_\_, as more particularly described on Exhibit G-\_\_ to the Credit Agreement.

"Secured Obligations" has the meaning ascribed to it in the Granting Clauses.

"Site" has the meaning ascribed to it in the Granting Clauses.

"Tangible Collateral" has the meaning ascribed to it in the Granting Clauses.

"Trust Estate" has the meaning ascribed to it in the Granting Clauses.

1.2 Accounting Terms. As used herein and in any certificate or other document made or delivered pursuant hereto, accounting terms not defined herein shall have the respective meanings given to them under GAAP.

1.3 The Rules of Interpretation. The rules of interpretation as set forth in the Credit Agreement shall govern the terms, conditions and provisions hereof. In the event of any conflict between those set forth in this Deed of Trust and the Credit Agreement, the latter shall be deemed controlling and shall preempt the former.

## **ARTICLE 2 - GENERAL COVENANTS AND PROVISIONS**

2.1 Trustor Performance of Credit Documents. Trustor shall perform, observe and comply with each and every provision hereof, and with each and every provision contained in the Credit Documents and shall promptly pay to Beneficiary, when payment shall become due under the Guaranty, the principal with interest thereon and all other sums required to be paid by Trustor under this Deed of Trust and the other Credit Documents at the time and in the manner provided in the Credit Documents.

2.2 General Representations, Covenants and Warranties. Trustor, to the best of its knowledge, represents, covenants and warrants that as of the date hereof: (a) Trustor has good and marketable title to the Site [, INCLUDING THE GROUND LEASE AND THE LEASEHOLD ESTATE CREATED THEREBY], free and clear of all encumbrances except the title exceptions set forth on Exhibit C

hereto and that it has the right to hold, occupy and enjoy its interest in the

**[LEASED] Premises [ON AND SUBJECT TO THE TERMS AND CONDITIONS OF THE GROUND**

LEASE], and has good right, full power and lawful authority to mortgage and pledge the same as provided herein and Beneficiary may at all times peaceably and quietly enter upon, hold, occupy and enjoy the entire [LEASED] Premises in accordance with the terms hereof; (b) all costs arising from construction of any improvements, the performance of any labor and the purchase of all Tangible Collateral and Improvements have been or shall be paid when due; (c) the Site has access for ingress and egress to dedicated street(s); and (d) no material part of the [LEASED] Premises has been damaged, destroyed, condemned or abandoned.

2.3 Compliance with Legal Requirements. Trustor shall promptly, fully, and faithfully comply with all Legal Requirements relating to its use and occupancy of the [LEASED] Premises, whether or not such compliance requires work or remedial measures that are ordinary or extraordinary, foreseen or unforeseen, structural or nonstructural, or that interfere with the use or enjoyment of the [LEASED] Premises.

2.4 Insurance; Application of Insurance Proceeds; Application of Eminent Domain Proceeds.

2.4.1 Trustor shall at its sole expense obtain for, deliver to, assign and maintain for the benefit of Beneficiary, during the term of this Deed of Trust, insurance policies insuring the Site and liability insurance policies, all in accordance with the requirements of Section 5.18 of the Credit Agreement. Trustor shall pay promptly when due any premiums on such insurance policies and on any renewals thereof. In the event of the foreclosure of this Deed of Trust or any other transfer of the [LEASED] Premises in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Trustor in and to all casualty insurance policies, and renewals thereof then in force, shall pass to the purchaser or grantee in connection therewith; provided that Trustor's obligations shall be reduced accordingly.

2.4.2 All insurance proceeds and all Eminent Domain Proceeds shall be paid and/or shall be applied in accordance with the provisions of the Credit Documents, including, without limitation, Sections 7.5 and 7.6 of the Credit Agreement.

2.5 Assignment of Rents. Trustor unconditionally and absolutely assigns to Beneficiary all of Trustor's right, title and interest in and to: all leases, subleases, occupancy agreements, licenses, rental contracts and other agreements now or hereafter existing relating to the use or occupancy of the Premises, together with all guarantees, modifications, extensions and renewals thereof; and all rents, issues, profits, income and proceeds due or to become due from tenants of the Premises (the "Leases"), including rentals and all other payments of any kind under any leases now existing or hereafter entered into, together with all deposits (including security deposits) of tenants thereunder. This is an absolute assignment to Beneficiary and not an assignment as security for the performance of the obligations under the Credit Documents, or any other indebtedness. Subject to the provisions of herein below, Beneficiary shall have the right, power and authority to: notify any person that the Leases have been assigned to Beneficiary and that all rents and other obligations are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure or taken possession of the Premises; settle compromise,

release, extend the time of payment of, and make allowances, adjustments and discounts of any rents or other obligations under the Leases; enforce payment of rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to rents and Leases; enter upon, take possession of and operate the Premises, lease all or any part of the Premises; and/or perform any and all obligations of Trustor under the Leases and exercise any and all rights of Trustor therein contained to the full extent of Trustor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. At Beneficiary's request, Trustor shall deliver a copy of this Deed of Trust to each tenant under a Lease. Trustor irrevocably directs any tenant, without any requirement for notice to or consent by Trustor, to comply with all demands of Beneficiary under this Section 2.5 and to turn over to Beneficiary on demand all rents which it receives. Beneficiary shall have the right, but not the obligation, to use and apply all rents received hereunder in such order and such manner as Beneficiary may determine in accordance with the Credit Agreement. Notwithstanding that this is an absolute assignment of the rents and Leases and not merely the collateral assignment of, or the grant of a lien or security interest in the rents and Leases, Beneficiary grants to Trustor a revocable license to collect and receive the rents and to retain, use and enjoy such rents. Such license may be revoked by Beneficiary only upon the occurrence of any Event of Default. Trustor shall apply any rents which it receives to the payment due under the Secured Obligations, taxes, assessments, water charges, sewer rents and other governmental charges levied, assessed or imposed against the Premises, insurance premiums, and other obligations of lessor under the Leases before using such proceeds for any other purpose. [UNLESS APPLICABLE (IN WHICH CASE DEFINED TERM "PREMISES" TO BE CHANGED TO "LEASED PREMISES"), DELETE IF SITE IS HELD VIA LEASE].

**[2.5 REJECTION OF GROUND LEASE BY LESSOR. TO THE EXTENT APPLICABLE, IF**

**THE LESSOR UNDER THE GROUND LEASE REJECTS OR DISAFFIRMS THE GROUND LEASE OR PURPORTS OR SEEKS TO DISAFFIRM THE GROUND LEASE PURSUANT TO ANY BANKRUPTCY LAW, THEN:**

**2.5.1 TO THE EXTENT PERMITTED BY LAW OR GOVERNMENTAL RULE, TRUSTOR SHALL REMAIN IN POSSESSION OF THE LEASED PREMISES DEMISED UNDER THE GROUND LEASE AND SHALL PERFORM ALL ACTS REASONABLY NECESSARY FOR TRUSTOR TO REMAIN IN SUCH POSSESSION FOR THE UNEXPIRED TERM OF SUCH GROUND LEASE (INCLUDING ALL RENEWALS), WHETHER THE THEN EXISTING TERMS AND PROVISIONS OF SUCH GROUND LEASE REQUIRE SUCH ACTS OR OTHERWISE; AND**

**2.5.2 ALL THE TERMS AND PROVISIONS OF THIS DEED OF TRUST AND THE LIEN CREATED BY THIS DEED OF TRUST SHALL REMAIN IN FULL FORCE AND EFFECT AND SHALL EXTEND AUTOMATICALLY TO ALL OF TRUSTOR'S RIGHTS AND REMEDIES ARISING AT ANY TIME UNDER, OR PURSUANT TO, SECTION 365(h) OF THE BANKRUPTCY CODE, INCLUDING ALL OF TRUSTOR'S RIGHTS TO REMAIN IN POSSESSION OF THE LEASED PREMISES.]**

**2.6 Expenses.** Trustor shall indemnify Beneficiary with respect to any transaction or matter in any way connected with any portion of the Site, or Trustor's use, occupancy, or operation of the Site in accordance with Section 5.11 of the Credit Agreement.

**2.7 Beneficiary Assumes No Secured Obligations.** It is expressly agreed that, anything herein contained to the contrary notwithstanding, Trustor shall remain obligated under all

agreements which are included in the definition of "Trust Estate" and shall perform all of its obligations thereunder in accordance with the provisions thereof, and neither Beneficiary nor any of the Banks shall have any obligation or liability with respect to such obligations of Trustor, nor shall Beneficiary or any of the Banks be required or obligated in any manner to perform or fulfill any obligations or duties of Trustor under such agreements, or to make any payment or to make any inquiry as to the nature or sufficiency of any payment received by it, or to present or file any claim or take any action to collect or enforce the payment of any amounts which have been assigned to Beneficiary hereunder or to which Beneficiary or the Banks may be entitled at any time or times.

2.8 Further Assurances. Trustor shall, from time to time, at its expense, promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or that Trustee or Beneficiary may reasonably request, in order to perfect and continue the lien and security interest granted hereby and to enable Beneficiary to obtain the full benefits of the lien and security interest granted or intended to be granted hereby. Trustor shall keep the Trust Estate free and clear of all Liens, other than Permitted Liens. Without limiting the generality of the foregoing, Trustor shall execute and record or file this Deed of Trust and each amendment hereto, and such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be necessary, or as Beneficiary or Trustee may reasonably request, in order to perfect and preserve the lien and security interest granted or purported to be granted hereby. Trustor hereby authorizes Beneficiary to file one or more financing statements or continuation statements, and amendments thereto, relative to all or any part of the Trust Estate necessary to preserve or protect the lien and security interest granted hereby without the signature of Trustor where permitted by law.

2.9 Acts of Trustor. Except as provided in or permitted by the Credit Documents, Trustor hereby represents and warrants that it has not mortgaged, hypothecated, assigned or pledged and hereby covenants that it will not mortgage, hypothecate, assign or pledge, so long as this Deed of Trust shall remain in effect, any of its right, title or interest in and to the Trust Estate or any part thereof, to anyone other than Beneficiary.

2.10 After-Acquired Property. Any and all of the Trust Estate which is hereafter acquired shall immediately, without any further conveyance, assignment or act on the part of Trustor or Beneficiary, become and be subject to the lien and security interest of this Deed of Trust as fully and completely as though specifically described herein, but nothing contained in this Section 2.10 shall be deemed to modify or change the obligations of Trustor under Section 2.8 hereof. If and whenever from time to time Trustor shall hereafter acquire any real property or interest therein which constitutes or is intended to constitute part of the Trust Estate hereunder, Trustor shall promptly give notice thereof to Beneficiary and Trustor shall forthwith execute, acknowledge and deliver to Beneficiary a supplement to this Deed of Trust in form and substance reasonably satisfactory to Beneficiary subjecting the property so acquired to the lien of this Deed of Trust. At the same time, if Beneficiary so requests, Trustor shall deliver to Beneficiary an endorsement to the lender's policy of title insurance issued to Beneficiary insuring the lien of this Deed of Trust which shall insure to Beneficiary in form and substance satisfactory to Beneficiary that the lien of this Deed of Trust as insured under such title insurance policy encumber such later acquired property and that Trustor's title to such property meets all of the applicable requirements

of the Credit Documents with respect to title to Trustor's real property. [TO BE  
**AMENDED IF LOCAL TITLE RULES PRECLUDE SUCH ENDORSEMENT TO TITLE POLICY.]**

2.11 Site.

2.11.1 [TRUSTOR SHALL PAY OR CAUSE TO BE PAID ALL RENT AND OTHER CHARGES REQUIRED UNDER THE GROUND LEASE AS AND WHEN THE SAME ARE DUE AND SHALL PROMPTLY AND FAITHFULLY PERFORM OR CAUSE TO BE PERFORMED ALL OTHER MATERIAL TERMS, OBLIGATIONS, COVENANTS, CONDITIONS, AGREEMENTS, INDEMNITIES AND LIABILITIES OF TRUSTOR UNDER THE GROUND LEASE.] Trustor shall observe all applicable covenants, easements and other restrictions of record with respect to the Site, the Easements or to any other part of the Trust Estate, in all material respects.

2.11.2 [TRUSTOR SHALL DO, OR CAUSE TO BE DONE, ALL THINGS NECESSARY TO PRESERVE AND KEEP UNIMPAIRED ALL RIGHTS OF TRUSTOR AS LESSEE UNDER THE GROUND LEASE, AND TO PREVENT ANY DEFAULT UNDER THE GROUND LEASE, OR ANY TERMINATION, SURRENDER, CANCELLATION, FORFEITURE, SUBORDINATION OR IMPAIRMENT THEREOF. TRUSTOR DOES HEREBY AUTHORIZE AND IRREVOCABLY APPOINT AND CONSTITUTE BENEFICIARY AS ITS TRUE AND LAWFUL ATTORNEY-IN-FACT, WHICH APPOINTMENT IS COUPLED WITH AN INTEREST, IN ITS NAME, PLACE AND STEAD, TO TAKE ANY AND ALL ACTIONS DEEMED NECESSARY OR DESIRABLE BY BENEFICIARY TO PERFORM AND COMPLY WITH ALL THE OBLIGATIONS OF TRUSTOR UNDER THE GROUND LEASE, AND TO DO AND TAKE UPON THE OCCURRENCE AND DURING CONSTRUCTION OF AN EVENT OF DEFAULT, BUT WITHOUT ANY OBLIGATION SO TO DO OR TAKE, ANY ACTION WHICH BENEFICIARY DEEMS REASONABLY NECESSARY TO PREVENT OR CURE ANY DEFAULT BY TRUSTOR UNDER THE GROUND LEASE, TO ENTER INTO AND UPON THE SITE OR ANY PART THEREOF AS PROVIDED IN THE CREDIT DOCUMENTS IN ORDER TO PREVENT OR CURE ANY DEFAULT OF TRUSTOR PURSUANT THERETO, TO THE END THAT THE RIGHTS OF TRUSTOR IN AND TO THE LEASEHOLD ESTATE CREATED BY THE GROUND LEASE SHALL BE KEPT FREE FROM DEFAULT.]

2.11.3 [TRUSTOR SHALL USE ALL REASONABLE EFFORTS TO ENFORCE THE OBLIGATIONS OF THE LESSOR UNDER THE GROUND LEASE IN A COMMERCIALY REASONABLE MANNER.]

2.11.4 [TRUSTOR SHALL NOT VOLUNTARILY SURRENDER ITS LEASEHOLD ESTATE AND INTEREST UNDER THE GROUND LEASE OR MODIFY, CHANGE, SUPPLEMENT, ALTER OR AMEND THE GROUND LEASE OR AFFIRMATIVELY WAIVE ANY PROVISIONS THEREOF, EITHER ORALLY OR IN WRITING, EXCEPT AS PERMITTED IN THE CREDIT DOCUMENTS, AND ANY ATTEMPT ON THE PART OF TRUSTOR TO DO ANY OF THE FOREGOING WITHOUT THE WRITTEN CONSENT OF BENEFICIARY SHALL BE NULL AND VOID.]

2.11.5 [IF ANY ACTION OR PROCEEDING SHALL BE INSTITUTED TO EVICT TRUSTOR OR TO RECOVER POSSESSION OF THE SITE OR ANY PART THEREOF OR INTEREST THEREIN FROM TRUSTOR OR ANY ACTION OR PROCEEDING OTHERWISE AFFECTING THE SITE OR THIS DEED OF TRUST SHALL BE INSTITUTED, THEN TRUSTOR SHALL, IMMEDIATELY AFTER RECEIPT, DELIVER TO BENEFICIARY A TRUE AND COMPLETE COPY OF EACH PETITION, SUMMONS, COMPLAINT, NOTICE OF MOTION, ORDER TO SHOW CAUSE AND ALL OTHER PLEADINGS AND PAPERS, HOWEVER DESIGNATED, SERVED IN ANY SUCH ACTION OR PROCEEDING.]

2.11.6 [TRUSTOR COVENANTS AND AGREES THAT THE FEE TITLE TO THE SITE AND THE LEASEHOLD ESTATE CREATED UNDER THE GROUND LEASE SHALL NOT MERGE BUT SHALL ALWAYS REMAIN

SEPARATE AND DISTINCT, NOTWITHSTANDING THE UNION OF SAID ESTATES EITHER IN TRUSTOR OR A THIRD PARTY BY PURCHASE OR OTHERWISE AND, IN CASE TRUSTOR ACQUIRES THE FEE TITLE OR ANY OTHER ESTATE, TITLE OR INTEREST IN AND TO THE SITE, THE LIEN OF THIS DEED OF TRUST SHALL, WITHOUT FURTHER CONVEYANCE, SIMULTANEOUSLY WITH SUCH ACQUISITION, BE SPREAD TO COVER AND ATTACH TO SUCH ACQUIRED ESTATE AND AS SO SPREAD AND ATTACHED SHALL BE PRIOR TO THE LIEN OF ANY MORTGAGE PLACED ON THE ACQUIRED ESTATE AFTER THE DATE OF THIS DEED OF TRUST.]

2.11.7 [NO RELEASE OR FORBEARANCE OF ANY OF TRUSTOR'S OBLIGATIONS UNDER THE GROUND LEASE BY THE LESSOR THEREUNDER, SHALL RELEASE TRUSTOR FROM ANY OF ITS OBLIGATIONS UNDER THIS DEED OF TRUST.]

2.11.8 [TRUSTOR SHALL, WITHIN TEN DAYS AFTER WRITTEN DEMAND FROM BENEFICIARY, DELIVER TO BENEFICIARY PROOF OF PAYMENT OF ALL ITEMS THAT ARE REQUIRED TO BE PAID BY TRUSTOR UNDER THE GROUND LEASE, INCLUDING, WITHOUT LIMITATION, RENT, TAXES, OPERATING EXPENSES AND OTHER CHARGES.]

2.11.9 [THE LIEN OF THIS DEED OF TRUST SHALL ATTACH TO ALL OF TRUSTOR'S RIGHTS AND REMEDIES AT ANY TIME ARISING UNDER OR PURSUANT TO SECTION 365(h) OF THE BANKRUPTCY LAW, INCLUDING, WITHOUT LIMITATION, ALL OF TRUSTOR'S RIGHTS TO REMAIN IN POSSESSION OF THE SITE. TRUSTOR SHALL NOT ELECT TO TREAT THE GROUND LEASE AS TERMINATED UNDER SECTION 365(h)(1) OF THE BANKRUPTCY LAW, AND ANY SUCH ELECTION SHALL BE VOID.]

2.11.9.1 [IF PURSUANT TO SECTION 365(h)(2) OF THE BANKRUPTCY LAW, TRUSTOR SHALL SEEK TO OFFSET AGAINST THE RENT RESERVED IN THE GROUND LEASE THE AMOUNT OF ANY DAMAGES CAUSED BY THE NONPERFORMANCE BY THE LESSOR OR ANY OTHER PARTY OF ANY OF THEIR RESPECTIVE OBLIGATIONS THEREUNDER AFTER THE REJECTION BY THE LESSOR OR SUCH OTHER PARTY OF THE GROUND LEASE UNDER THE BANKRUPTCY LAW, THEN TRUSTOR SHALL, PRIOR TO EFFECTING SUCH OFFSET, NOTIFY BENEFICIARY OF ITS INTENT TO DO SO, SETTING FORTH THE AMOUNT PROPOSED TO BE SO OFFSET AND THE BASIS THEREFOR. BENEFICIARY SHALL HAVE THE RIGHT TO OBJECT TO ALL OR ANY PART OF SUCH OFFSET THAT, IN THE REASONABLE JUDGMENT OF BENEFICIARY, WOULD CONSTITUTE A BREACH OF THE GROUND LEASE, AND IN THE EVENT OF SUCH OBJECTION, TRUSTOR SHALL NOT EFFECT ANY OFFSET OF THE AMOUNTS FOUND OBJECTIONABLE BY BENEFICIARY. NEITHER BENEFICIARY'S FAILURE TO OBJECT AS AFORESAID NOR ANY OBJECTION RELATING TO SUCH OFFSET SHALL CONSTITUTE AN APPROVAL OF ANY SUCH OFFSET BY BENEFICIARY.]

2.11.9.2 [IF ANY ACTION, PROCEEDING, MOTION OR NOTICE SHALL BE COMMENCED OR FILED IN RESPECT OF THE LESSOR UNDER THE GROUND LEASE OR ANY OTHER PARTY OR IN RESPECT OF THE GROUND LEASE IN CONNECTION WITH ANY CASE UNDER THE BANKRUPTCY LAW, THEN BENEFICIARY SHALL HAVE THE OPTION TO INTERVENE IN ANY SUCH LITIGATION WITH COUNSEL OF BENEFICIARY'S CHOICE. BENEFICIARY MAY PROCEED IN ITS OWN NAME IN CONNECTION WITH ANY SUCH LITIGATION, AND TRUSTOR AGREES TO EXECUTE ANY AND ALL POWERS, AUTHORIZATIONS, CONSENTS OR OTHER DOCUMENTS REQUIRED BY BENEFICIARY IN CONNECTION THEREWITH.]

2.11.9.3 [TRUSTOR SHALL, AFTER OBTAINING KNOWLEDGE THEREOF, PROMPTLY NOTIFY BENEFICIARY OF ANY FILING BY OR AGAINST THE LESSOR OR OTHER PARTY WITH

AN INTEREST IN THE SITE OF A PETITION UNDER THE BANKRUPTCY LAW. TRUSTOR SHALL PROMPTLY DELIVER TO BENEFICIARY, FOLLOWING RECEIPT, COPIES OF ANY AND ALL NOTICES, SUMMONSES, PLEADINGS, APPLICATIONS AND OTHER DOCUMENTS RECEIVED BY TRUSTOR IN CONNECTION WITH ANY SUCH PETITION AND ANY PROCEEDINGS RELATING THERETO.]

2.11.9.4 [IF THERE SHALL BE FILED BY OR AGAINST TRUSTOR A PETITION UNDER THE BANKRUPTCY LAW, AND TRUSTOR, AS LESSEE UNDER THE GROUND LEASE, SHALL DETERMINE TO REJECT THE GROUND LEASE PURSUANT TO SECTION 365(a) OF THE BANKRUPTCY LAW, THEN TRUSTOR SHALL GIVE BENEFICIARY A NOTICE OF THE DATE ON WHICH TRUSTOR SHALL APPLY TO THE BANKRUPTCY COURT FOR AUTHORITY TO REJECT THE GROUND LEASE (SUCH NOTICE TO BE NO LATER THAN 20 DAYS PRIOR TO SUCH DATE). BENEFICIARY SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO SERVE UPON TRUSTOR AT ANY TIME PRIOR TO THE DATE ON WHICH TRUSTOR SHALL SO APPLY TO THE BANKRUPTCY COURT A NOTICE STATING THAT BENEFICIARY DEMANDS THAT TRUSTOR ASSUME AND ASSIGN THE GROUND LEASE TO BENEFICIARY PURSUANT TO SECTION 365 OF THE BANKRUPTCY LAW. IF BENEFICIARY SHALL SERVE UPON TRUSTOR THE NOTICE DESCRIBED IN THE PRECEDING SENTENCE, TO THE EXTENT PERMITTED BY LAW OR GOVERNMENTAL RULE TRUSTOR SHALL NOT SEEK TO REJECT THE GROUND LEASE AND SHALL COMPLY WITH THE DEMAND PROVIDED FOR IN THE PRECEDING SENTENCE. IN ADDITION, EFFECTIVE UPON THE ENTRY OF AN ORDER FOR RELIEF WITH RESPECT TO TRUSTOR UNDER THE BANKRUPTCY LAW, TRUSTOR HEREBY ASSIGNS AND TRANSFERS TO BENEFICIARY A NON-EXCLUSIVE RIGHT TO APPLY TO THE BANKRUPTCY COURT UNDER SECTION 365(d)(4) OF THE BANKRUPTCY LAW FOR AN ORDER EXTENDING THE PERIOD DURING WHICH THE GROUND LEASE MAY BE REJECTED OR ASSUMED; AND SHALL (a) PROMPTLY NOTIFY BENEFICIARY OF ANY DEFAULT BY TRUSTOR IN THE PERFORMANCE OR OBSERVANCE OF ANY OF THE TERMS, COVENANTS OR CONDITIONS ON THE PART OF TRUSTOR TO BE PERFORMED OR OBSERVED UNDER THE GROUND LEASE AND OF THE GIVING OF ANY WRITTEN NOTICE BY THE LESSOR THEREUNDER TO TRUSTOR OF ANY SUCH DEFAULT, AND (b) PROMPTLY CAUSE A COPY OF EACH WRITTEN NOTICE GIVEN TO TRUSTOR BY THE LESSOR UNDER THE GROUND LEASE TO BE DELIVERED TO BENEFICIARY. BENEFICIARY MAY RELY ON ANY NOTICE RECEIVED BY IT FROM ANY SUCH LESSOR OF ANY DEFAULT BY TRUSTOR UNDER THE GROUND LEASE AND MAY TAKE SUCH ACTION AS MAY BE PERMITTED BY LAW OR GOVERNMENTAL RULE TO CURE SUCH DEFAULT EVEN THOUGH THE EXISTENCE OF SUCH DEFAULT OR THE NATURE THEREOF SHALL BE QUESTIONED OR DENIED BY TRUSTOR OR BY ANY PERSON ON ITS BEHALF.]

2.12 Power of Attorney. Trustor does hereby irrevocably constitute and appoint Beneficiary, its true and lawful attorney (which appointment is coupled with an interest), with full power of substitution, for Trustor and in the name, place and stead of Trustor or in Beneficiary's own name, for so long as any of the Secured Obligations are outstanding, to ask, demand, collect, receive, receipt for and sue for any and all rents, income and other sums which are assigned hereunder with full power to endorse the name of Trustor on all instruments given in payment or in part payment thereof, to settle, adjust or compromise any claims thereunder as fully as Trustor itself could do and in its discretion file any claim or take any action or proceeding, either in its own name or in the name of Trustor or otherwise, which Beneficiary may deem necessary or appropriate to protect and preserve the right, title and interest of Beneficiary in and to such rents, income and other sums and the security intended to be afforded hereby; provided that Beneficiary shall not exercise such rights unless an Event of Default has occurred and is continuing.

2.13 Covenant to Pay. If an Event of Default has occurred and is continuing and such Event of Default could reasonably be expected to materially and adversely affect Beneficiary's interest hereunder in the Trust Estate or result in personal injury, then Beneficiary, among its other rights and remedies, shall have the right, but not the obligation, to pay, observe or perform the same, in whole or in part, and with such modifications as Beneficiary reasonably shall deem advisable. To the extent provided in the Credit Documents, all sums, including, without limitation, reasonable attorneys fees, so expended or incurred by Beneficiary by reason of the default of Trustor, or by reason of the bankruptcy or insolvency of Trustor, as well as, without limitation, sums expended or incurred to sustain the lien or estate of this Deed of Trust or its priority, or to protect or enforce any rights of Beneficiary hereunder, or to recover any of the Secured Obligations, or to complete construction of the Project for which the Credit Documents are intended as financing, or for repairs, maintenance, alterations, replacements or improvements thereto or for the protection thereof, or for real estate taxes or other governmental assessments or charges against any part of the Trust Estate, or premiums for insurance of the Trust Estate, shall be entitled to the benefit of the lien on the Trust Estate as of the date of the recording of this Deed of Trust, shall be deemed to be added to and be part of the Secured Obligations secured hereby, whether or not the result thereof causes the total amount of the Secured Obligations to exceed the stated amount set forth in the second introductory paragraph of this Deed of Trust, and shall be repaid by Trustor as provided in the Credit Documents.

#### 2.14 Security Agreement.

2.14.1 This Deed of Trust shall also be a security agreement between Trustor and Beneficiary covering the Deed of Trust Property constituting personal property or fixtures (hereinafter collectively called "UCC Collateral") governed by the [RELEVANT STATE] Uniform Commercial Code ("UCC") as the same may be more specifically set forth in any financing statement delivered in connection with this Deed of Trust, and as further security for the payment and performance of the Secured Obligations, Trustor hereby grants to Beneficiary a security interest in such portion of the Site to the full extent that the Site may be subject to the UCC. In addition to Beneficiary's other rights hereunder, Beneficiary shall have all rights of a secured party under the UCC. Trustor shall execute and deliver to Beneficiary all financing statements and such further assurances that may be reasonably required by Beneficiary to establish, create, perfect (to the extent the same can be achieved by the filing of a financing statement) and maintain the validity and priority of Beneficiary's security interests, and Trustor shall bear all reasonable costs thereof, including all UCC searches. Except as otherwise provided in the Credit Documents, if Beneficiary should dispose of any of the Site comprising the UCC Collateral pursuant to the UCC, ten (10) days' prior written notice by Beneficiary to Trustor shall be deemed to be reasonable notice; provided, however, Beneficiary may dispose of such property in accordance with the foreclosure procedures of this Deed of Trust in lieu of proceeding under the UCC. Beneficiary may from time to time execute and deliver at Trustor's expense, all continuation statements, termination statements, amendments, partial releases, or other instruments relating to all financing statements by and between Trustor and Beneficiary. Except as otherwise provided in the Credit Documents, if an Event of Default shall occur and is continuing, (a) Beneficiary, in addition to any other rights and remedies which it may have, may exercise immediately and without demand to the extent permitted by law, any and all rights and remedies granted to a secured party under the UCC

including, without limiting the generality of the foregoing, the right to take possession of the UCC Collateral or any part thereof, and to take such other measures as Beneficiary may deem necessary for the care, protection and preservation of such collateral and (b) upon request or demand of Beneficiary, Trustor shall at its expense, assemble the UCC Collateral and make it available to Beneficiary at a convenient place acceptable to Beneficiary. Trustor shall pay to Beneficiary on demand, any and all expenses, including reasonable attorneys' fees and disbursements incurred or paid by Beneficiary in protecting the interest in the UCC Collateral and in enforcing the rights hereunder with respect to such UCC Collateral.

2.14.2 Trustor and the Beneficiary agree, to the extent permitted by law, that: (i) this Deed of Trust upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of [SECTIONS 9-313 AND 9-402 OF THE UCC]; (ii) all or a part of the Trust Estate are or are to become fixtures; and (iii) the addresses of Trustor and Beneficiary are as set forth on the first page of this Deed of Trust.

### **ARTICLE 3 - REMEDIES**

3.1 Acceleration of Maturity. If an Event of Default occurs and is continuing, Beneficiary may (except that such acceleration shall be automatic if the Event of Default is caused by a Bankruptcy Event of Trustor), declare the Secured Obligations to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become due and payable without demand, presentment, notice or other requirements of any kind (all of which Trustor waives).

3.2 Protective Advances If an Event of Default shall have occurred and is continuing, then without thereby limiting Beneficiary's other rights or remedies, waiving or releasing any of Trustor's obligations, or imposing any obligation on Beneficiary, Beneficiary may either advance any amount owing or perform any or all actions that Beneficiary considers necessary or appropriate to cure such default. All such advances shall constitute "Protective Advances." No sums advanced or performance rendered by Beneficiary shall cure, or be deemed a waiver of any Event of Default.

3.3 Institution of Equity Proceedings. If an Event of Default occurs and is continuing, Beneficiary may institute an action, suit or proceeding in equity for specific performance of this Deed of Trust, the Guaranty or any other Credit Document, all of which shall be specifically enforceable by injunction or other equitable remedy.

3.4 Beneficiary's Power of Enforcement.

(a) If an Event of Default occurs and is continuing, Beneficiary shall be entitled, at its option and in its sole and absolute discretion, to prepare and record on its own behalf, or to deliver to Trustee for recording, if appropriate, written declaration of default and demand for sale and written Notice of Breach and Election to Sell (or other statutory notice) to cause the Trust Estate to be sold to satisfy the obligations hereof, and in the case of delivery to Trustee, Trustee shall cause said notice to be filed for record.

(b) After the lapse of such time as may then be required by law following the recordation of said Notice of Breach and Election to Sell, and notice of sale having been given as then required by law, Trustee without demand on Trustor, shall sell the Trust Estate or any portion thereof at the time and place fixed by it in said notice, either as a whole or in separate parcels, and in such order as it may determine, at public auction to the highest bidder, of cash in lawful money of the United States payable at the time of sale. Trustee may, for any cause it deems expedient, postpone the sale of all or any portion of said property until it shall be completed and, in every case, notice of postponement shall be given by public announcement thereof at the time and place last appointed for the sale and from time to time thereafter Trustee may postpone such sale by public announcement at the time fixed by the preceding postponement; provided that Trustee shall give Trustor notice of such postponement to the extent required by law. Trustee shall execute and deliver to the purchaser its Deed, Bill of Sale, or other instrument conveying said property so sold, but without any covenant or warranty, express or implied. The recitals in such instrument of conveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale.

(c) After deducting all costs, fees and expenses of Trustee and of this Deed of Trust, including, without limitation, costs of evidence of title and reasonable attorneys' fees of Trustee or Beneficiary in connection with a sale, Trustee shall apply the proceeds of such sale to payment of all sums expended under the terms hereof not then repaid, with accrued interest at the interest rate on the Notes then to the payment of all other sums then secured hereby and the remainder, if any, to the person or persons legally entitled thereto.

(d) If any Event of Default occurs and is continuing, Beneficiary may, either with or without entry or taking possession of the Trust Estate, and without regard to whether or not the indebtedness and other sums secured hereby shall be due and without prejudice to the right of Beneficiary thereafter to bring an action or proceeding to foreclose or any other action for any default existing at the time such earlier action was commenced, proceed by any appropriate action or proceeding: (1) to enforce payment of the Secured Obligations, to the extent permitted by law, or the performance of any term hereof or any other right; (2) to foreclose this Deed of Trust in any manner provided by law for the foreclosure of mortgages or deeds of trust on real property and to sell, as an entirety or in separate lots or parcels, the Trust Estate or any portion thereof pursuant to the laws of the [RELEVANT STATE] or under the judgment or decree of a court or courts of competent jurisdiction, and Beneficiary shall be entitled to recover in any such proceeding all costs and expenses incident thereto, including reasonable attorneys' fees in such amount as shall be awarded by the court; (3) to exercise any or all of the rights and remedies available to it under the Credit Documents; and (4) to pursue any other remedy available to it. Beneficiary shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Beneficiary may determine.

(e) The remedies described in this Section 3.4 may be exercised with respect to all or any portion of the Tangible Collateral, either simultaneously with the sale of any real property encumbered hereby or independent thereof. Beneficiary shall at any time be

permitted to proceed with respect to all or any portion of the Tangible Collateral in any manner permitted by the UCC. Trustor agrees that Beneficiary's inclusion of all or any portion of the Tangible Collateral in a sale or other remedy exercised with respect to the real property encumbered hereby, as permitted by the UCC, is a commercially reasonable disposition of such property.

### 3.5 Beneficiary's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default occurs and is continuing, Trustor, upon demand of Beneficiary, shall forthwith surrender to Beneficiary the actual possession and, if and to the extent permitted by law, Beneficiary itself, or by such officers or agents as it may appoint, may enter and take possession of all the Trust Estate including the Tangible Collateral, without liability for trespass, damages or otherwise, and may exclude Trustor and its agents and employees wholly therefrom and may have joint access with Trustor to the books, papers and accounts of Trustor.

(b) If an Event of Default has occurred and is continuing and Trustor shall for any reason fail to surrender or deliver the Trust Estate, the Tangible Collateral or any part thereof after Beneficiary's demand, Beneficiary may obtain a judgment or decree conferring on Beneficiary or Trustee the right to immediate possession or requiring Trustor to deliver immediate possession of all or part of such property to Beneficiary or Trustee and Trustor hereby specifically consents to the entry of such judgment or decree. Trustor shall pay to Beneficiary or Trustee, upon demand, all costs and expenses of obtaining such judgment or decree and reasonable compensation to Beneficiary or Trustee, their attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Deed of Trust.

(c) Upon every such entering upon or taking of possession, Beneficiary or Trustee may hold, store, use, operate, manage and control the Trust Estate and conduct the business thereof, and, from time to time in its sole and absolute discretion and without being under any duty to so act:

- (1) make all necessary and proper maintenance, repairs, renewals and replacements thereto and thereon, and all necessary additions, betterments and improvements thereto and thereon and purchase or otherwise acquire fixtures, personalty and other property in connection therewith;
- (2) insure or keep the Trust Estate insured;
- (3) manage and operate the Trust Estate and exercise all the rights and powers of Trustor in their name or otherwise with respect to the same;
- (4) enter into agreements with others to exercise the powers herein granted Beneficiary or Trustee, all as Beneficiary or Trustee from time to time may determine; and shall apply the monies so received by Beneficiary or Trustee in such priority as provided by the Credit Documents to
  - (1) the payment of interest and principal due and payable to the Beneficiary,
  - (2) the deposits for taxes and assessments and insurance premiums due, (3) the cost of insurance, taxes,

assessments and other proper charges upon the Trust Estate or any part thereof;

(4) the compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary or Trustee as allowed under this Deed of Trust; and (5) any other charges or costs required to be paid by Trustor under the terms of the Credit Documents.

(5) rent or sublet the Trust Estate or any portion thereof for any purpose permitted by this Deed of Trust.

Beneficiary or Trustee shall surrender possession of the Trust Estate and the Tangible Collateral to Trustor (i) as may be required by law or court order, or (ii) when all amounts under any of the terms of the Credit Documents, including this Deed of Trust, shall have been paid current and all Events of Default have been cured or waived. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

3.6 Separate Sales. To the extent permitted by law or Governmental Rule, the Trust Estate may be sold in one or more parcels and in such manner and order as Trustee, in his sole discretion, may elect, it being expressly understood and agreed that the right of sale arising out of any Event of Default shall not be exhausted by any one or more sales.

3.7 Waiver of Appraisement, Valuation, Stay, Extension and Redemption Laws. Trustor agrees to the full extent permitted by law that if an Event of Default occurs and is continuing, neither Trustor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Deed of Trust or the absolute sale of the Trust Estate or any portion thereof or the final and absolute putting into possession thereof, immediately after such sale, of the purchasers thereof, and Trustor for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Trust Estate marshalled upon any foreclosure of the lien hereof and agrees that Trustee or any court having jurisdiction to foreclose such lien may sell the Trust Estate in part or as an entirety.

3.8 Receiver. If an Event of Default occurs and is continuing, Beneficiary, to the extent permitted by law, and without regard to the value, adequacy or occupancy of the security for the indebtedness and other sums secured hereby, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Trust Estate and to collect all earnings, revenues and receipts and apply the same as the court may direct, and such receiver may be appointed by any court of competent jurisdiction upon application by Beneficiary. To the extent permitted by law or Governmental Rule, Beneficiary may have a receiver appointed without notice to Trustor or any third party, and Beneficiary may waive any requirement that the receiver post a bond. To the extent permitted by law or Governmental Rule, Beneficiary shall have the power to designate and select the Person who shall serve as the receiver and to negotiate all terms and conditions under which such receiver shall serve. To the extent permitted by law or Governmental Rule, any receiver appointed on Beneficiary's behalf may be an Affiliate of Beneficiary. The reasonable expenses, including receiver's fees, reasonable attorneys' fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Deed of

Trust. The right to enter and take possession of and to manage and operate the Trust Estate and to collect all earnings, revenues and receipts, whether by a receiver or otherwise, shall be cumulative to any other right or remedy available to Beneficiary under this Deed of Trust, the other Credit Documents or otherwise available to Beneficiary and may be exercised concurrently therewith or independently thereof, but such rights shall be exercised in a manner which is otherwise in accordance with and consistent with the Credit Documents. Beneficiary shall be liable to account only for such earnings, revenues and receipts (including, without limitation, security deposits) actually received by Beneficiary, whether received pursuant to this section or any other provision hereof. Notwithstanding the appointment of any receiver or other custodian, Beneficiary shall be entitled as pledgee to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Deed of Trust to, Beneficiary.

3.9 Suits to Protect the Trust Estate. Beneficiary shall have the power and authority to institute and maintain any suits and proceedings as Beneficiary, in its sole and absolute discretion, may deem advisable (a) to prevent any impairment of the Trust Estate by any acts which may be unlawful or in violation of this Deed of Trust, (b) to preserve or protect its interest in the Trust Estate, or (c) to restrain the enforcement of or compliance with any legislation or other Legal Requirement that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Beneficiary's interest

3.10 Proofs of Claim. In the case of any receivership, insolvency, Bankruptcy Event, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Trustor, any Affiliate or any guarantor, co-maker or endorser of any of Trustor's obligations, its creditors or its property, Beneficiary, to the extent permitted by law, shall be entitled to file such proofs of claim or other documents as it may deem be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Trustor under the Credit Documents, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Trustor after such date.

3.11 Trustor to Pay Amounts Secured Hereby on Any Default in Payment; Application of Monies by Beneficiary.

(a) In case of a foreclosure sale of all or any part of the Trust Estate and of the application of the proceeds of sale to the payment of the sums secured hereby, to the extent permitted by law, Beneficiary shall be entitled to enforce payment from Trustor of any additional amounts then remaining due and unpaid and to recover judgment against Trustor for any portion thereof remaining unpaid, with interest at the interest rate on the Notes.

(b) Trustor hereby agrees to the extent permitted by law, that no recovery of any such judgment by Beneficiary or other action by Beneficiary and no attachment or levy of any execution upon any of the Trust Estate or any other property shall in any way affect the Lien and security interest of this Deed of Trust upon the Trust Estate or any part thereof or any Lien, rights, powers or remedies of Beneficiary hereunder, but such Lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Beneficiary under this

Section 3.11 shall be first applied to the payment of compensation, expenses and disbursements of the agents, attorneys and other representatives of Beneficiary, and the balance remaining shall be applied to the payment of amounts due and unpaid under the Credit Documents.

3.12 Delay or Omission; No Waiver. No delay or omission of Beneficiary or the Banks to exercise any right, power or remedy upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Beneficiary whether contained herein or in the other Credit Documents or otherwise available to Beneficiary may be exercised from time to time and as often as may be deemed expedient by Beneficiary.

3.13 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default then existing, or impair any rights, powers or remedies consequent thereon. If Beneficiary (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in this Deed of Trust or any other Credit Document; (d) releases any part of the Trust Estate from the lien or security interest of this Deed of Trust or any other instrument securing the Secured Obligations; (e) consents to the filing of any map, plat or replat of the [LEASED] Premises; (f) consents to the granting of any easement on the [LEASED] Premises; or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any other Credit Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the liability under this Deed of Trust or any other Credit Document or otherwise of Trustor, or any subsequent purchaser of the Trust Estate or any part thereof or any maker, co-signer, surety or guarantor with respect to any other matters not addressed by such act or omission. No such act or omission shall preclude Beneficiary from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default, nor, except as otherwise expressly provided in an instrument or instruments executed by Beneficiary, shall the lien or security interest of this Deed of Trust be altered thereby, except to the extent expressly provided in such acts or omissions. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Trust Estate, Beneficiary, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Trust Estate or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder, or waiving its right to declare such sale or transfer an Event of Default as provided herein. Notwithstanding anything to the contrary contained in this Deed of Trust or any other Credit Document, (i) in the case of any non-monetary Event of Default, Beneficiary may continue to accept payments due hereunder without thereby waiving the existence of such or any other Event of Default and (ii) in the case of any monetary Event of Default, Beneficiary may accept partial payments of any sums due hereunder without thereby waiving the existence of such Event of Default if the partial payment is not sufficient to completely cure such Event of Default.

3.14 Discontinuance of Proceedings; Position of Parties Restored. If Beneficiary shall have proceeded to enforce any right or remedy under this Deed of Trust by foreclosure, entry of judgement or otherwise and such proceedings shall have been discontinued or abandoned for any reason, or such proceedings shall have resulted in a final determination adverse to Beneficiary, then and in every such case Trustor and Beneficiary shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Beneficiary shall continue as if no such proceedings had occurred or had been taken.

3.15 Remedies Cumulative. Subject to the provisions of Section 5.15 hereof, no right, power or remedy, including without limitation remedies with respect to any security for the Secured Obligations, conferred upon or reserved to Beneficiary by this Deed of Trust or any other Credit Document is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under any other Credit Document, now or hereafter existing at law, in equity or by statute, and Beneficiary shall be entitled to resort to such rights, powers, remedies or security as Beneficiary shall in its sole and absolute discretion deem advisable.

3.16 Interest After Event of Default. If an Event of Default shall have occurred and is continuing, all sums outstanding and unpaid under the Credit Documents, including this Deed of Trust, shall, at Beneficiary's option, bear interest at the interest rate on the [NOTES] until such Event of Default has been cured. Trustor's obligation to pay such interest shall be secured by this Deed of Trust.

3.17 Foreclosure; Expenses of Litigation. If Trustee forecloses, reasonable attorneys' fees for services in the supervision of said foreclosure proceeding shall be allowed to the Trustee and Beneficiary as part of the foreclosure costs. In the event of foreclosure of the lien hereof, there shall be allowed and included as additional indebtedness all reasonable expenditures and expenses which may be paid or incurred by or on behalf of Beneficiary for attorneys' fees, appraiser's fees, outlays for documentary and expert evidence, stenographers' charges, publication costs, and costs (which may be estimated as to items to be expended after foreclosure sale or entry of the decree) of procuring all such abstracts of title, title searches and examinations, title insurance policies and guarantees, and similar data and assurances with respect to title as Beneficiary may deem reasonably necessary either to prosecute such suit or to evidence to a bidder at any sale which may be had pursuant to such decree the true condition of the title to or the value of the Trust Estate or any portion thereof. All expenditures and expenses of the nature in this section mentioned, and such expenses and fees as may be incurred in the protection of the Trust Estate and the maintenance of the lien and security interest of this Deed of Trust, including the reasonable fees of any attorney employed by Beneficiary in any litigation or proceeding affecting this Deed of Trust or any other Credit Document, the Trust Estate or any portion thereof, including, without limitation, civil, probate, appellate and bankruptcy proceedings, or in preparation for the commencement or defense of any proceeding or threatened suit or proceeding, shall be immediately due and payable by Trustor, with interest thereon at the interest rate on the Notes, and shall be secured by this Deed of Trust. Trustee waives its right to any statutory fee in connection with any judicial or nonjudicial foreclosure of the lien hereof and agrees to accept a reasonable fee for such services.

3.18 Deficiency Judgments Recourse against Trustor, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Deed of Trust shall be limited to the extent provided in Article 9 of the Credit Agreement. Subject to Article 9 of the Credit Agreement, if after foreclosure of this Deed of Trust or Trustee's sale hereunder, there shall remain any deficiency with respect to any amounts payable under the Credit Documents, including hereunder, or any amounts secured hereby, and Beneficiary shall institute any proceedings to recover such deficiency or deficiencies, all such amounts shall continue to bear interest at the interest rate on the Notes. Subject to Article 9 of the Credit Agreement, Trustor waives any defense to Beneficiary's recovery against Trustor of any deficiency after any foreclosure sale of the Trust Estate. Subject to Article 9 of the Credit Agreement, to the extent permitted by law, Trustor expressly waives any defense or benefits that may be derived from any statute granting Trustor any defense to any such recovery by Beneficiary. Subject to Article 9 of the Credit Agreement, in addition, Beneficiary and Trustee shall be entitled to recovery of all of their reasonable costs and expenditures (including without limitation any court imposed costs) in connection with such proceedings, including their reasonable attorneys' fees, appraisal fees and the other costs, fees and expenditures referred to in Section 3.17 above. This provision shall survive any foreclosure or sale of the Trust Estate, any portion thereof and/or the extinguishment of the lien hereof.

3.19 Waiver of Jury Trial. Beneficiary and Trustor each waive any right to have a jury participate in resolving any dispute whether sounding in contract, tort or otherwise arising out of, connected with, related to or incidental to the relationship established between them in connection with this Deed of Trust, the Guaranty or any other Credit Document. Any such disputes shall be resolved in a bench trial without a jury.

3.20 Exculpation of Beneficiary. The acceptance by Beneficiary of the assignment contained herein with all of the rights, powers, privileges and authority created hereby shall not, prior to entry upon and taking possession of the Trust Estate by Beneficiary, be deemed or construed to make Beneficiary a "mortgagee in possession"; nor thereafter or at any time or in any event obligate Beneficiary to appear in or defend any action or proceeding relating to the Trust Estate, nor shall Beneficiary, prior to such entry and taking, be liable in any way for any injury or damage to person or property sustained by any Person in or about the Trust Estate.

#### **ARTICLE 4 - RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE**

Notwithstanding anything to the contrary in this Deed of Trust, Trustor and Beneficiary agree as follows.

4.1 Exercise of Remedies by Trustee To the extent that this Deed of Trust or applicable law authorizes or empowers Beneficiary to exercise any remedies set forth in Article Three hereof or otherwise, or perform any acts in connection therewith, Trustee (but not to the exclusion of Beneficiary unless so required under the law of the State of [RELEVANT STATE]) shall have the power to exercise any or all such remedies, and to perform any acts provided for in this Deed of Trust in connection therewith, all for the benefit of Beneficiary and on Beneficiary's behalf in accordance with applicable law of the State of [RELEVANT STATE]. In connection therewith,

Trustee: (a) shall not exercise, or waive the exercise of, any Beneficiary's Remedies (other than any rights or Trustee to any indemnity or reimbursement), except at Beneficiary's request, and (b) shall exercise, or waive the exercise of, any or all of Beneficiary's remedies at Beneficiary's request, and in accordance with Beneficiary's directions as to the manner of such exercise or waiver. Trustee may, however, decline to follow Beneficiary's request or direction if Trustee shall be advised by counsel that the action or proceeding, or manner thereof, so directed may not lawfully be taken or waived.

4.2 Rights and Privileges of Trustee. To the extent that this Deed of Trust requires Trustor to reimburse Beneficiary for any expenditures Beneficiary may incur, Trustee shall be entitled to the same rights to reimbursement of expenses as Beneficiary, subject to such limitations and conditions as would apply in the case of Beneficiary. To the extent that this Deed of Trust negates or limits Beneficiary's liability as to any matter, Trustee shall be entitled to the same negation or limitation of liability. To the extent that Trustor, pursuant to this Deed of Trust, appoints Beneficiary as Trustor's attorney in fact for any purpose, Beneficiary or (when so instructed by Beneficiary) Trustee shall be entitled to act on Trustor's behalf without joinder or confirmation by the other.

4.3 Resignation or Replacement of Trustee Trustee may resign by an instrument in writing addressed to Beneficiary, and Trustee may be removed at any time with or without cause (i.e., in Beneficiary's sole and absolute discretion) by an instrument in writing executed by Beneficiary. In case of the death, resignation, removal or disqualification of Trustee or if for any reason Beneficiary shall deem it desirable to appoint a substitute, successor or replacement Trustee to act instead of Trustee originally named (or in place of any substitute, successor or replacement Trustee), then Beneficiary shall have the right and is hereby authorized and empowered to appoint a successor, substitute or replacement Trustee, and, if preferred, several substitute trustees in succession, without any formality other than appointment and designation in writing executed by Beneficiary, which instrument shall be recorded if required by the law of the State of [RELEVANT STATE]. The law of the State of [RELEVANT STATE] shall govern the qualifications of any Trustee. The authority conferred upon Trustee by this Deed of Trust shall automatically extend to any and all other successor, substitute and replacement Trustee(s) successively until the Secured Obligations have been paid in full or the Trust Estate has been sold hereunder or released in accordance with the provisions of the Credit Documents. Beneficiary's written appointment and designation of any Trustee shall be full evidence of Beneficiary's right and authority to make the same and of all facts therein recited. No confirmation, authorization, approval or other action by Trustor shall be required in connection with any resignation or other replacement of Trustee.

4.4 Authority of Beneficiary. If Beneficiary is a banking corporation, state banking corporation or a national banking association and the instrument of appointment of any successor or replacement Trustee is executed on Beneficiary's behalf by an officer of such corporation, state banking corporation or national banking association, then such appointment may be executed by any authorized officer or agent of Beneficiary and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of Beneficiary.

4.5 Effect of Appointment of Successor Trustee. Upon the appointment and designation of any successor, substitute or replacement Trustee, Trustee's entire estate and title in the Trust Estate shall vest in the designated successor, substitute or replacement Trustee. Such successor, substitute or replacement Trustee shall thereupon succeed to and shall hold, possess and execute all the rights, powers, privileges, immunities and duties herein conferred upon Trustee. All references herein to Trustee shall be deemed to refer to Trustee (including any successor or substitute appointed and designated as herein provided) from time to time acting hereunder.

4.6 Confirmation of Transfer and Succession. Any new Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed or conveyance, become vested with all the estates, properties, rights, powers and trusts of his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Beneficiary or of any successor, substitute or replacement Trustee, any former Trustee ceasing to act shall execute and deliver an instrument transferring to such successor, substitute or replacement Trustee all of the right, title, estate and interest in the Trust Estate of Trustee so ceasing to act, together with all the rights, powers, privileges, immunities and duties herein conferred upon Trustee, and shall duly assign, transfer and deliver all properties and moneys held by said Trustee hereunder to said successor, substitute or replacement Trustee.

4.7 Exculpation. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or otherwise be responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence, willful misconduct or knowing violation of law. Trustee shall not be personally liable in case of entry by him, or anyone entering by virtue of the powers herein granted him, upon the Trust Estate for debts contracted or liability or damages incurred in the management or operation of the Trust Estate. Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by it hereunder, believed by it in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law). Trustee shall be under no liability for interest on any moneys received by it hereunder.

4.8 Endorsement and Execution of Documents. Upon Beneficiary's written request, Trustee shall, without liability or notice to Trustor, execute, consent to, or join in any instrument or agreement in connection with or necessary to effectuate the purposes of the Credit Documents. Trustor hereby irrevocably designates Trustee as its attorney in fact to execute, acknowledge and deliver, on Trustor's behalf and in Trustor's name, all instruments or agreements necessary to implement any provision(s) of this Deed of Trust or to further perfect the lien created by this Deed of Trust on the Trust Estate. This power of attorney shall be deemed to be coupled with an interest and shall survive any disability of Trustor.

4.9 Multiple Trustees. If Beneficiary appoints multiple trustees, then any Trustee, individually, may exercise all powers granted to Trustee under this instrument, without the need for action by any other Trustee(s).

4.10 No Required Action. Trustee shall not be required to take any action under this Deed of Trust or to institute, appear in or defend any action, suit or other proceeding in connection therewith where in his opinion such action will be likely to involve him in expense or liability, unless requested so to do by a written instrument signed by Beneficiary and, if Trustee so requests, unless Trustee is tendered security and indemnity satisfactory to him against any and all costs, expense and liabilities arising therefrom. Trustee shall not be responsible for the execution, acknowledgment or validity of the Credit Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and makes no representation in respect thereof or in respect of the rights, remedies and recourses of Beneficiary.

4.11 Terms of Trustee's Acceptance. Trustee accepts the trust created by this Deed of Trust upon the following terms and conditions:

(a) DELEGATION. Trustee may exercise any of its powers through appointment of attorney(s) in fact or agents.

(b) SECURITY. Trustee shall be under no obligation to take any action upon any Event of Default unless furnished security or indemnity, in form satisfactory to Trustee, against costs, expenses, and liabilities that Trustee may incur.

(c) COSTS AND EXPENSES. Trustor shall reimburse Trustee, as part of the Secured Obligations secured hereunder, for all reasonable disbursements and expenses (including reasonable legal fees and expenses) incurred by reason of or arising from an Event of Default and as provided for in this Deed of Trust, including any of the foregoing incurred in Trustee's administering and executing the trust created by this Deed of Trust and performing Trustee's duties and exercising Trustee's powers under this Deed of Trust.

(d) RELEASE. Upon payment of the Secured Obligations secured hereunder, Beneficiary shall request Trustee to release this Deed of Trust and shall surrender all the Secured Obligations secured hereunder to Trustee. Trustee shall release this Deed of Trust without charge to Trustor. Trustor shall pay all costs of recordation, if any.

## **ARTICLE 5 - GENERAL**

5.1 Discharge. When all of the Secured Obligations shall have been paid in full, then this Deed of Trust and the lien and security interest created hereby shall be of no further force and effect, Trustor shall be released from the covenants, agreements and obligations of Trustor contained in this Deed of Trust and all right, title and interest in and to the Trust Estate shall revert to Trustor. Beneficiary and Trustee, at the request and the expense of Trustor, shall promptly execute a deed of reconveyance and such other documents as may be reasonably requested by Trustor to evidence the discharge and satisfaction of this Deed of Trust and the release of Trustor from its obligations hereunder.

5.2 No Waiver. The exercise of the privileges granted in this Deed of Trust to perform Trustor's obligations under the agreements which constitute the Trust Estate shall in no event be considered or constitute a waiver of any right which Beneficiary may have at any time, after an

Event of Default shall have occurred and be continuing, to declare the Secured Obligations to be immediately due and payable. No delay or omission to exercise any right, remedy or power accruing upon any default shall impair any such right, remedy or power or shall be construed to be a waiver of any such default or acquiescence therein; and every such right, remedy and power may be exercised from time to time and as often as may be deemed expedient.

5.3 Extension, Rearrangement or Renewal of Secured Obligations. It is expressly agreed that any of the Secured Obligations at any time secured hereby may be from time to time extended for any period, or with the consent of Trustor rearranged or renewed, and that any part of the security herein described, or any other security for the Secured Obligations, may be waived or released, without altering, varying or diminishing the force, effect or lien or security interest of this Deed of Trust; and the lien and security interest granted by this Deed of Trust shall continue as a prior lien and security interest on all of the Trust Estate not expressly so released, until the Secured Obligations are fully paid and this Deed of Trust is terminated in accordance with the provisions hereof; and no other security now existing or hereafter taken to secure the payment of the Secured Obligations or any part thereof or the performance of any obligation or liability of Trustor whatever shall in any manner impair or affect the security given by this Deed of Trust; and all security for the payment of the Secured Obligations or any part thereof and the performance of any obligation or liability shall be taken, considered and held as cumulative.

5.4 Forcible Detainer. Trustor agrees for itself and all Persons claiming by, through or under it, that subsequent to foreclosure hereunder in accordance with this Deed of Trust and applicable law if Trustor shall hold possession of the Trust Estate or any part thereof, Trustor or the Persons so holding possession shall be guilty of trespass; and any such tenant failing or refusing to surrender possession upon demand shall be guilty of forcible detainer and shall be liable to such purchasers for reasonable rental on said premises, and shall be subject to eviction and removal in accordance with law.

5.5 Waiver of Stay or Extension. To the extent permitted to be waived by law, Trustor shall not at any time insist upon or plead or in any manner whatever claim the benefit or advantage of any stay, extension or moratorium law now or at any time hereafter in force in any locality where the Trust Estate or any part thereof may or shall be situated, nor shall Trustor claim any benefit or advantage from any law now or hereafter in force providing for the valuation or appraisal of the Trust Estate or any part thereof prior to any sale thereof to be made pursuant to any provision of this Deed of Trust or to a decree of any court of competent jurisdiction, nor after any such sale shall Trustor claim or exercise any right conferred by any law now or at any time hereafter in force to redeem the Trust Estate so sold or any part thereof; and Trustor hereby expressly waives all benefit or advantage of any such law or laws and the appraisal of the Trust Estate or any part thereof, and covenants that Trustor shall not hinder or delay the execution of any power herein granted and delegated to Beneficiary but that Trustor shall permit the execution of every such power as though no such law had been made.

5.6 Notices. Except where certified or registered mail notice is required by applicable law, any notice to Trustor or Beneficiary required or permitted hereunder shall be deemed to be given when given in the manner prescribed in Section 12.1 of the Credit Agreement. All notices to

Trustee required or permitted hereunder shall be deemed given when given in the manner prescribed in Section 12.1 of the Credit Agreement to the following address:

**[TRUSTEE ADDRESS]**

5.7 Severability. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law, and are intended to be limited to the extent necessary so that they will not render this Deed of Trust invalid, unenforceable or not entitled to be recorded, registered or filed under any applicable law. In the event any term or provision contained in this Deed of Trust is in conflict, or may hereafter be held to be in conflict, with the laws of [RELEVANT STATE] or of the United States of America, this Deed of Trust shall be affected only as to such particular term or provision, and shall in all other respects remain in full force and effect.

5.8 Application of Payments. In the event that any part of the Secured Obligations cannot lawfully be secured hereby, or in the event that the lien and security interest hereof cannot be lawfully enforced to pay any part of the Secured Obligations, or in the event that the lien or security interest created by this Deed of Trust shall be invalid or unenforceable as to any part of the Secured Obligations, then all payments on the Secured Obligations shall be deemed to have been first applied to the complete payment and liquidation of that part of the Secured Obligations which is not secured by this Deed of Trust and the unsecured portion of the Secured Obligations shall be completely paid and liquidated prior to the payment and liquidation of the remaining secured portion of the Secured Obligations.

5.9 Governing Law

**THIS DEED OF TRUST IS GOVERNED BY AND SHALL BE CONSTRUED IN**

**ACCORDANCE WITH THE LAWS OF THE STATE OF [RELEVANT STATE.]**

5.10 Entire Agreement. THIS WRITTEN AGREEMENT, THE GUARANTY AND THE OTHER CREDIT DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES.

**AS OF THE DATE HEREOF, THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.**

**TRUSTOR BENEFICIARY**

5.11 Amendments. This Deed of Trust may be amended, supplemented or otherwise modified only by an instrument in writing signed by Trustor and Beneficiary.

5.12 Successors and Assigns. All terms of this Deed of Trust shall run with the land and bind each of Trustor and Beneficiary and their respective successors and assigns, and all Persons claiming under or through Trustor or Beneficiary, as the case may be, or any such successor or assign, and shall inure to the benefit of Beneficiary and Trustor, and their respective successors and assigns.

5.13 Renewal, Etc. Beneficiary may at any time and from time to time renew or extend this Deed of Trust, or alter or modify the same in any way, or waive any of the terms, covenants or conditions hereof in whole or in part and may release any portion of the Trust Estate or any other security, and grant such extensions and indulgences in relation to the Secured Obligations as Beneficiary may determine, without the consent of any junior lienor or encumbrancer and without any obligation to give notice of any kind thereto and without in any manner affecting the priority of the lien and security interest hereof on any part of the Trust Estate; provided that nothing in this Section 5.13 shall grant Beneficiary the right to alter or modify the Deed of Trust without the consent of the Trustor unless otherwise specifically permitted in this Deed of Trust.

5.14 Future Advances. This Deed of Trust is executed and delivered to secure, among other things, Trustor's guaranty of future advances under the Credit Agreement. It is understood and agreed that this Deed of Trust secures Trustor's guaranty of present and future advances made pursuant to the Credit Agreement and that the lien of such future advances shall relate to the date of this Deed of Trust. The advances are being used by Trustor to pay for all or part of the cost of completing erection, acquisition, construction, alteration or repair of any part of the Project, the financing of which, in whole or in part, this Deed of Trust was given to secure.

5.15 Liability. Notwithstanding any provision in this Deed of Trust to the contrary, Recourse against the Trustor, the other Portfolio Entities, the Member and their respective Affiliates (all as defined in the Credit Agreement), stockholders, officers, directors and employees under this Deed of Trust shall be limited to the extent provided in Article 9 of the Credit Agreement.

5.16 [SEVERABILITY AND COMPLIANCE WITH USURY LAW. THE CREDIT DOCUMENTS ARE INTENDED TO BE PERFORMED IN ACCORDANCE WITH, AND ONLY TO THE EXTENT PERMITTED BY, ALL APPLICABLE GOVERNMENTAL RULES AND LEGAL REQUIREMENTS. IF ANY PROVISION OF ANY OF THE CREDIT DOCUMENTS OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE SHALL, FOR ANY REASON AND TO ANY EXTENT, BE INVALID OR UNENFORCEABLE, NEITHER THE REMAINDER OF THE INSTRUMENT IN WHICH SUCH PROVISION IS CONTAINED, NOR THE APPLICATION OF SUCH PROVISION TO OTHER PERSONS OR CIRCUMSTANCES, NOR THE OTHER INSTRUMENTS REFERRED TO HEREINABOVE, SHALL BE AFFECTED THEREBY, BUT RATHER SHALL BE ENFORCEABLE TO THE GREATEST EXTENT PERMITTED BY LAW. IT IS EXPRESSLY STIPULATED AND AGREED TO BE THE INTENT OF TRUSTOR AND BENEFICIARY AT ALL TIMES TO COMPLY WITH THE APPLICABLE [RELEVANT STATE] LAW GOVERNING THE MAXIMUM RATE OR AMOUNT OF INTEREST PAYABLE ON OR IN CONNECTION WITH THE SECURED OBLIGATIONS (OR APPLICABLE UNITED STATES FEDERAL LAW TO THE EXTENT THAT IT PERMITS BENEFICIARY TO CONTRACT FOR, CHARGE, TAKE, RESERVE OR RECEIVE A GREATER AMOUNT OF INTEREST THAN UNDER [RELEVANT STATE] LAW). IF THE APPLICABLE LAW IS EVER JUDICIALLY INTERPRETED SO AS TO RENDER USURIOUS ANY AMOUNT CALLED FOR UNDER THE CREDIT DOCUMENTS, OR CONTRACTED FOR, CHARGED, TAKEN, RESERVED OR RECEIVED WITH RESPECT TO THE EXTENSION OF CREDIT EVIDENCED BY THE CREDIT DOCUMENTS OR IF ACCELERATION OF THE MATURITY OF THE SECURED OBLIGATIONS OR IF ANY PREPAYMENT BY TRUSTOR RESULTS IN TRUSTOR

HAVING PAID ANY INTEREST IN EXCESS OF THAT PERMITTED BY LAW, THEN IT IS TRUSTOR'S AND BENEFICIARY'S EXPRESS INTENT THAT ALL EXCESS AMOUNTS THERETOFORE COLLECTED BY BENEFICIARY BE CREDITED ON THE PRINCIPAL BALANCE DUE UNDER THE CREDIT DOCUMENTS (OR, IF THE CREDIT DOCUMENTS HAVE BEEN OR WOULD THEREBY BE PAID IN FULL, REFUNDED TO TRUSTOR), AND THE PROVISIONS OF THE CREDIT DOCUMENTS IMMEDIATELY BE DEEMED REFORMED AND THE AMOUNTS THEREAFTER COLLECTIBLE THEREUNDER REDUCED, WITHOUT THE NECESSITY OF THE EXECUTION OF ANY NEW DOCUMENT, SO AS TO COMPLY WITH THE APPLICABLE LAW, BUT SO AS TO PERMIT THE RECOVERY OF THE FULLEST AMOUNT OTHERWISE CALLED FOR HEREUNDER AND THEREUNDER. THE RIGHT TO ACCELERATE MATURITY OF SECURED OBLIGATIONS DOES NOT INCLUDE THE RIGHT TO ACCELERATE ANY INTEREST WHICH HAS NOT OTHERWISE ACCRUED ON THE DATE OF SUCH ACCELERATION, AND BENEFICIARY DOES NOT INTEND TO COLLECT ANY UNEARNED INTEREST IN THE EVENT OF ACCELERATION. ALL SUMS PAID OR AGREED TO BE PAID TO BENEFICIARY FOR THE USE, FORBEARANCE OR DETENTION OF THE SECURED OBLIGATIONS SHALL, TO THE EXTENT PERMITTED BY APPLICABLE LAW, BE AMORTIZED, PRORATED, ALLOCATED AND SPREAD THROUGHOUT THE FULL TERM OF THE SECURED OBLIGATIONS UNTIL PAYMENT IN FULL SO THAT THE RATE OR AMOUNT OF INTEREST ON ACCOUNT OF THE SECURED OBLIGATIONS DOES NOT EXCEED THE APPLICABLE USURY CEILING.]

5.17 [SUBJECT TO GROUND LEASE. THE TRUSTOR, THE BENEFICIARY AND THE TRUSTEE ACKNOWLEDGE AND AGREE THAT THIS DEED OF TRUST IS SUBJECT TO THE TERMS AND CONDITIONS OF THE GROUND LEASE. IN THE EVENT OF A CONFLICT BETWEEN THE TERMS OF THIS DEED OF TRUST AND THE GROUND LEASE, THE TERMS OF THE GROUND LEASE SHALL SUPERSEDE AND CONTROL.]

5.18 Release of Collateral.

(a) Notwithstanding any provision herein to the contrary, The Trust Estate or any part thereof shall be released from the security interest created by this Deed of Trust at any time or from time to time upon the request of the Trustor; provided that the requirements of the Credit Documents have been satisfied. Upon satisfaction of such requirements, a Responsible Officer of the Beneficiary shall instruct the Trustee to promptly execute, deliver and acknowledge any necessary or proper instruments of termination, satisfaction or release to evidence the release of any Trust Estate permitted to be released pursuant to this Deed of Trust.

(b) The Beneficiary may instruct the Trustee to release Trust Estate from the security interest created hereunder upon the sale or disposition of such Trust Estate pursuant to the Beneficiary's powers, rights and duties with respect to remedies provided herein.

5.19 Fixture Filing Under Uniform Commercial Code. Trustor and the Beneficiary agree, to the extent permitted by law, that: (i) this Deed of Trust upon recording or registration in the real estate records of the proper office shall constitute a financing statement filed as a "fixture filing" within the meaning of [SECTIONS 9-313 AND 9-402] of the UCC; and (ii) the addresses of Trustor and Beneficiary are as set forth on the last page of this Deed of Trust.

5.20 Credit Agreement Controls. [EXCEPT WITH RESPECT TO SECTION 5.17 HEREOF,] In the event of any conflict between any terms and provisions set forth in this Deed of Trust and those set forth in the Credit Agreement, the terms and provisions of the Credit Agreement shall supersede and control the terms and provisions of this Deed of Trust.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Trustor has caused this Deed of Trust to be duly executed and delivered as of the day and year first above written.

-----, a Delaware

By:

Name:

Title:

**THE STATE OF :**

COUNTY OF \_\_\_\_\_ :  
\_\_\_\_\_ :

This instrument was acknowledged before me on \_\_\_\_\_, 200\_\_,

by \_\_\_\_\_, \_\_\_\_\_ President of \_\_\_\_\_  
\_\_\_\_\_, a \_\_\_\_\_ corporation, on behalf of such corporation.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_ My Commission Expires: \_\_\_\_\_

**Printed Name of Notary**

**EXHIBIT A**

**DESCRIPTION OF [LEASED] PREMISES**

**EXHIBIT B**

**DESCRIPTION OF EASEMENTS**

**EXHIBIT C**

**PERMITTED ENCUMBRANCES**

**EXHIBIT D-3  
to the Credit Agreement**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:**

**Christopher B. Isaac**

**LATHAM & WATKINS  
701 "B" STREET, SUITE 2100  
SAN DIEGO, CALIFORNIA 92101**

**FORM OF  
DEED OF TRUST, ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

**DATED AS OF \_\_\_\_\_, 200\_\_**

**BY**

**A DELAWARE \_\_\_\_\_,  
AS TRUSTOR**

**TO**

**[TITLE COMPANY],  
AS TRUSTEE**

**FOR THE BENEFIT OF**

**CREDIT SUISSE FIRST BOSTON,  
ACTING THROUGH ITS NEW YORK BRANCH,  
AS ADMINISTRATIVE AGENT FOR THE BANKS,  
AS BENEFICIARY**

**TABLE OF CONTENTS**

	Page ----
ARTICLE 1 - DEFINITIONS.....	4
1.1    DEFINED TERMS.....	4
1.2    ACCOUNTING TERMS.....	5
1.3    THE RULES OF INTERPRETATION.....	5
ARTICLE 2 - GENERAL COVENANTS AND PROVISIONS.....	5
2.1    TRUSTOR PERFORMANCE OF CREDIT DOCUMENTS.....	5
2.2    GENERAL REPRESENTATIONS, COVENANTS AND WARRANTIES.....	5
2.3    COMPLIANCE WITH LEGAL REQUIREMENTS.....	6
2.4    INSURANCE; APPLICATION OF INSURANCE PROCEEDS; APPLICATION OF EMINENT DOMAIN PROCEEDS.....	6
2.5    ASSIGNMENT OF RENTS.....	6
2.6    EXPENSES.....	7
2.7    BENEFICIARY ASSUMES NO SECURED OBLIGATIONS.....	7
2.8    FURTHER ASSURANCES.....	8
2.9    ACTS OF TRUSTOR.....	8
2.10   AFTER-ACQUIRED PROPERTY.....	8
2.11   SITE.....	9
2.12   POWER OF ATTORNEY.....	11
2.13   COVENANT TO PAY.....	12
2.14   SECURITY AGREEMENT.....	12
ARTICLE 3 - REMEDIES.....	13
3.1    ACCELERATION OF MATURITY.....	13
3.2    PROTECTIVE ADVANCES.....	13
3.3    INSTITUTION OF EQUITY PROCEEDINGS.....	13
3.4    BENEFICIARY'S POWER OF ENFORCEMENT.....	13
3.5    BENEFICIARY'S RIGHT TO ENTER AND TAKE POSSESSION, OPERATE AND APPLY INCOME.....	15
3.6    SEPARATE SALES.....	16
3.7    WAIVER OF APPRAISEMENT, VALUATION, STAY, EXTENSION AND REDEMPTION LAWS.....	16
3.8    RECEIVER.....	16
3.9    SUITS TO PROTECT THE TRUST ESTATE.....	17
3.10   PROOFS OF CLAIM.....	17
3.11   TRUSTOR TO PAY AMOUNTS SECURED HEREBY ON ANY DEFAULT IN PAYMENT; APPLICATION OF MONIES BY BENEFICIARY.....	17
3.12   DELAY OR OMISSION; NO WAIVER.....	18
3.13   NO WAIVER OF ONE DEFAULT TO AFFECT ANOTHER.....	18
3.14   DISCONTINUANCE OF PROCEEDINGS; POSITION OF PARTIES RESTORED.....	19
3.15   REMEDIES CUMULATIVE.....	19
3.16   INTEREST AFTER EVENT OF DEFAULT.....	19
3.17   FORECLOSURE; EXPENSES OF LITIGATION.....	19
3.18   DEFICIENCY JUDGMENTS.....	20
3.19   WAIVER OF JURY TRIAL.....	20
3.20   EXCULPATION OF BENEFICIARY.....	20
ARTICLE 4 - RIGHTS AND RESPONSIBILITIES OF TRUSTEE; OTHER PROVISIONS RELATING TO TRUSTEE.....	20

4.1	EXERCISE OF REMEDIES BY TRUSTEE.....	20
4.2	RIGHTS AND PRIVILEGES OF TRUSTEE.....	21
4.3	RESIGNATION OR REPLACEMENT OF TRUSTEE.....	21
4.4	AUTHORITY OF BENEFICIARY.....	21
4.5	EFFECT OF APPOINTMENT OF SUCCESSOR TRUSTEE.....	22
4.6	CONFIRMATION OF TRANSFER AND SUCCESSION.....	22
4.7	EXCULPATION.....	22
4.8	ENDORSEMENT AND EXECUTION OF DOCUMENTS.....	22
4.9	MULTIPLE TRUSTEES.....	22
4.10	NO REQUIRED ACTION.....	23
4.11	TERMS OF TRUSTEE'S ACCEPTANCE.....	23
ARTICLE 5 - GENERAL.....		23
5.1	DISCHARGE.....	23
5.2	NO WAIVER.....	23
5.3	EXTENSION, REARRANGEMENT OR RENEWAL OF SECURED OBLIGATIONS.....	24
5.4	FORCIBLE DETAINER.....	24
5.5	WAIVER OF STAY OR EXTENSION.....	24
5.6	NOTICES.....	24
5.7	SEVERABILITY.....	25
5.8	APPLICATION OF PAYMENTS.....	25
5.9	GOVERNING LAW.....	25
5.10	ENTIRE AGREEMENT.....	25
5.11	AMENDMENTS.....	25
5.12	SUCCESSORS AND ASSIGNS.....	26
5.13	RENEWAL, ETC.....	26
5.14	FUTURE ADVANCES.....	26
5.15	LIABILITY.....	26
5.16	[SEVERABILITY AND COMPLIANCE WITH USURY LAW.....	26
5.17	[SUBJECT TO GROUND LEASE.....	27
5.18	RELEASE OF COLLATERAL.....	27
5.19	FIXTURE FILING UNDER UNIFORM COMMERCIAL CODE.....	27
5.20	CREDIT AGREEMENT CONTROLS.....	27

## EXHIBIT D4-A

### BORROWER SECURITY AGREEMENT

This BORROWER SECURITY AGREEMENT (this "Agreement"), dated as of October 16, 2000, is entered into by and between CALPINE CONSTRUCTION FINANCE COMPANY II, LLC, a Delaware limited liability company ("Borrower"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks (as defined below).

#### PREFACE

A. Borrower, the financial institutions listed on Exhibit H to the Credit Agreement (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, have entered into that certain Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks agreed to make certain advances of credit to Borrower in the amounts specified and on the terms and subject to the conditions set forth therein. For purposes of this Agreement, the term "Banks" shall include the Administrative Agent, the Lead Arrangers, the Co-Syndication Agents, the Bookrunner, the Co-Documentation Agents and the Banks (as such terms are defined in the Credit Agreement).

B. As a condition precedent to the Banks' making the advances of credit contemplated by the Credit Agreement, the Banks require that Borrower shall have executed this Agreement.

#### AGREEMENT

In consideration of the promises contained herein, and in order to induce the Banks to enter into the Credit Agreement and to make the advances of credit pursuant to the terms thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Borrower hereby agrees with Administrative Agent for the benefit of Administrative Agent and the Banks as follows:

##### 1. DEFINITIONS.

1.1 "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a

jurisdiction other than the State of New York the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.2 All capitalized terms used, but not otherwise defined herein, shall have the meanings provided in the Credit Agreement. All other terms used herein (whether or not capitalized) shall have the meanings given them in the UCC. The rules of interpretation contained in Exhibit A to the Credit Agreement shall apply to this Agreement.

## 2. ASSIGNMENT, PLEDGE AND GRANT OF SECURITY INTEREST.

2.1 To secure the timely payment and performance of the Obligations (as defined in Section 3 hereof) Borrower does hereby assign, grant and pledge to, and subject to a security interest in favor of, Administrative Agent, on behalf of and for the benefit of Administrative Agent and the Banks, all the estate, right, title and interest of Borrower, whether now owned or hereafter acquired, in, to and under:

2.1.1 The following agreements and documents, as amended from time to time (individually, an "Assigned Agreement," and collectively, the "Assigned Agreements") and all of Borrower's rights thereunder:

(a) any Project Documents and Turbine Purchase Contracts to which Borrower is or may become a party;

(b) the insurance policies maintained or required to be maintained by Borrower or any other Person under the Credit Agreement, including, without limitation, any such policies insuring against loss of revenues by reason of interruption of the operation of a Project and all loss proceeds and other amounts payable to Borrower thereunder, and all eminent domain proceeds relating to any Project;

(c) to the extent assignable, all agreements, including vendor warranties, running to Borrower or assigned to Borrower, relating to the construction, maintenance, improvement, operation or acquisition of a Project or Turbine or any part thereof, or transport of material, equipment and other parts of a Project or any part thereof;

(d) any lease or sublease agreements or easement agreements, including, without limitation, those relating to a Project or any part thereof or any ancillary facilities, to which Borrower is or becomes a party;

(e) each Additional Project Document, and, to the extent assignable, any other agreements to which Borrower may be or become a party, including, without limitation, those relating to the construction or operation of a Project or any part thereof or the purchase of a Turbine;

(f) all amendments, supplements, substitutions and renewals to any of the aforesaid agreements; and

(g) all Permits issued in the name of Borrower, but excluding any of the Permits which by their terms or by operation of law prohibit or do not allow assignment or which would become void solely by virtue of a security interest being granted therein;

2.1.2 all rents, profits, income, distributions royalties and revenues derived in any other manner by Borrower, including, without limitation, those from its direct or indirect ownership of a Project, Turbine or Portfolio Entity or any part thereof, including, without limitation, all Project Revenues and all revenues from the sale of electricity, steam, heat, goods or services, but excluding amounts distributed to Borrower under Waterfall Levels 8 and 10 of Section 7.2.1 of the Credit Agreement;

2.1.3 all other personal property and fixtures of Borrower, including, without limitation, those relating to any Project, Turbine or Portfolio Entity, whether now owned or existing or hereafter acquired or arising, or in which Borrower may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, including, without limitation, all machinery, tools, engines, turbines (including combustion turbines and steam turbine generators), boilers, fuel storage tanks, control equipment, appliances, mechanical and electrical systems, elevators, lighting, alarm systems, fire control systems, furnishings, furniture, as-extracted collateral, equipment, service equipment, motor vehicles, building or maintenance equipment, building or maintenance materials, pipes and pipelines supplies, goods and property covered by any warehouse receipts or bills of lading or other such documents, spare parts, maps, plans, specifications, architectural, engineering, construction or shop drawings, manuals or similar documents, copyrights, trademarks and trade names, and any replacements, renewals or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by Borrower;

2.1.4 all goods, money, instruments, investment securities, investment property, accounts, contract rights, commercial tort claims, letters of credit, letter of credit rights, payment intangibles, promissory notes, software, supporting obligations, documents, deposit accounts, chattel paper (including tangible and electronic chattel paper), general intangibles, and inventory, including, without limitation, those relating directly or indirectly to any Project, Turbine or Portfolio Entity;

2.1.5 the Portfolio Entity Note from Development Company (the "Development Company Portfolio Entity Note") and the Portfolio Entity Note from CCFC II Equipment Finance Company, LLC, a Delaware limited liability company;

2.1.6 all Accounts, including without limitation, the Construction Accounts, the Revenue Accounts, the Loss Proceeds Account and the Working Capital Reserve Accounts, including any sub-accounts within such accounts; and

2.1.7 the proceeds of all of the foregoing (all of the collateral described in clauses 2.1.1 through 2.1.7 being herein collectively referred to as the "Collateral"), including, without limitation, (a) all rights of Borrower to receive moneys due and to become due under or pursuant to the Collateral; (b) all rights of Borrower to receive the return of any premiums for, or proceeds of, any insurance, indemnity, warranty or guaranty with respect to the Collateral or to

receive any condemnation proceeds; (c) all claims of Borrower for damages arising out of, or for breach of or default under, the Assigned Agreements or any other Collateral; (d) all rights of Borrower to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (e) to the extent not included in the foregoing, all proceeds receivable or received when any and all of the foregoing Collateral is sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily.

2.2 In order to effectuate the foregoing, Borrower has heretofore delivered, or concurrently with the delivery hereof, is delivering to Administrative Agent an executed counterpart or certified copy of each of the Assigned Agreements. Borrower will likewise deliver to Administrative Agent an executed counterpart of each future lease, construction agreement, operation agreement and other agreement, including, without limitation, those relating to a Project, Turbine or Portfolio Entity, or any part thereof, and amendments and supplements to the foregoing, included in the Collateral, as they are entered into by Borrower promptly upon the execution thereof. Notwithstanding anything to the contrary contained herein, no such future lease, construction agreement, operation agreement or other material agreement or any part thereof may be entered into by Borrower except as permitted under the Credit Agreement.

2.3 Notwithstanding anything to the contrary contained herein, Borrower shall remain liable under each of the Assigned Agreements to perform all of the obligations undertaken by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and Administrative Agent shall have no obligation or liability under any of such Assigned Agreements by reason of or arising out of this Agreement, nor shall Administrative Agent be required or obligated in any manner to perform or fulfill any obligations of Borrower thereunder or to make any payment or inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

2.4 If any default by Borrower under any of the Assigned Agreements shall occur and be continuing, then Administrative Agent shall, at its option and after the expiration of the applicable cure periods under Section 8.1.7 of the Credit Agreement, be permitted (but shall not be obligated) to remedy any such default by giving written notice of such intent to Borrower and to the parties to the Assigned Agreement or Assigned Agreements for which Administrative Agent intends to remedy the default. After giving such notice of its intent to cure such default and upon the commencement thereof, Administrative Agent will proceed diligently to cure such default. Any cure by Administrative Agent of Borrower's default under any of the Assigned Agreements shall not be construed as an assumption by Administrative Agent or any of the Banks of any obligations, covenants or agreements of Borrower under such Assigned Agreement, and neither Administrative Agent nor any of the Banks shall be liable to Borrower or any other Person as a result of any actions undertaken by Administrative Agent in curing or attempting to cure any such default, except as set forth in Section 12.13 of the Credit Agreement. This Agreement shall not be deemed to release or to affect in any way the obligations of Borrower under the Assigned Agreements.

3. OBLIGATIONS SECURED. Without limiting the generality of the foregoing, this Agreement and all of the Collateral secure the payment and performance when due of all Obligations (as defined in the Credit Agreement) of Borrower to the Administrative Agent and the Banks (the "Obligations").

4. REPRESENTATIONS AND WARRANTIES OF BORROWER. Borrower represents and warrants as of the date hereof as follows:

4.1 Borrower has not assigned any of its rights under the Assigned Agreements except as provided in the Credit Documents.

4.2 Borrower has not executed and is not aware of any effective financing statement, security agreement or other instrument similar in effect covering all or any part of the Collateral, except such as may have been filed pursuant to this Agreement and the other Credit Documents or pursuant to the documents evidencing Permitted Liens.

4.3 Except as permitted by the Credit Agreement, Borrower is lawfully possessed of ownership of the Collateral and has full right, title and interest in and to all rights purported to be granted to it under the Assigned Agreements, not subject to any mortgages, liens, charges, or encumbrances except Permitted Liens. Borrower has full power and lawful authority to grant and assign the Collateral hereunder.

5. COVENANTS OF BORROWER. Borrower covenants as follows:

5.1 Any action or proceeding to enforce this Agreement or any Assigned Agreement may be taken by Administrative Agent either in Borrower's name or in Administrative Agent's name, as Administrative Agent may deem necessary.

5.2 Borrower will, so long as any Obligations shall be outstanding, warrant and defend its title to the Collateral and the interest of Administrative Agent in the Collateral against any claim or demand of any persons (other than Permitted Liens) which could reasonably be expected to materially adversely affect Borrower's title to, or Administrative Agent's right or interest in, such Collateral.

5.3 Borrower will at all times keep accurate and complete records of the Collateral. Borrower shall permit representatives of Administrative Agent upon reasonable prior notice, and in accordance with Section 5.6 of the Credit Agreement, at any time during normal business hours of Borrower to inspect and make abstracts from Borrower's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at Administrative Agent's request, Borrower shall promptly deliver copies of any and all such records to Administrative Agent.

5.4 Unless waived in writing by Administrative Agent, Borrower shall give Administrative Agent at least 45 days' notice before it changes the location of its principal place of business, chief executive office or state of organization and shall at the expense of Borrower execute and deliver such instruments and documents as may reasonably be required by Administrative Agent to maintain a prior perfected security interest in the Collateral.

6. EVENTS OF DEFAULT. The occurrence of an Event of Default under the Credit Agreement, whatever the reason therefor and whether it shall be voluntary or involuntary or be effected by operation of law, or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, shall constitute an event of default hereunder (an "Event of Default").

7. REMEDIES UPON EVENT OF DEFAULT.

7.1 If any Event of Default has occurred and is continuing, Administrative Agent may (1) declare any amounts payable by Borrower under the Credit Agreement to be due and payable immediately and thereupon the same shall become immediately due and payable (provided that if such Event of Default occurs under Section 8.1.4 of the Credit Agreement with respect to Borrower, all such amounts shall become automatically due and payable); (2) proceed to protect and enforce the rights vested in it by this Agreement, including but not limited to, the right to cause all revenues pledged hereby as security and all other moneys pledged hereunder to be paid directly to it, and to enforce its rights hereunder to such payments and all other rights hereunder by such appropriate judicial proceedings as it shall deem most effective to protect and enforce any of such rights, either at law or in equity or otherwise, whether for specific enforcement of any covenant or agreement contained in any of the Assigned Agreements, or in aid of the exercise of any power therein or herein granted, or for any foreclosure hereunder and sale under a judgment or decree in any judicial proceeding, or to enforce any other legal or equitable right vested in it by this Agreement or by law; (3) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any Obligations or rights hereunder or included in the Collateral, or to foreclose or enforce any other agreement or other instrument by or under or pursuant to which such Obligations are issued or secured, subject in each case to the provisions and requirements thereof; (4) sell or otherwise dispose of any or all of the Collateral or cause the Collateral to be sold or otherwise disposed of in one or more sales or transactions, at such prices and in such manner as Administrative Agent may deem commercially reasonable, and for cash or on credit or for future delivery, without assumption of any credit risk at any broker's board or at public or private sale, with or without a warranty of title, without demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), it being agreed that Administrative Agent may be a purchaser on behalf of the Banks or on its own behalf at any such sale and that Administrative Agent, any Bank, or any other Person who may be a bona fide purchaser for value and without notice of any claims of any or all of the Collateral so sold shall thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of Borrower, any such demand, notice or right and equity being hereby expressly waived and released to the extent permitted by law; (5) incur reasonable expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement; (6) perform any obligation of Borrower hereunder or under any other Credit Document, and make payments, purchase, contest or compromise any encumbrance, charge or lien, and pay taxes and expenses without, however, any obligation to do so; (7) in connection with any acceleration and foreclosure, take possession of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon any Site or any other location where the same may be located for that purpose, control, manage, operate, rent and lease the Collateral, either separately or in

conjunction with any Project, collect all rents and income from the Collateral and apply the same to reimburse the Banks for any cost or expenses incurred hereunder or under any of the Credit Documents and to the payment or performance of Borrower's obligations hereunder or under any of the Credit Documents, and apply the balance to the Loans of Borrower as provided for in the Credit Agreement and any remaining excess balance to whomsoever is legally entitled thereto; (8) secure the appointment of a receiver of the Collateral or any part thereof; or (9) exercise any other or additional rights or remedies granted to a secured party under the UCC. If pursuant to applicable law prior notice of any such action is required to be given to Borrower, Borrower hereby acknowledges that the minimum time required by such applicable law, or if no minimum time is specified, 10 Banking Days, shall be deemed a reasonable notice period.

7.2 All reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Administrative Agent in connection with any such suit or proceeding or in connection with the performance by Administrative Agent of any of Borrower's agreements contained in any of the Assigned Agreements or any exercise of its rights or remedies hereunder, pursuant to the terms of this Agreement, together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the Default Rate from the date on which such costs or expenses are incurred to the date of payment thereof, shall constitute additional indebtedness secured by this Agreement and shall be paid by Borrower to Administrative Agent on behalf of the Banks on demand.

#### 8. REMEDIES CUMULATIVE; DELAY NOT WAIVER.

8.1 No right, power or remedy herein conferred upon or reserved to Administrative Agent is intended to be exclusive of any other right, power or remedy and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Administrative Agent may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

8.2 No delay or omission of Administrative Agent to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Administrative Agent.

9. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by and due and owing to Administrative Agent and the Banks under the Credit Agreement, the other Credit Documents or the Collateral Documents; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such

amounts); third, to the principal amounts of the Obligations outstanding; fourth, to any other Obligations of Borrower owing to Administrative Agent or the Banks; and fifth, to, or as directed by, Borrower.

10. ATTORNEY-IN-FACT. Borrower hereby constitutes and appoints Administrative Agent, acting for and on behalf of itself and the Banks and each successor or assign of Administrative Agent and the Banks, the true and lawful attorney-in-fact of Borrower, with full power and authority in the place and stead of Borrower and in the name of Borrower, Administrative Agent or otherwise to enforce all rights, interests and remedies of Borrower with respect to the Collateral, including, without limitation, the right:

10.1 to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Assigned Agreements or any of the other Collateral, including without limitation, any insurance policies;

10.2 to elect remedies thereunder and to endorse any checks or other instruments or orders in connection therewith;

10.3 to file any claims or take any action or institute any proceedings in connection therewith which Administrative Agent may reasonably deem to be necessary or advisable;

10.4 to pay, settle or compromise all bills and claims which may be or become liens or security interests against any or all of the Collateral, or any part thereof, unless a bond or other security satisfactory to Administrative Agent has been provided; and

10.5 upon foreclosure and to the extent provided in the Consents, to do any and every act which Borrower may do on its behalf with respect to the Collateral or any part thereof and to exercise any or all of Borrower's rights and remedies under any or all of the Assigned Agreements;

provided, however, that Administrative Agent shall not exercise any such rights except upon the occurrence and continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable.

11. ADMINISTRATIVE AGENT MAY PERFORM. Upon the occurrence and during the continuance of an Event of Default, if Borrower fails to perform any agreement contained herein, Administrative Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of Administrative Agent incurred in connection therewith shall be part of the Obligations.

12. PERFECTION; FURTHER ASSURANCES.

12.1 Borrower agrees that from time to time, at the expense of Borrower, Borrower shall promptly execute and deliver all instruments and documents, and take all action, that may be reasonably necessary, or that Administrative Agent may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted

hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Borrower shall (i) with respect to the Development Company Portfolio Entity Note and any other Collateral evidenced by a promissory note or other instrument in excess of \$5,000, deliver and pledge to Administrative Agent for the benefit of the Banks such note duly endorsed without recourse, and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Administrative Agent; and (ii) execute and deliver to Administrative Agent such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as Administrative Agent may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

12.2 Borrower hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Borrower where permitted by law.

12.3 Borrower shall pay all filing, registration and recording fees and all refiling, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, any agreement supplemental hereto, any financing statements, and any instruments of further assurance.

12.4 Borrower shall, promptly upon request, provide to Administrative Agent all information and evidence it may reasonably request concerning the Collateral to enable Administrative Agent to enforce the provisions of this Agreement.

13. PLACE OF BUSINESS; LOCATION OF RECORDS. Unless Administrative Agent is otherwise notified under Section 5.4, the place of business and chief executive office of Borrower is, and all records of Borrower concerning the Collateral are and will be, located at the address set forth in Schedule 4.24 to the Credit Agreement and Borrower is, and will be, a limited liability company organized under the laws of the State of Delaware.

14. CONTINUING ASSIGNMENT AND SECURITY INTEREST; TRANSFER OF NOTES. This Agreement shall create a continuing assignment of, and security interest in, the Collateral and shall (a) remain in full force and effect until payment in full of the Obligations, (b) be binding upon Borrower, its successors and assigns; provided, however, that the obligations of Borrower, its successors and assigns hereunder may not be assigned without the prior written consent of Administrative Agent; and (c) inure, together with the rights and remedies of Administrative Agent, to the benefit of Administrative Agent, the Banks and their respective successors, transferees and assigns. Without limiting the generality of the foregoing but subject to the terms of the Credit Agreement, Administrative Agent or any of the Banks may assign or otherwise transfer all or any part of or interest in the Notes and the other Credit Documents or other evidence of indebtedness held by them to any other Person to the extent permitted by and in accordance with the Credit Agreement, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Banks herein or

otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by Administrative Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any person on the indebtedness secured hereby. If this Agreement shall be terminated or revoked by operation of law, Borrower will indemnify and save Administrative Agent and the Banks harmless from any loss which may be suffered or incurred by Administrative Agent and the Banks in acting hereunder prior to the receipt by Administrative Agent, its successors, transferees, or assigns of notice of such termination or revocation.

15. **TERMINATION OF SECURITY INTEREST.** Upon the indefeasible payment in full of the Obligations, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Borrower. Upon any such termination, Administrative Agent will, at Borrower's expense, execute and, subject to Section 21 hereof, deliver to Borrower such documents (including, without limitation, UCC-3 termination statements) as Borrower shall reasonably request to evidence such termination.

16. **ATTORNEYS' FEES.** In the event any legal action or proceeding (including, without limitation, any of the remedies provided for herein or at law) is commenced to enforce or interpret this Agreement or any provision thereof, unless Borrower is the prevailing party, Borrower shall indemnify each of Administrative Agent and the Banks for their reasonable attorneys' fees and other costs and expenses incurred therein, and if a judgment or award is entered in any such action or proceeding, such reasonable attorneys' fees and other costs and expenses may be made a part of such judgment or award.

17. **LIABILITY.** Recourse against the Borrower, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Agreement shall be limited to the extent provided in Article 9 of the Credit Agreement.

18. **AMENDMENTS; WAIVERS; CONSENTS.** No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by Borrower therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Borrower.

19. **NOTICES.** All notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall be effective if given in accordance with the provisions of Section 12.1 of the Credit Agreement. Notices to Borrower may be given at the address of Borrower set forth in such Section 12.1.

20. **GOVERNING LAW.** This Agreement, including all matters of construction, validity, performance and the creation, validity, enforcement or priority of the lien of, and security interests created by, this Agreement in or upon the Collateral shall be governed by the laws of the state of New York, without reference to conflicts of law (other than Section 5-1401 of the New York General Obligations Law), except as required by mandatory provisions of law and except to the extent that the validity or perfection of the lien and security interest hereunder, or remedies

hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the state of New York.

21. REINSTATEMENT. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Administrative Agent in respect of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, liquidation of Borrower or any general partner of Borrower or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, Borrower or any general partner of Borrower or any substantial part of Borrower's or any of its general partners' assets, or otherwise, all as though such payments had not been made.

22. SEVERABILITY. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

23. SURVIVAL OF PROVISIONS. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the Credit Agreement and the making of the Loans and extensions of credit thereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of Borrower set forth herein shall terminate only upon payment of the Obligations, and the termination of all Commitments and other obligations of the Banks under the Credit Documents.

24. HEADINGS DESCRIPTIVE. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

25. ENTIRE AGREEMENT. This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

26. TIME. Time is of the essence of this Agreement.

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

28. WAIVER OF JURY TRIAL. BORROWER AND ADMINISTRATIVE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP AMONG BORROWER AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. BORROWER AND ADMINISTRATIVE AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL

INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. BORROWER AND ADMINISTRATIVE AGENT FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned has caused this Borrower Security Agreement to be duly executed and delivered as of the day and year first above written.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

**EXHIBIT D-4A  
to the Credit Agreement**

**FORM**

**OF**

**BORROWER SECURITY AGREEMENT**

**Dated as of October 16, 2000**

between

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

## TABLE OF CONTENTS

	PAGE
	-----
1. Definitions.....	2
2. Assignment, Pledge and Grant of Security Interest.....	2
3. Obligations Secured.....	6
4. Representations and Warranties of Borrower.....	6
5. Covenants of Borrower.....	6
6. Events of Default.....	7
7. Remedies Upon Event of Default.....	7
8. Remedies Cumulative; Delay Not Waiver.....	8
9. Application of Proceeds.....	9
10. Attorney-In-Fact.....	9
11. Administrative Agent May Perform.....	10
12. Perfection; Further Assurances.....	10
13. Place of Business; Location of Records.....	11
14. Continuing Assignment and Security Interest; Transfer of Notes.....	11
15. Termination of Security Interest.....	11
16. Attorneys' Fees.....	11
17. Liability.....	11
18. Amendments; Waivers; Consents.....	12
19. Notices.....	12
20. Governing Law.....	12
21. Reinstatement.....	12
22. Severability.....	12
23. Survival of Provisions.....	12
24. Headings Descriptive.....	13
25. Entire Agreement.....	13
26. Time.....	13
27. Counterparts.....	13
28. Waiver of Jury Trial.....	13

## EXHIBIT D4-B

### PROJECT/TURBINE OWNER SECURITY AGREEMENT

This PROJECT/TURBINE OWNER SECURITY AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 200\_\_, is entered into by and between [NAME OF PROJECT/TURBINE OWNER], a Delaware \_\_\_\_\_ ("Owner"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks (as defined below).

#### PREFACE

A. [OWNER INTENDS TO CONSTRUCT AND OWN AND OPERATE THE \_\_\_\_\_ PROJECT (THE "PROJECT").][OWNER INTENDS TO PURCHASE [DESCRIBE TURBINES] (THE "TURBINE(S)") AND IN FURTHERANCE THEREOF HAS ENTERED INTO OR BEEN ASSIGNED RIGHTS UNDER THAT CERTAIN [DESCRIBE TURBINE PURCHASE CONTRACT] DATED \_\_\_\_\_, \_\_\_\_\_, BETWEEN [OWNER] AND [DESCRIBE TURBINE PURCHASE CONTRACTOR] (THE "TURBINE PURCHASE CONTRACT").

B. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), the financial institutions listed on Exhibit H to the Credit Agreement (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, have entered into that certain Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks agreed to make certain advances of credit to Borrower in the amounts specified and on the terms and subject to the conditions set forth therein. For purposes of this Agreement, the term "Banks" shall include the Administrative Agent, the Lead Arrangers, the Co-Syndication Agents, the Bookrunner, the Co-Documentation Agents and the Banks (as such terms are defined in the Credit Agreement).

C. Owner intends to finance certain [PROJECT][TURBINE] Costs associated with Owner's [CONSTRUCTION AND OPERATION OF THE PROJECT][PURCHASE OF THE TURBINE(S)] with funds borrowed by Borrower pursuant to the Credit Agreement.

D. [INSERT IF PROJECT OWNER][OWNER AND ADMINISTRATIVE AGENT ON BEHALF OF THE BANKS HAVE ENTERED INTO THE PROJECT OWNER GUARANTY DATED AS OF \_\_\_\_\_, 200\_\_ (THE "GUARANTY") PURSUANT TO WHICH OWNER HAS GUARANTEED THE OBLIGATIONS OF EACH OF THE OTHER PORTFOLIO ENTITIES UNDER THE CREDIT DOCUMENTS, INCLUDING BORROWER'S OBLIGATIONS UNDER THE CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS TO WHICH BORROWER IS A PARTY.]

E. As a condition precedent to the Banks' making the advances of credit contemplated by the Credit Agreement, the Banks require that Owner shall have executed this Agreement.

## AGREEMENT

In consideration of the promises contained herein, and in order to induce the Banks to enter into the Credit Agreement and to make the advances of credit pursuant to the terms thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner hereby agrees with Administrative Agent for the benefit of Administrative Agent and the Banks as follows:

### 1. DEFINITIONS.

1.1 "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York [OR, WITH RESPECT TO THE OPERATING ACCOUNT (AS DEFINED BELOW) ONLY, THE STATE OF \_\_\_\_\_][IF PROJECT OWNER, INSERT STATE WHERE OPERATING ACCOUNT HELD] provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York [OR, IF APPLICABLE, THE STATE OF \_\_\_\_\_][TO BE USED FOR OPERATING ACCOUNT] the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.2 All capitalized terms used, but not otherwise defined herein, shall have the meanings provided in the Credit Agreement. All other terms used herein (whether or not capitalized) shall have the meanings given them in the UCC. The rules of interpretation contained in Exhibit A to the Credit Agreement shall apply to this Agreement.

### 2. ASSIGNMENT, PLEDGE AND GRANT OF SECURITY INTEREST.

2.1 To secure the timely payment and performance of the Obligations (as defined in Section 3 hereof) Owner does hereby assign, grant and pledge to, and subject to a security interest in favor of, Administrative Agent, on behalf of and for the benefit of Administrative Agent and the Banks, all the estate, right, title and interest of Owner, whether now owned or hereafter acquired, in, to and under:

2.1.1 The following agreements and documents, as amended from time to time (individually, an "Assigned Agreement," and collectively, the "Assigned Agreements") and all of Owner's rights thereunder:

(a) [INSERT IF PROJECT OWNER - IF AT CLOSING USE GENERAL DEFINITIONS BELOW AND IF AT FUNDING INSERT DESCRIPTION OF

SPECIFIC DOCUMENTS IN ADDITION TO GENERAL DEFINITIONS][ALL PROJECT DOCUMENTS WITH RESPECT TO THE PROJECT TO WHICH OWNER IS OR MAY BECOME A PARTY FROM TIME TO TIME INCLUDING;

- (i) ANY POWER ISLAND SUPPLY CONTRACT;
- (ii) ANY PRIME CONSTRUCTION CONTRACT;
- (iii) ANY ENGINEERING CONTRACT;
- (iv) ANY MAINTENANCE CONTRACT;
- (v) ANY CONSTRUCTION MANAGEMENT AGREEMENT;
- (vi) ANY PROJECT DOCUMENT RELATED TO THE DELIVERY OF WATER TO THE PROJECTS;
- (vii) ANY LEASE;
- (viii) ANY O&M AGREEMENT;
- (ix) ANY PROJECT MANAGEMENT AGREEMENT;
- (x) ANY GAS SUPPLY CONTRACT;
- (xi) ANY GAS TRANSPORTATION AGREEMENT;
- (xii) ANY FUEL MANAGEMENT AGREEMENT;
- (xiii) ANY POWER PURCHASE DOCUMENT;
- (xiv) ANY POWER MARKETING AGREEMENT; AND
- (xv) ANY EQUIPMENT LEASE;]

**[INSERT IF TURBINE OWNER][OWNER'S INTEREST IN ANY TURBINE**

**PURCHASE CONTRACT AND ANY EQUIPMENT LEASE;]**

(b) the insurance policies maintained or required to be maintained by Owner or any other Person under the Credit Agreement [OR THE TURBINE PURCHASE CONTRACT][OR ANY PROJECT DOCUMENT, INCLUDING, WITHOUT LIMITATION, ANY SUCH POLICIES INSURING AGAINST LOSS OF REVENUES BY REASON OF INTERRUPTION OF THE OPERATION OF THE PROJECT AND ALL LOSS PROCEEDS AND OTHER AMOUNTS PAYABLE TO OWNER THEREUNDER, AND ALL EMINENT DOMAIN PROCEEDS RELATING TO THE PROJECT];

(c) to the extent assignable, all other agreements, including vendor warranties, running to Owner or assigned to Owner, relating to the [CONSTRUCTION, MAINTENANCE, IMPROVEMENT, OPERATION OR ACQUISITION OF THE PROJECT][PURCHASE OF THE TURBINE] or any part thereof,

or transport of material, equipment and other parts of the [PROJECT][TURBINE] or any part thereof;

(d) [INSERT IF PROJECT OWNER][ANY OTHER LEASE OR SUBLEASE AGREEMENTS OR EASEMENT AGREEMENTS RELATING TO THE PROJECT OR ANY PART THEREOF OR ANY ANCILLARY FACILITIES TO WHICH OWNER IS OR BECOMES A PARTY];

(e) [INSERT IF PROJECT OWNER][ANY TURBINE PURCHASE CONTRACT TO WHICH OWNER IS OR BECOMES A PARTY];

(f) [INSERT IF PROJECT OWNER][EACH ADDITIONAL PROJECT DOCUMENT, AND, TO THE EXTENT ASSIGNABLE, ANY OTHER AGREEMENTS TO WHICH OWNER MAY BE OR BECOME A PARTY TO RELATING TO THE CONSTRUCTION OR OPERATION OF THE PROJECT OR ANY PART THEREOF];

(g) all amendments, supplements, substitutions and renewals to any of the aforesaid agreements; and

(h) [INSERT IF PROJECT OWNER][ALL PERMITS ISSUED IN THE NAME OF THE OWNER BUT EXCLUDING ANY OF THE PERMITS WHICH BY THEIR TERMS OR BY OPERATION OF LAW PROHIBIT OR DO NOT ALLOW ASSIGNMENT OR WHICH WOULD BECOME VOID SOLELY BY VIRTUE OF A SECURITY INTEREST BEING GRANTED THEREIN];

2.1.2 [INSERT IF PROJECT OWNER][ALL RENTS, PROFITS, INCOME, DISTRIBUTIONS, ROYALTIES AND REVENUES DERIVED IN ANY OTHER MANNER BY OWNER FROM ITS OWNERSHIP OF THE PROJECT OR ANY PART THEREOF AND THE OPERATION OF THE PROJECT OR ANY PART THEREOF, INCLUDING, WITHOUT LIMITATION, ALL PROJECT REVENUES AND ALL REVENUES FROM THE SALE OF ELECTRICITY, STEAM, HEAT, GOODS OR SERVICES];

2.1.3 all other personal property and fixtures of Owner, including without limitation personal property and fixtures relating to the [PROJECT][TURBINE], whether now owned or existing or hereafter acquired or arising, or in which Owner may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, including without limitation all machinery, tools, engines, turbines (including combustion turbines and steam turbine generators), boilers, fuel storage tanks, control equipment, appliances, mechanical and electrical systems, elevators, lighting, alarm systems, fire control systems, furnishings, furniture, as-extracted collateral, equipment, service equipment, motor vehicles, building or maintenance equipment, building or maintenance materials, pipes and pipelines supplies, goods and property covered by any warehouse receipts or bills of lading or other such documents, spare parts, maps, plans, specifications, architectural, engineering, construction or shop drawings, manuals or similar documents, copyrights, trademarks and trade names, and any replacements, renewals or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by Owner;

2.1.4 all goods, money, instruments, investment securities, investment property, accounts, contract rights, commercial tort claims, letters of credit, letter of credit rights, payment intangibles, promissory notes, software, supporting obligations, documents, deposit

accounts, chattel paper (including tangible and electronic chattel paper), general intangibles, and inventory, including without limitation those relating to the [PROJECT][TURBINE];

2.1.5 [INSERT IF PROJECT OWNER][THE \_\_\_\_\_ (THE "OPERATING ACCOUNT");] and

2.1.6 the proceeds of all of the foregoing (all of the collateral described in clauses [2.1.1 THROUGH 2.1.6], being herein collectively referred to as the "Collateral"), including without limitation, (a) all rights of Owner to receive moneys due and to become due under or pursuant to the Collateral; (b) all rights of Owner to receive the return of any premiums for, or proceeds of, any insurance, indemnity, warranty or guaranty with respect to the Collateral or to receive any condemnation proceeds; (c) all claims of Owner for damages arising out of, or for breach of or default under, the Assigned Agreements or any other Collateral; (d) all rights of Owner to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (e) to the extent not included in the foregoing, all proceeds receivable or received when any and all of the foregoing Collateral is sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily.

2.2 In order to effectuate the foregoing, Owner has heretofore delivered, or concurrently with the delivery hereof, is delivering to Administrative Agent an executed counterpart or certified copy of each of the Assigned Agreements. Owner will likewise deliver to Administrative Agent an executed counterpart of each future lease, construction agreement, operation agreement and other agreement, including without limitation those relating to the [PROJECT][PURCHASE OF THE TURBINE] or any part thereof, and amendments and supplements to the foregoing, included in the Collateral, as they are entered into by Owner promptly upon the execution thereof. Notwithstanding anything to the contrary contained herein, no such future lease, construction agreement, operation agreement or other material agreement may be entered into by Owner except as permitted under the Credit Documents.

2.3 Notwithstanding anything to the contrary contained herein, Owner shall remain liable under each of the Assigned Agreements to perform all of the obligations undertaken by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and Administrative Agent shall have no obligation or liability under any of such Assigned Agreements by reason of or arising out of this Agreement, nor shall Administrative Agent be required or obligated in any manner to perform or fulfill any obligations of Owner thereunder or to make any payment or inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

2.4 If any default by Owner under any of the Assigned Agreements shall occur and be continuing, then Administrative Agent shall, at its option and after the expiration of the applicable cure periods under Section 8.1.7 of the Credit Agreement, be permitted (but shall not be obligated) to remedy any such default by giving written notice of such intent to Owner and to the parties to the Assigned Agreement or Assigned Agreements for which Administrative Agent intends to remedy the default. After giving such notice of its intent to cure such default and upon

the commencement thereof, Administrative Agent will proceed diligently to cure such default. Any cure by Administrative Agent of Owner's default under any of the Assigned Agreements shall not be construed as an assumption by Administrative Agent or any of the Banks of any obligations, covenants or agreements of Owner under such Assigned Agreement, and neither Administrative Agent nor any of the Banks shall be liable to Owner or any other Person as a result of any actions undertaken by Administrative Agent in curing or attempting to cure any such default, except as set forth in Section 12.13 of the Credit Agreement. This Agreement shall not be deemed to release or to affect in any way the obligations of Owner under the Assigned Agreements.

3. OBLIGATIONS SECURED. Without limiting the generality of the foregoing, this Agreement and all of the Collateral secure the payment and performance when due of the [IF PROJECT OWNER: GUARANTEED OBLIGATIONS (AS DEFINED IN THE GUARANTY) OF OWNER UNDER THE GUARANTY][IF TURBINE OWNER: OBLIGATIONS (AS DEFINED IN THE CREDIT AGREEMENT) OF EACH OF THE PORTFOLIO ENTITIES (INCLUDING OWNER) UNDER THE CREDIT DOCUMENTS, INCLUDING BORROWER'S OBLIGATIONS UNDER THE CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS TO WHICH BORROWER IS A PARTY] to the Administrative Agent and the Banks (the "Obligations"); provided, however, the Obligations as defined in this Section 3 shall not include any Obligations (as defined in the Credit Agreement) of any Portfolio Entity under the Credit Documents relating to or arising from Projects (as defined in the Credit Agreement) that have achieved Operation prior to the effective date of this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants as of the date hereof as follows:

4.1 Owner has not assigned any of its rights under the Assigned Agreements except as provided in the Credit Documents.

4.2 Owner has not executed and is not aware of any effective financing statement, security agreement or other instrument similar in effect covering all or any part of the Collateral, except such as may have been filed pursuant to this Agreement and the other Credit Documents or pursuant to the documents evidencing Permitted Liens.

4.3 Except as permitted by the Credit Agreement, Owner is lawfully possessed of ownership of the Collateral and has full right, title and interest in and to all rights purported to be granted to it under the Assigned Agreements, not subject to any mortgages, liens, charges, or encumbrances except Permitted Liens. Owner has full power and lawful authority to grant and assign the Collateral hereunder.

5. COVENANTS OF OWNER. Owner covenants as follows:

5.1 Any action or proceeding to enforce this Agreement or any Assigned Agreement may be taken by Administrative Agent either in Owner's name or in Administrative Agent's name, as Administrative Agent may deem necessary.

5.2 Owner will, so long as any Obligations shall be outstanding, warrant and defend its title to the Collateral and the interest of Administrative Agent in the Collateral against any claim or demand of any persons (other than Permitted Liens) which could reasonably be expected to materially adversely affect Owner's title to, or Administrative Agent's right or interest in, such Collateral.

5.3 Owner will at all times keep accurate and complete records of the Collateral. Owner shall permit representatives of Administrative Agent upon reasonable prior notice, and in accordance with Section 5.6 of the Credit Agreement, at any time during normal business hours of Owner to inspect and make abstracts from Owner's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at Administrative Agent's request, Owner shall promptly deliver copies of any and all such records to Administrative Agent.

5.4 Unless waived in writing by Administrative Agent, Owner shall give Administrative Agent at least 45 days' notice before it changes the location of its principal place of business, chief executive office or state of organization and shall at the expense of Owner execute and deliver such instruments and documents as may reasonably be required by Administrative Agent to maintain a prior perfected security interest in the Collateral.

6. EVENTS OF DEFAULT. The occurrence of an Event of Default under the Credit Agreement, whatever the reason therefor and whether it shall be voluntary or involuntary or be effected by operation of law, or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, shall constitute an event of default hereunder (an "Event of Default").

#### 7. REMEDIES UPON EVENT OF DEFAULT.

7.1 If any Event of Default has occurred and is continuing, Administrative Agent may (a) proceed to protect and enforce the rights vested in it by this Agreement, including but not limited to, the right to cause all revenues pledged hereby as security and all other moneys pledged hereunder to be paid directly to it, and to enforce its rights hereunder to such payments and all other rights hereunder by such appropriate judicial proceedings as it shall deem most effective to protect and enforce any of such rights, either at law or in equity or otherwise, whether for specific enforcement of any covenant or agreement contained in any of the Assigned Agreements, or in aid of the exercise of any power therein or herein granted, or for any foreclosure hereunder and sale under a judgment or decree in any judicial proceeding, or to enforce any other legal or equitable right vested in it by this Agreement or by law; (b) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any Obligations or rights hereunder or included in the Collateral, or to foreclose or enforce any other agreement or other instrument by or under or pursuant to which such Obligations are issued or secured, subject in each case to the provisions and requirements thereof; (c) sell or otherwise dispose of any or all of the Collateral or cause the Collateral to be sold or otherwise disposed of in one or more sales or transactions, at such prices and in such manner as Administrative Agent may deem commercially reasonable, and for cash or on credit or for future delivery, without assumption of any credit risk at any broker's board or at public or

private sale, with or without a warranty of title, without demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), it being agreed that Administrative Agent may be a purchaser on behalf of the Banks or on its own behalf at any such sale and that Administrative Agent, any Bank, or any other Person who may be a bona fide purchaser for value and without notice of any claims of any or all of the Collateral so sold shall thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of Owner, any such demand, notice or right and equity being hereby expressly waived and released to the extent permitted by law; (d) incur reasonable expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement; (e) perform any obligation of Owner hereunder or under any other Credit Document, and make payments, purchase, contest or compromise any encumbrance, charge or lien, and pay taxes and expenses without, however, any obligation to do so; (f) in connection with any acceleration and foreclosure, take possession of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon any Site or any other location where the same may be located for that purpose, control, manage, operate, rent and lease the Collateral[, EITHER SEPARATELY OR IN CONJUNCTION WITH THE PROJECT], collect all rents and income from the Collateral and apply the same to reimburse the Banks for any cost or expenses incurred hereunder or under any of the Credit Documents and to the payment or performance of Owner's obligations hereunder or under any of the Credit Documents, and apply the balance to the Loans of Borrower as provided for in the Credit Agreement and any remaining excess balance to whomsoever is legally entitled thereto; (g) secure the appointment of a receiver of the Collateral or any part thereof; or (h) exercise any other or additional rights or remedies granted to a secured party under the UCC. If pursuant to applicable law prior notice of any such action is required to be given to Owner, Owner hereby acknowledges that the minimum time required by such applicable law, or if no minimum time is specified, 10 Banking Days, shall be deemed a reasonable notice period.

7.2 All reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Administrative Agent in connection with any such suit or proceeding or in connection with the performance by Administrative Agent of any of Owner's agreements contained in any of the Assigned Agreements or any exercise of its rights or remedies hereunder, pursuant to the terms of this Agreement, together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the Default Rate from the date on which such costs or expenses are incurred to the date of payment thereof, shall constitute additional indebtedness secured by this Agreement and shall be paid by Owner to Administrative Agent on behalf of the Banks on demand.

#### 8. REMEDIES CUMULATIVE; DELAY NOT WAIVER.

8.1 No right, power or remedy herein conferred upon or reserved to Administrative Agent is intended to be exclusive of any other right, power or remedy and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other appropriate right or

remedy. Resort to any or all security now or hereafter held by Administrative Agent may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

8.2 No delay or omission of Administrative Agent to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Administrative Agent.

9. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by and due and owing to Administrative Agent and the Banks under the Credit Agreement, the other Credit Documents or the Collateral Documents; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); third, to the principal amounts of the Obligations outstanding; fourth, to any other Obligations of Owner owing to Administrative Agent or the Banks; and fifth, to, or as directed by, Owner.

10. ATTORNEY-IN-FACT. Owner hereby constitutes and appoints Administrative Agent, acting for and on behalf of itself and the Banks and each successor or assign of Administrative Agent and the Banks, the true and lawful attorney-in-fact of Owner, with full power and authority in the place and stead of Owner and in the name of Owner, Administrative Agent or otherwise to enforce all rights, interests and remedies of Owner with respect to the Collateral, including, without limitation, the right:

10.1 to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Assigned Agreements or any of the other Collateral, including without limitation, any insurance policies;

10.2 to elect remedies thereunder and to endorse any checks or other instruments or orders in connection therewith;

10.3 to file any claims or take any action or institute any proceedings in connection therewith which Administrative Agent may reasonably deem to be necessary or advisable;

10.4 to pay, settle or compromise all bills and claims which may be or become liens or security interests against any or all of the Collateral, or any part thereof, unless a bond or other security satisfactory to Administrative Agent has been provided; and

10.5 upon foreclosure and to the extent provided in the Consents, to do any and every act which Owner may do on its behalf with respect to the Collateral or any part thereof

and to exercise any or all of Owner's rights and remedies under any or all of the Assigned Agreements;

provided, however, that Administrative Agent shall not exercise any such rights except upon the occurrence and continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable.

11. ADMINISTRATIVE AGENT MAY PERFORM. Upon the occurrence and during the continuance of an Event of Default, if Owner fails to perform any agreement contained herein, Administrative Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of Administrative Agent incurred in connection therewith shall be part of the Obligations.

## 12. PERFECTION; FURTHER ASSURANCES.

12.1 Owner agrees that from time to time, at the expense of Owner, Owner shall promptly execute and deliver all instruments and documents, and take all action, that may be reasonably necessary, or that Administrative Agent may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Owner shall

(a) if any Collateral shall be evidenced by a promissory note or other instrument in excess of \$5,000, deliver and pledge to Administrative Agent for the benefit of the Banks such note duly endorsed without recourse, and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Administrative Agent; and (b) execute and deliver to Administrative Agent such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as Administrative Agent may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

12.2 Owner hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Owner where permitted by law.

12.3 Owner shall pay all filing, registration and recording fees and all re-filing, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, any agreement supplemental hereto, any financing statements, and any instruments of further assurance.

12.4 Owner shall, promptly upon request, provide to Administrative Agent all information and evidence it may reasonably request concerning the Collateral to enable Administrative Agent to enforce the provisions of this Agreement.

13. **PLACE OF BUSINESS; LOCATION OF RECORDS.** Unless Administrative Agent is otherwise notified under Section 5.4, the place of business and chief executive office of Owner is, and all records of Owner concerning the Collateral are and will be, located at the address set forth in Schedule 4.24 to the Credit Agreement and Owner is, and will be, a \_\_\_\_\_ organized under the laws of the state of Delaware.

14. **CONTINUING ASSIGNMENT AND SECURITY INTEREST; [FOR PROJECT OWNERS ONLY: TRANSFER OF GUARANTY].** This Agreement shall create a continuing assignment of, and security interest in, the Collateral and shall (a) remain in full force and effect until payment in full of the Obligations, (b) be binding upon Owner, its successors and assigns; provided, however, that the obligations of Owner, its successors and assigns hereunder may not be assigned without the prior written consent of Administrative Agent; and (c) inure, together with the rights and remedies of Administrative Agent, to the benefit of Administrative Agent, the Banks and their respective successors, transferees and assigns. Without limiting the generality of the foregoing but subject to the terms of the Credit Agreement, Administrative Agent or any of the Banks may assign or otherwise transfer all or any part of or interest in the Notes and the other Credit Documents[INSERT IF PROJECT OWNER: , INCLUDING THE GUARANTY,] or other evidence of indebtedness held by them to any other Person to the extent permitted by and in accordance with the Credit Agreement, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Banks herein or otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by Administrative Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any person on the indebtedness secured hereby. If this Agreement shall be terminated or revoked by operation of law, Owner will indemnify and save Administrative Agent and the Banks harmless from any loss which may be suffered or incurred by Administrative Agent and the Banks in acting hereunder prior to the receipt by Administrative Agent, its successors, transferees, or assigns of notice of such termination or revocation.

15. **TERMINATION OF SECURITY INTEREST.** Upon the indefeasible payment in full of the Obligations, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Owner. Upon any such termination, Administrative Agent will, at Owner's expense, execute and, subject to Section 21 hereof, deliver to Owner such documents (including, without limitation, UCC-3 termination statements) as Owner shall reasonably request to evidence such termination.

16. **ATTORNEYS' FEES.** In the event any legal action or proceeding (including, without limitation, any of the remedies provided for herein or at law) is commenced to enforce or interpret this Agreement or any provision thereof, unless Owner is the prevailing party, Owner shall indemnify each of Administrative Agent and the Banks for their reasonable attorneys' fees and other costs and expenses incurred therein, and if a judgment or award is entered in any such action or proceeding, such reasonable attorneys' fees and other costs and expenses may be made a part of such judgment or award.

17. **LIABILITY.** Recourse against the Owner, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees

under this Agreement shall be limited to the extent provided in Article 9 of the Credit Agreement.

18. AMENDMENTS; WAIVERS; CONSENTS. No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by Owner therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Owner.

19. NOTICES. All notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall be effective if given in accordance with the provisions of Section 12.1 of the Credit Agreement. Notices to Owner may be given at the address of Borrower set forth in such Section 12.1.

20. GOVERNING LAW. This Agreement, including all matters of construction, validity, performance and the creation, validity, enforcement or priority of the lien of, and security interests created by, this Agreement in or upon the Collateral shall be governed by the laws of the state of New York, without reference to conflicts of law (other than Section 5-1401 of the New York General Obligations Law), except as required by mandatory provisions of law and except to the extent that the validity or perfection of the lien and security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the state of New York. [INSERT FOR PROJECT OWNER][NOTWITHSTANDING THE FOREGOING, THE VALIDITY, PERFECTION AND PRIORITY OF THE LIEN AND SECURITY INTEREST CREATED HEREUNDER IN RESPECT TO THE OPERATING ACCOUNT IS GOVERNED BY THE LAWS OF THE STATE OF \_\_\_\_\_ [INSERT STATE WHERE OPERATING ACCOUNT HELD].

21. REINSTATEMENT. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Administrative Agent in respect of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, liquidation of Owner or any general partner of Owner or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, Owner or any general partner of Owner or any substantial part of Owner's or any of its general partners' assets, or otherwise, all as though such payments had not been made.

22. SEVERABILITY. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

23. SURVIVAL OF PROVISIONS. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the Credit Agreement and the making of the Loans and extensions of credit thereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of Owner set forth herein shall terminate only upon payment of the Obligations, and the termination of all Commitments and other obligations of the Banks under the Credit Documents.

24. **HEADINGS DESCRIPTIVE.** The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.
25. **ENTIRE AGREEMENT.** This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.
26. **TIME.** Time is of the essence of this Agreement.
27. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same agreement.
28. **WAIVER OF JURY TRIAL.** OWNER AND ADMINISTRATIVE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP AMONG OWNER AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. OWNER AND ADMINISTRATIVE AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. OWNER AND ADMINISTRATIVE AGENT FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.
29. **ADDITIONAL WAIVERS.** [TO INSERT IF TURBINE OWNER] [OWNER HEREBY WAIVES AND RELINQUISHES ALL RIGHTS AND REMEDIES ACCORDED BY APPLICABLE LAW TO SURETIES OR GUARANTORS AND AGREES NOT TO ASSERT OR TAKE ADVANTAGE OF ANY SUCH RIGHTS OR REMEDIES, INCLUDING WITHOUT LIMITATION (a) ANY RIGHT TO REQUIRE ADMINISTRATIVE AGENT OR THE BANKS TO PROCEED AGAINST ANY PORTFOLIO ENTITY OR ANY OTHER PERSON OR TO PROCEED AGAINST OR EXHAUST ANY SECURITY HELD BY ADMINISTRATIVE AGENT OR THE BANKS AT ANY TIME OR TO PURSUE ANY OTHER REMEDY IN ADMINISTRATIVE AGENT'S OR THE BANKS' POWER BEFORE PROCEEDING AGAINST OWNER, (b) ANY DEFENSE THAT MAY ARISE BY REASON OF THE INCAPACITY, LACK OF POWER OR AUTHORITY, DEATH, DISSOLUTION, MERGER, TERMINATION OR DISABILITY OF ANY PORTFOLIO ENTITY OR ANY OTHER PERSON OR THE FAILURE OF ADMINISTRATIVE AGENT OR THE BANKS TO FILE OR ENFORCE A CLAIM AGAINST THE ESTATE (IN ADMINISTRATION, BANKRUPTCY OR ANY OTHER PROCEEDING) OF ANY PORTFOLIO ENTITY OR ANY OTHER PERSON, (c) DEMAND, PRESENTMENT, PROTEST AND NOTICE OF ANY KIND, INCLUDING WITHOUT LIMITATION NOTICE OF THE EXISTENCE, CREATION OR INCURRING OF ANY NEW OR ADDITIONAL INDEBTEDNESS OR OBLIGATION OR OF ANY ACTION OR NON-ACTION ON THE PART OF ANY PORTFOLIO ENTITY, ADMINISTRATIVE AGENT, THE BANKS, ANY ENDORSER OR CREDITOR OF THE FOREGOING OR ON THE PART OF ANY OTHER PERSON UNDER THIS OR ANY OTHER INSTRUMENT IN CONNECTION WITH ANY OBLIGATION OR EVIDENCE OF INDEBTEDNESS HELD BY ADMINISTRATIVE AGENT OR THE BANKS AS

COLLATERAL OR IN CONNECTION WITH ANY OBLIGATIONS, (d) ANY DEFENSE BASED UPON AN ELECTION OF REMEDIES BY ADMINISTRATIVE AGENT OR THE BANKS, INCLUDING WITHOUT LIMITATION AN ELECTION TO PROCEED BY NON-JUDICIAL RATHER THAN JUDICIAL FORECLOSURE, WHICH DESTROYS OR OTHERWISE IMPAIRS THE SUBROGATION RIGHTS OF OWNER, THE RIGHT OF OWNER TO PROCEED AGAINST A PORTFOLIO ENTITY OR ANOTHER PERSON FOR REIMBURSEMENT, OR BOTH, (e) ANY DEFENSE BASED ON ANY OFFSET AGAINST ANY AMOUNTS WHICH MAY BE OWED BY ANY PERSON TO OWNER FOR ANY REASON WHATSOEVER, (f) ANY DEFENSE BASED ON ANY ACT, FAILURE TO ACT, DELAY OR OMISSION WHATSOEVER ON THE PART OF A PORTFOLIO ENTITY OF THE FAILURE BY A PORTFOLIO ENTITY TO DO ANY ACT OR THING OR TO OBSERVE OR PERFORM ANY COVENANT, CONDITION OR AGREEMENT TO BE OBSERVED OR PERFORMED BY IT UNDER THE CREDIT DOCUMENTS, (g) ANY DEFENSE BASED UPON ANY STATUTE OR RULE OF LAW WHICH PROVIDES THAT THE OBLIGATION OF A SURETY MUST BE NEITHER LARGER IN AMOUNT NOR IN OTHER RESPECTS MORE BURDENSOME THAN THAT OF THE PRINCIPAL PROVIDED, THAT, UPON PAYMENT IN FULL OF THE OBLIGATIONS, THIS AGREEMENT SHALL NO LONGER BE OF ANY FORCE OR EFFECT, (h) ANY DEFENSE, SETOFF OR COUNTERCLAIM WHICH MAY AT ANY TIME BE AVAILABLE TO OR ASSERTED BY A PORTFOLIO ENTITY AGAINST ADMINISTRATIVE AGENT, THE BANKS OR ANY OTHER PERSON UNDER THE CREDIT DOCUMENTS, (i) ANY DUTY ON THE PART OF ADMINISTRATIVE AGENT OR THE BANKS TO DISCLOSE TO OWNER ANY FACTS ADMINISTRATIVE AGENT OR THE BANKS MAY NOW OR HEREAFTER KNOW ABOUT ANY PORTFOLIO ENTITY, REGARDLESS OF WHETHER ADMINISTRATIVE AGENT OR THE BANKS HAVE REASON TO BELIEVE THAT ANY SUCH FACTS MATERIALLY INCREASE THE RISK BEYOND THAT WHICH OWNER INTENDS TO ASSUME, OR HAVE REASON TO BELIEVE THAT SUCH FACTS ARE UNKNOWN TO OWNER, OR HAVE A REASONABLE OPPORTUNITY TO COMMUNICATE SUCH FACTS TO OWNER, SINCE OWNER ACKNOWLEDGES THAT OWNER IS FULLY RESPONSIBLE FOR BEING AND KEEPING INFORMED OF THE FINANCIAL CONDITION OF THE PORTFOLIO ENTITIES AND OF ALL CIRCUMSTANCES BEARING ON THE RISK OF NON-PAYMENT OF ANY OBLIGATIONS AND LIABILITIES HEREBY GUARANTEED, (j) THE FACT THAT ANY PORTFOLIO ENTITY MAY AT ANY TIME IN THE FUTURE DISPOSE OF ALL OR PART OF ITS DIRECT OR INDIRECT INTEREST IN ANY OTHER PORTFOLIO ENTITY, (k) ANY DEFENSE BASED ON ANY CHANGE IN THE TIME, MANNER OR PLACE OF ANY PAYMENT UNDER, OR IN ANY OTHER TERM OF, THE CREDIT DOCUMENTS OR ANY OTHER AMENDMENT, RENEWAL, EXTENSION, ACCELERATION, COMPROMISE OR WAIVER OF OR ANY CONSENT OR DEPARTURE FROM THE TERMS OF THE CREDIT DOCUMENTS, (l) ANY DEFENSE ARISING BECAUSE OF ADMINISTRATIVE AGENT'S OR THE BANKS' ELECTION, IN ANY PROCEEDING INSTITUTED UNDER THE FEDERAL BANKRUPTCY CODE, OF THE APPLICATION OF SECTION 1111(b)(2) OF THE FEDERAL BANKRUPTCY CODE, AND (m) ANY DEFENSE BASED UPON ANY BORROWING OR GRANT OF A SECURITY INTEREST UNDER SECTION 364 OF THE FEDERAL BANKRUPTCY CODE.]

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned has caused this Project/Turbine Owner Security Agreement to be duly executed and delivered as of the day and year first above written.

**[NAME OF PROJECT/TURBINE OWNER],  
a Delaware**

By:  
Name:

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

**EXHIBIT D-4B  
to the Credit Agreement**

**FORM**

**OF**

**PROJECT/TURBINE OWNER SECURITY AGREEMENT**

**Dated as of \_\_\_\_\_, 200\_\_**

between

**[NAME OF PROJECT/TURBINE OWNER]  
a Delaware \_\_\_\_\_**

and

**CREDIT SUISSE FIRST BOSTON,  
acting through its New York Branch,  
as Administrative Agent**

# TABLE OF CONTENTS

	PAGE
	-----
1. Definitions.....	2
2. Assignment, Pledge and Grant of Security Interest.....	2
3. Obligations Secured.....	4
4. Representations and Warranties of Owner.....	4
5. Covenants of Owner.....	5
6. Events of Default.....	5
7. Remedies Upon Event of Default.....	5
8. Remedies Cumulative; Delay Not Waiver.....	7
9. Application of Proceeds.....	7
10. Attorney-In-Fact.....	7
11. Administrative Agent May Perform.....	8
12. Perfection; Further Assurances.....	8
13. Place of Business; Location of Records.....	9
14. Continuing Assignment and Security Interest; [for Project Owners only: Transfer of Guaranty].....	9
15. Termination of Security Interest.....	9
16. Attorneys' Fees.....	9
17. Liability.....	10
18. Amendments; Waivers; Consents.....	10
19. Notices.....	10
20. Governing Law.....	10
21. Reinstatement.....	10
22. Severability.....	10
23. Survival of Provisions.....	10
24. Headings Descriptive.....	11
25. Entire Agreement.....	11
26. Time.....	11
27. Counterparts.....	11
28. Waiver of Jury Trial.....	11
29. Additional Waivers.....	11

## EXHIBIT D4-C

### DEVELOPMENT COMPANY SECURITY AGREEMENT

#### This DEVELOPMENT COMPANY SECURITY AGREEMENT (this

"Agreement"), dated as of \_\_\_\_\_, \_\_\_\_\_, is entered into by and between CCFC II DEVELOPMENT COMPANY, LLC, a Delaware limited liability company ("Owner"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks (as defined below).

#### PREFACE

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), the financial institutions listed on Exhibit H to the Credit Agreement (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, have entered into that certain Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks agreed to make certain advances of credit to Borrower in the amounts specified and on the terms and subject to the conditions set forth therein. For purposes of this Agreement, the term "Banks" shall include the Administrative Agent, the Lead Arrangers, the Co-Syndication Agents, the Bookrunner, the Co-Documentation Agents and the Banks (as such terms are defined in the Credit Agreement).

B. Owner is a wholly-owned Subsidiary of Borrower and certain Portfolio Entities (including each Project Owner, their Intermediate Parents, certain Turbine Owners and certain Equipment Finance Companies) are Subsidiaries of Owner. Each Project Owner and certain Turbine Owners intend to finance certain Costs associated with such entity's construction and operation of a Project or purchase of a Turbine(s), as the case may be, with funds borrowed from Owner. Owner intends to borrower such funds from Borrower and Borrower intends to borrower such funds pursuant to the Credit Agreement.

C. As a condition precedent to the Banks' making the advances of credit contemplated by the Credit Agreement, the Banks require that Owner shall have executed this Agreement.

#### AGREEMENT

In consideration of the promises contained herein, and in order to induce the Banks to enter into the Credit Agreement and to make the advances of credit pursuant to the terms thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby

acknowledged, Owner hereby agrees with Administrative Agent for the benefit of Administrative Agent and the Banks as follows:

## 1. DEFINITIONS.

1.1 "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.2 All capitalized terms used, but not otherwise defined herein, shall have the meanings provided in the Credit Agreement. All other terms used herein (whether or not capitalized) shall have the meanings given them in the UCC. The rules of interpretation contained in Exhibit A to the Credit Agreement shall apply to this Agreement.

## 2. ASSIGNMENT, PLEDGE AND GRANT OF SECURITY INTEREST.

2.1 To secure the timely payment and performance of the Obligations (as defined in Section 3 hereof) Owner does hereby assign, grant and pledge to, and subject to a security interest in favor of, Administrative Agent, on behalf of and for the benefit of Administrative Agent and the Banks, all the estate, right, title and interest of Owner, whether now owned or hereafter acquired, in, to and under:

2.1.1 The following agreements and documents, as amended from time to time (individually, an "Assigned Agreement," and collectively, the "Assigned Agreements") and all of Owner's rights thereunder:

- (a) all Project Documents and Turbine Purchase Contracts with respect to which Owner is or may become a party from time to time;
- (b) the insurance policies maintained or required to be maintained by Owner or any other Person under any Operative Document; and
- (c) all amendments, supplements, substitutions and renewals to any of the aforesaid agreements.

2.1.2 the Portfolio Entity Notes from each Project Owner and Turbine Owner (collectively, the "Project/Turbine Owner Portfolio Entity Notes");

2.1.3 all other personal property and fixtures of Owner, including without limitation personal property and fixtures relating to any Project or Turbine, whether now owned or existing or hereafter acquired or arising, or in which Owner may have an interest, and

wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, including without limitation all machinery, tools, engines, turbines (including combustion turbines and steam turbine generators), boilers, fuel storage tanks, control equipment, appliances, mechanical and electrical systems, elevators, lighting, alarm systems, fire control systems, furnishings, furniture, as-extracted collateral, equipment, service equipment, motor vehicles, building or maintenance equipment, building or maintenance materials, pipes and pipelines supplies, goods and property covered by any warehouse receipts or bills of lading or other such documents, spare parts, maps, plans, specifications, architectural, engineering, construction or shop drawings, manuals or similar documents, copyrights, trademarks and trade names, and any replacements, renewals or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by Owner;

2.1.4 all goods, money, instruments, investment securities, investment property, accounts, contract rights, commercial tort claims, letters of credit, letter of credit rights, payment intangibles, promissory notes, software, supporting obligations, documents, deposit accounts, chattel paper (including tangible and electronic chattel paper), general intangibles, and inventory, including without limitation those relating to any Project or Turbine; and

2.1.5 the proceeds of all of the foregoing (all of the collateral described in clauses 2.1.1 through 2.1.5, being herein collectively referred to as the "Collateral"), including without limitation, (a) all rights of Owner to receive moneys due and to become due under or pursuant to the Collateral; (b) all rights of Owner to receive the return of any premiums for, or proceeds of, any insurance, indemnity, warranty or guaranty with respect to the Collateral or to receive any condemnation proceeds; (c) all claims of Owner for damages arising out of, or for breach of or default under, the Assigned Agreements or any other Collateral; (d) all rights of Owner to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (e) to the extent not included in the foregoing, all proceeds receivable or received when any and all of the foregoing Collateral is sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily.

2.2 In order to effectuate the foregoing, Owner has heretofore delivered, or concurrently with the delivery hereof, is delivering to Administrative Agent an executed counterpart or certified copy of each of the Assigned Agreements. Owner will likewise deliver to Administrative Agent an executed counterpart of each future lease, construction agreement, operation agreement and other agreement, including without limitation those relating to any Project or Turbine or any part thereof, and amendments and supplements to the foregoing, included in the Collateral, as they are entered into by Owner promptly upon the execution thereof. Notwithstanding anything to the contrary contained herein, no such future lease, construction agreement, operation agreement or other material agreement may be entered into by Owner except as permitted under the Credit Documents.

2.3 Notwithstanding anything to the contrary contained herein, Owner shall remain liable under each of the Assigned Agreements to perform all of the obligations undertaken by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and Administrative Agent shall have no obligation or liability under any of such

Assigned Agreements by reason of or arising out of this Agreement, nor shall Administrative Agent be required or obligated in any manner to perform or fulfill any obligations of Owner thereunder or to make any payment or inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

2.4 If any default by Owner under any of the Assigned Agreements shall occur and be continuing, then Administrative Agent shall, at its option and after the expiration of the applicable cure periods under Section 8.1.7 of the Credit Agreement, be permitted (but shall not be obligated) to remedy any such default by giving written notice of such intent to Owner and to the parties to the Assigned Agreement or Assigned Agreements for which Administrative Agent intends to remedy the default. After giving such notice of its intent to cure such default and upon the commencement thereof, Administrative Agent will proceed diligently to cure such default. Any cure by Administrative Agent of Owner's default under any of the Assigned Agreements shall not be construed as an assumption by Administrative Agent or any of the Banks of any obligations, covenants or agreements of Owner under such Assigned Agreement, and neither Administrative Agent nor any of the Banks shall be liable to Owner or any other Person as a result of any actions undertaken by Administrative Agent in curing or attempting to cure any such default, except as set forth in Section 12.13 of the Credit Agreement. This Agreement shall not be deemed to release or to affect in any way the obligations of Owner under the Assigned Agreements.

3. OBLIGATIONS SECURED. Without limiting the generality of the foregoing, this Agreement and all of the Collateral secure the payment and performance when due of the Obligations (as defined in the Credit Agreement) of each of the Portfolio Entities (including Owner) under the Credit Documents, including Borrower's Obligations under the Credit Agreement and the other Credit Documents to which Borrower is a party to the Administrative Agent and the Banks (the "Obligations"); provided, however, the Obligations as defined in this Section 3 shall not include any Obligations (as defined in the Credit Agreement) of any Portfolio Entity under the Credit Documents relating to or arising from Projects (as defined in the Credit Agreement) that have achieved Operation prior to the effective date of this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants as of the date hereof as follows:

4.1 Owner has not assigned any of its rights under the Assigned Agreements except as provided in the Credit Documents.

4.2 Owner has not executed and is not aware of any effective financing statement, security agreement or other instrument similar in effect covering all or any part of the Collateral, except such as may have been filed pursuant to this Agreement and the other Credit Documents or pursuant to the documents evidencing Permitted Liens.

4.3 Except as permitted by the Credit Agreement, Owner is lawfully possessed of ownership of the Collateral and has full right, title and interest in and to all rights purported to be granted to it under the Assigned Agreements, not subject to any mortgages, liens, charges, or

encumbrances except Permitted Liens. Owner has full power and lawful authority to grant and assign the Collateral hereunder.

5. COVENANTS OF OWNER. Owner covenants as follows:

5.1 Any action or proceeding to enforce this Agreement or any Assigned Agreement may be taken by Administrative Agent either in Owner's name or in Administrative Agent's name, as Administrative Agent may deem necessary.

5.2 Owner will, so long as any Obligations shall be outstanding, warrant and defend its title to the Collateral and the interest of Administrative Agent in the Collateral against any claim or demand of any persons (other than Permitted Liens) which could reasonably be expected to materially adversely affect Owner's title to, or Administrative Agent's right or interest in, such Collateral.

5.3 Owner will at all times keep accurate and complete records of the Collateral. Owner shall permit representatives of Administrative Agent upon reasonable prior notice, and in accordance with Section 5.6 of the Credit Agreement, at any time during normal business hours of Owner to inspect and make abstracts from Owner's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at Administrative Agent's request, Owner shall promptly deliver copies of any and all such records to Administrative Agent.

5.4 Unless waived in writing by Administrative Agent, Owner shall give Administrative Agent at least 45 days' notice before it changes the location of its principal place of business, chief executive office or state of organization and shall at the expense of Owner execute and deliver such instruments and documents as may reasonably be required by Administrative Agent to maintain a prior perfected security interest in the Collateral.

6. EVENTS OF DEFAULT. The occurrence of an Event of Default under the Credit Agreement, whatever the reason therefor and whether it shall be voluntary or involuntary or be effected by operation of law, or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, shall constitute an event of default hereunder (an "Event of Default").

7. REMEDIES UPON EVENT OF DEFAULT.

7.1 If any Event of Default has occurred and is continuing, Administrative Agent may (a) proceed to protect and enforce the rights vested in it by this Agreement, including but not limited to, the right to cause all revenues pledged hereby as security and all other moneys pledged hereunder to be paid directly to it, and to enforce its rights hereunder to such payments and all other rights hereunder by such appropriate judicial proceedings as it shall deem most effective to protect and enforce any of such rights, either at law or in equity or otherwise, whether for specific enforcement of any covenant or agreement contained in any of the Assigned Agreements, or in aid of the exercise of any power therein or herein granted, or for any foreclosure hereunder and sale under a judgment or decree in any judicial proceeding, or to

enforce any other legal or equitable right vested in it by this Agreement or by law; (b) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any Obligations or rights hereunder or included in the Collateral, or to foreclose or enforce any other agreement or other instrument by or under or pursuant to which such Obligations are issued or secured, subject in each case to the provisions and requirements thereof; (c) sell or otherwise dispose of any or all of the Collateral or cause the Collateral to be sold or otherwise disposed of in one or more sales or transactions, at such prices and in such manner as Administrative Agent may deem commercially reasonable, and for cash or on credit or for future delivery, without assumption of any credit risk at any broker's board or at public or private sale, with or without a warranty of title, without demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), it being agreed that Administrative Agent may be a purchaser on behalf of the Banks or on its own behalf at any such sale and that Administrative Agent, any Bank, or any other Person who may be a bona fide purchaser for value and without notice of any claims of any or all of the Collateral so sold shall thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of Owner, any such demand, notice or right and equity being hereby expressly waived and released to the extent permitted by law; (d) incur reasonable expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement; (e) perform any obligation of Owner hereunder or under any other Credit Document, and make payments, purchase, contest or compromise any encumbrance, charge or lien, and pay taxes and expenses without, however, any obligation to do so; (f) in connection with any acceleration and foreclosure, take possession of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon any Site or any other location where the same may be located for that purpose, control, manage, operate, rent and lease the Collateral, either separately or in conjunction with a Project, collect all rents and income from the Collateral and apply the same to reimburse the Banks for any cost or expenses incurred hereunder or under any of the Credit Documents and to the payment or performance of Owner's obligations hereunder or under any of the Credit Documents, and apply the balance to the Loans of Borrower as provided for in the Credit Agreement and any remaining excess balance to whomsoever is legally entitled thereto; (g) secure the appointment of a receiver of the Collateral or any part thereof; or (h) exercise any other or additional rights or remedies granted to a secured party under the UCC. If pursuant to applicable law prior notice of any such action is required to be given to Owner, Owner hereby acknowledges that the minimum time required by such applicable law, or if no minimum time is specified, 10 Banking Days, shall be deemed a reasonable notice period.

7.2 All reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Administrative Agent in connection with any such suit or proceeding or in connection with the performance by Administrative Agent of any of Owner's agreements contained in any of the Assigned Agreements or any exercise of its rights or remedies hereunder, pursuant to the terms of this Agreement, together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the Default Rate from the date on which such costs or expenses are incurred to the date of payment thereof, shall constitute additional indebtedness secured by this Agreement and shall be paid by Owner to Administrative Agent on behalf of the Banks on demand.

## 8. REMEDIES CUMULATIVE; DELAY NOT WAIVER.

8.1 No right, power or remedy herein conferred upon or reserved to Administrative Agent is intended to be exclusive of any other right, power or remedy and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Administrative Agent may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

8.2 No delay or omission of Administrative Agent to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Administrative Agent.

9. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by and due and owing to Administrative Agent and the Banks under the Credit Agreement, the other Credit Documents or the Collateral Documents; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); third, to the principal amounts of the Obligations outstanding; fourth, to any other Obligations of Owner owing to Administrative Agent or the Banks; and fifth, to, or as directed by, Owner.

10. ATTORNEY-IN-FACT. Owner hereby constitutes and appoints Administrative Agent, acting for and on behalf of itself and the Banks and each successor or assign of Administrative Agent and the Banks, the true and lawful attorney-in-fact of Owner, with full power and authority in the place and stead of Owner and in the name of Owner, Administrative Agent or otherwise to enforce all rights, interests and remedies of Owner with respect to the Collateral, including, without limitation, the right:

10.1 to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Assigned Agreements or any of the other Collateral, including without limitation, any insurance policies;

10.2 to elect remedies thereunder and to endorse any checks or other instruments or orders in connection therewith;

10.3 to file any claims or take any action or institute any proceedings in connection therewith which Administrative Agent may reasonably deem to be necessary or advisable;

10.4 to pay, settle or compromise all bills and claims which may be or become liens or security interests against any or all of the Collateral, or any part thereof, unless a bond or other security satisfactory to Administrative Agent has been provided; and

10.5 upon foreclosure and to the extent provided in the Consents, to do any and every act which Owner may do on its behalf with respect to the Collateral or any part thereof and to exercise any or all of Owner's rights and remedies under any or all of the Assigned Agreements;

provided, however, that Administrative Agent shall not exercise any such rights except upon the occurrence and continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable.

11. ADMINISTRATIVE AGENT MAY PERFORM. Upon the occurrence and during the continuance of an Event of Default, if Owner fails to perform any agreement contained herein, Administrative Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of Administrative Agent incurred in connection therewith shall be part of the Obligations.

## 12. PERFECTION; FURTHER ASSURANCES.

12.1 Owner agrees that from time to time, at the expense of Owner, Owner shall promptly execute and deliver all instruments and documents, and take all action, that may be reasonably necessary, or that Administrative Agent may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Owner shall

(a) with respect to the Project/Turbine Owner Portfolio Entity Notes and any other Collateral evidenced by a promissory note or other instrument in excess of \$5,000, deliver and pledge to Administrative Agent for the benefit of the Banks such note duly endorsed without recourse, and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Administrative Agent; and (b) execute and deliver to Administrative Agent such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as Administrative Agent may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

12.2 Owner hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Owner where permitted by law.

12.3 Owner shall pay all filing, registration and recording fees and all re-filing, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in

connection with the execution and delivery of this Agreement, any agreement supplemental hereto, any financing statements, and any instruments of further assurance.

12.4 Owner shall, promptly upon request, provide to Administrative Agent all information and evidence it may reasonably request concerning the Collateral to enable Administrative Agent to enforce the provisions of this Agreement.

13. **PLACE OF BUSINESS; LOCATION OF RECORDS.** Unless Administrative Agent is otherwise notified under Section 5.4, the place of business and chief executive office of Owner is, and all records of Owner concerning the Collateral are and will be, located at the address set forth in Schedule 4.24 to the Credit Agreement and Owner is, and will be, a limited liability company organized under the laws of the state of Delaware.

14. **CONTINUING ASSIGNMENT AND SECURITY INTEREST.** This Agreement shall create a continuing assignment of, and security interest in, the Collateral and shall (a) remain in full force and effect until payment in full of the Obligations, (b) be binding upon Owner, its successors and assigns; provided, however, that the obligations of Owner, its successors and assigns hereunder may not be assigned without the prior written consent of Administrative Agent; and (c) inure, together with the rights and remedies of Administrative Agent, to the benefit of Administrative Agent, the Banks and their respective successors, transferees and assigns. Without limiting the generality of the foregoing but subject to the terms of the Credit Agreement, Administrative Agent or any of the Banks may assign or otherwise transfer all or any part of or interest in the Notes and the other Credit Documents or other evidence of indebtedness held by them to any other Person to the extent permitted by and in accordance with the Credit Agreement, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Banks herein or otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by Administrative Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any person on the indebtedness secured hereby. If this Agreement shall be terminated or revoked by operation of law, Owner will indemnify and save Administrative Agent and the Banks harmless from any loss which may be suffered or incurred by Administrative Agent and the Banks in acting hereunder prior to the receipt by Administrative Agent, its successors, transferees, or assigns of notice of such termination or revocation.

15. **TERMINATION OF SECURITY INTEREST.** Upon the indefeasible payment in full of the Obligations, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Owner. Upon any such termination, Administrative Agent will, at Owner's expense, execute and, subject to Section 21 hereof, deliver to Owner such documents (including, without limitation, UCC-3 termination statements) as Owner shall reasonably request to evidence such termination.

16. **ATTORNEYS' FEES.** In the event any legal action or proceeding (including, without limitation, any of the remedies provided for herein or at law) is commenced to enforce or interpret this Agreement or any provision thereof, unless Owner is the prevailing party, Owner shall indemnify each of Administrative Agent and the Banks for their reasonable attorneys' fees and other costs and expenses incurred therein, and if a judgment or award is entered in any such

action or proceeding, such reasonable attorneys' fees and other costs and expenses may be made a part of such judgment or award.

17. **LIABILITY.** Recourse against the Owner, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Agreement shall be limited to the extent provided in Article 9 of the Credit Agreement.

18. **AMENDMENTS; WAIVERS; CONSENTS.** No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by Owner therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Owner.

19. **NOTICES.** All notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall be effective if given in accordance with the provisions of Section 12.1 of the Credit Agreement. Notices to Owner may be given at the address of Borrower set forth in such Section 12.1.

20. **GOVERNING LAW.** This Agreement, including all matters of construction, validity, performance and the creation, validity, enforcement or priority of the lien of, and security interests created by, this Agreement in or upon the Collateral shall be governed by the laws of the state of New York, without reference to conflicts of law (other than Section 5-1401 of the New York General Obligations Law), except as required by mandatory provisions of law and except to the extent that the validity or perfection of the lien and security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the state of New York.

21. **REINSTATEMENT.** This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Administrative Agent in respect of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, liquidation of Owner or any general partner of Owner or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, Owner or any general partner of Owner or any substantial part of Owner's or any of its general partners' assets, or otherwise, all as though such payments had not been made.

22. **SEVERABILITY.** The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

23. **SURVIVAL OF PROVISIONS.** All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the Credit Agreement and the making of the Loans and extensions of credit thereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of

Owner set forth herein shall terminate only upon payment of the Obligations, and the termination of all Commitments and other obligations of the Banks under the Credit Documents.

24. HEADINGS DESCRIPTIVE. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

25. ENTIRE AGREEMENT. This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

26. TIME. Time is of the essence of this Agreement.

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

28. WAIVER OF JURY TRIAL. OWNER AND ADMINISTRATIVE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP AMONG OWNER AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. OWNER AND ADMINISTRATIVE AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. OWNER AND ADMINISTRATIVE AGENT FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

29. ADDITIONAL WAIVERS. Owner hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against any Portfolio Entity or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other remedy in Administrative Agent's or the Banks' power before proceeding against Owner, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of any Portfolio Entity or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any Portfolio Entity or any other Person, (c) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of any Portfolio Entity, Administrative Agent, the Banks, any endorser or creditor of the foregoing or on the part of any other Person

under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Owner, the right of Owner to proceed against a Portfolio Entity or another Person for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Owner for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of a Portfolio Entity of the failure by a Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Agreement shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by a Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Owner any facts Administrative Agent or the Banks may now or hereafter know about any Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Owner intends to assume, or have reason to believe that such facts are unknown to Owner, or have a reasonable opportunity to communicate such facts to Owner, since Owner acknowledges that Owner is fully responsible for being and keeping informed of the financial condition of the Portfolio Entities and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) the fact that any Portfolio Entity may at any time in the future dispose of all or part of its direct or indirect interest in any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Credit Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents, (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned has caused this Development Company Security Agreement to be duly executed and delivered as of the day and year first above written.

**CCFC II DEVELOPMENT COMPANY, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

**EXHIBIT D-4C  
to the Credit Agreement**

**FORM**

**OF**

**DEVELOPMENT COMPANY SECURITY AGREEMENT**

**Dated as of \_\_\_\_\_, \_\_\_\_\_**

between

**CCFC II DEVELOPMENT COMPANY, LLC**  
a Delaware limited liability company

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

# TABLE OF CONTENTS

	PAGE
	-----
1. Definitions.....	2
2. Assignment, Pledge and Grant of Security Interest.....	2
3. Obligations Secured.....	4
4. Representations and Warranties of Owner.....	4
5. Covenants of Owner.....	5
6. Events of Default.....	5
7. Remedies Upon Event of Default.....	5
8. Remedies Cumulative; Delay Not Waiver.....	7
9. Application of Proceeds.....	7
10. Attorney-In-Fact.....	7
11. Administrative Agent May Perform.....	8
12. Perfection; Further Assurances.....	8
13. Place of Business; Location of Records.....	9
14. Continuing Assignment and Security Interest.....	9
15. Termination of Security Interest.....	9
16. Attorneys' Fees.....	9
17. Liability.....	10
18. Amendments; Waivers; Consents.....	10
19. Notices.....	10
20. Governing Law.....	10
21. Reinstatement.....	10
22. Severability.....	10
23. Survival of Provisions.....	10
24. Headings Descriptive.....	11
25. Entire Agreement.....	11
26. Time.....	11
27. Counterparts.....	11
28. Waiver of Jury Trial.....	11
29. Additional Waivers.....	11

**DEPOSITARY AGREEMENT**

dated as of October 16, 2000

among

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company,

as Borrower,

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch  
as Administrative Agent for the Banks,

and

**THE BANK OF NEW YORK,**

as Depositary Agent

THIS DEPOSITARY AGREEMENT (this "Agreement"), dated as of October 16, 2000, is among CALPINE CONSTRUCTION FINANCE COMPANY II, LLC, a Delaware limited liability company ("Borrower"), CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, acting in its capacity as Administrative Agent ("Administrative Agent") for the Banks under the Credit Agreement (as defined below), and THE BANK OF NEW YORK, acting in its capacity as Depositary Agent (the "Depositary Agent").

## RECITALS

A. Borrower has entered into that certain Credit Agreement, dated as of October 16, 2000 (as the same may be amended, supplemented or otherwise modified from time to time, the "Credit Agreement"), among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, whereby the Banks have agreed to advance to Borrower certain loans to finance the construction and operation by Borrower of the Projects and the purchase of the Turbines.

B. In order to give effect to (a) the security interest in the Accounts (as defined herein) granted by Borrower to Administrative Agent and (b) the deposit of funds into the Accounts and the application of funds in connection with the construction and operation of the Projects and the purchase of the Turbines, each as contemplated in the Credit Agreement, the parties have agreed that all amounts to be paid over to Administrative Agent for deposit into, and disbursement from, the Accounts under of the Credit Agreement shall be paid to Depositary Agent, as agent for Administrative Agent, to be held by Depositary Agent in pledge as collateral security for Borrower's obligations under the Credit Agreement and distributed by Depositary Agent as provided herein.

C. Depositary Agent has agreed to act as depositary agent for Administrative Agent pursuant to the terms of this Agreement.

## AGREEMENT

NOW, THEREFORE, in consideration of the premises and of the mutual covenants contained in this Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

## ARTICLE 1

### Definitions; Rules of Interpretation

Section 1.1 Definitions. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Credit Agreement. The following terms when used herein shall have the following meanings:

"Accounts" shall mean the collective reference to the Construction Account, the Revenue Account, the Loss Proceeds Account, the Working Capital Reserve Account and any and all other accounts hereinafter established under the Credit Agreement and/or this Agreement, including any sub-accounts within such accounts but excluding any Operating Account held in the name of any Project Owner.

"Account Withdrawal Certificate" shall mean a certificate of an Authorized Representative of Borrower countersigned by Administrative Agent substantially in the form of Exhibit A hereto, stating (i) the specific amount requested to be withdrawn from a specific Account and transferred, applied or paid over to another Account or Person, (ii) the purpose for which such payment shall be made, (iii) that no Event of Default and, with respect to withdrawals from the Construction Account or the Loss Proceeds Account of the Project to which such withdrawal relates, no Non-Fundamental Project Default shall have occurred and be continuing or will occur after giving effect to the withdrawal of funds so requested and (iv) that all other conditions to distributions from such account set forth in the Credit Agreement have been satisfied.

"Construction Account" shall mean, collectively, the special account designated by that name established by the Depository Agent pursuant to Section 2.5, the Construction Sub-Accounts, including the Turbine Purchase Sub-Accounts and all other sub-accounts therein.

"Disbursement Instruction" shall mean a notice from Administrative Agent, substantially in the form of Exhibit B hereto, instructing Depository Agent to transfer a specific amount of funds from any of the Accounts to such other account or recipient identified by Administrative Agent in accordance therewith.

"Loss Proceeds Account" shall mean collectively the special account designated by that name established by Depository Agent pursuant to Section 2.5 and all sub-accounts therein.

"Revenue Account" shall mean the special account designated by that name established by the Depository Agent pursuant to Section 2.5 and all sub-accounts therein.

"UCC" shall mean the Uniform Commercial Code as adopted in the State of New York.

"Working Capital Reserve Account" shall mean the special account designated by that name established by the Depository Agent pursuant to Section 2.5 and all sub-accounts therein.

Section 1.2 Rules of Interpretation. The rules of interpretation set forth in Exhibit A to the Credit Agreement shall apply to this Agreement.

## ARTICLE 2

### Appointment of Depositary Agent; Establishment of Accounts

Section 2.1 Appointment of Depositary Agent. Depositary Agent is hereby appointed by Borrower and by Administrative Agent as depositary agent hereunder, and Depositary Agent hereby agrees to act as such and to accept all cash, payments, other amounts and Permitted Investments to be delivered to or held by Depositary Agent pursuant to the terms of this Agreement. Depositary Agent shall hold and safeguard the Accounts (and the cash, instruments and securities on deposit therein) during the term of this Agreement and shall treat the cash, instruments, and securities in the Accounts as funds, instruments and securities pledged by Borrower to Administrative Agent for the ratable benefit of the Banks, to be held by Depositary Agent, as agent of Administrative Agent, in trust in accordance with the provisions hereof.

Section 2.2 Security Interest; Control. In order to secure the performance by Borrower of all of its covenants, agreements and obligations under the Credit Agreement and the other Credit Documents and the payment and performance by Borrower of all Obligations, this Agreement is intended to create, and Borrower hereby pledges to and creates in favor of Administrative Agent, for the benefit of the Banks, a security interest in and to, the Accounts, all cash, cash equivalents, instruments, investments and other securities at any time on deposit in the Accounts, and all proceeds of any of the foregoing (collectively, the "Collateral"). All moneys, cash equivalents, instruments, investments and securities at any time on deposit in any of the Accounts shall constitute collateral security for the payment and performance by Borrower of the Obligations, and shall at all times be subject to the control of Administrative Agent, acting through Depositary Agent in respect of the Accounts and shall be held in the custody of Depositary Agent in trust for the purposes of, and on the terms set forth in, this Agreement.

Section 2.3 Accounts Maintained as UCC "Securities Accounts." Depositary Agent hereby agrees and confirms that it has established the Accounts as set forth and defined in this Agreement. Each of Depositary Agent and Borrower agrees that (i) Depositary Agent is acting as "securities intermediary" (within the meaning of Section 8-102(14) of the UCC) with respect to the Accounts and the "financial assets" (within the meaning of Section 8-102(a)(9) of the UCC, the "Financial Assets") credited to the Accounts; (ii) each such Account established by Depositary Agent is and will be maintained as a "securities account" (within the meaning of Section 8-501 of the UCC); (iii) Borrower is an "entitlement holder" (within the meaning of Section 8-102(a)(7) of the UCC) in respect of the Financial Assets credited to such Accounts and with respect to such Accounts and Depositary Agent shall so note in its records pertaining to such Financial Assets and Accounts; and (iv) all Financial Assets in registered form or payable to or to order of and credited to any such Account shall be registered in the name of, payable to or to the order of, or specially endorsed to, Depositary Agent or in blank, or credited to another securities account maintained in the name of Depositary Agent, and in no case will any Financial

Asset credited to any such Account be registered in the name of, payable to or to the order of, or endorsed to, Borrower except to the extent the foregoing have been subsequently endorsed by Borrower to Depository Agent or in blank. Each item of property (including a security, security entitlement, investment property, instrument or obligation, share, participation, interest or other property whatsoever) credited to any Account shall be treated as a Financial Asset. Until this Agreement shall terminate in accordance with the terms hereof, Administrative Agent shall have "control" (within the meaning of Section 8-106(d)(2) of the UCC) of Borrower's "security entitlements" (within the meaning of Section 8-102 (a)(17) of the UCC, "Security Entitlements") with respect to the Accounts and the Financial Assets credited to the Accounts. All property delivered to Depository Agent pursuant to this Agreement will be promptly credited to the Accounts and shall be treated as Financial Assets. If at any time Depository Agent shall receive from Administrative Agent any "entitlement order" (within the meaning of Section 8-102(8) of the UCC, an "Entitlement Order") relating to the Accounts or Financial Assets credited to the Accounts, Depository Agent shall comply with such Entitlement Order without further consent by Borrower or any other Person. In the event that Depository Agent receives conflicting Entitlement Orders relating to the Accounts or Financial Assets credited to the Accounts from Administrative Agent and any other Person (including, without limitation, Borrower), Depository Agent shall comply with the Entitlement Orders originated by Administrative Agent. Each of Borrower and Depository Agent agrees that it has not and will not execute and deliver, or otherwise become bound by, any agreement under which it agrees with any Person other than Administrative Agent to comply with Entitlement Orders originated by such Person relating to the Accounts or Financial Assets credited to the Accounts. Except for the claims and interests of Administrative Agent and Borrower in the Accounts and the Financial Assets credited to the Accounts, neither Depository Agent nor Borrower knows of any claim to, or interest in, any Account or Financial Assets credited to the Accounts. If either Depository Agent or Borrower obtains knowledge that any Person has asserted a lien, encumbrance or adverse claim against any or the Accounts or Financial Assets credited to the Accounts, such party will promptly notify Administrative Agent thereof. In the event that the Depository Agent has or subsequently obtains by agreement, operation of law or otherwise a Lien or security interest in any Account, any Security Entitlement carried therein or credited thereto or any Financial Asset that is the subject of any such Security Entitlement, Depository Agent agrees that such Lien or security interest shall be subordinate to the Lien and security interest of the Administrative Agent. The Financial Assets standing to the credit of the Accounts will not be subject to deduction, set-off, banker's lien or any other right, and Depository Agent shall not grant, permit or consent to any other right or interest in such Financial Assets, in favor of any Person (including the Depository Agent) other than Administrative Agent.

Section 2.4 Borrower's Rights. Borrower shall not have any rights or powers with respect to any amounts in the Accounts or any part thereof except (i) as provided in Article 5 hereof and (ii) the right to have such amounts applied in accordance with the provisions hereof and of the Credit Agreement.

Section 2.5 Creation of Accounts. Depository Agent hereby establishes at its office located in New York, New York, the following special, segregated and irrevocable money collateral accounts and sub-accounts within such accounts which shall be maintained at all times

until the termination of this Agreement, unless earlier termination is otherwise provided for herein or in the Credit Agreement:

- (1) The Construction Account (Acc. # 050451);
- (2) The Construction Sub-Account (Los Medanos) (Acc. # 050452);
- (3) The Construction Sub-Account (Baytown) (Acc. # 050453);
- (4) The Construction Sub-Account (Carville) (Acc. # 050454);
- (5) The Construction Sub-Account (Panda) (Acc. # 050455);
- (6) The Construction Sub-Account (Santa Rosa) (Acc. # 050456);
- (7) The Construction Sub-Account (Delta) (Acc. # 050457);
- (8) The Construction Sub-Account (Freestone) (Acc. # 050458);
- (9) The Construction Sub-Account (Broad River) (Acc. # 050459);
- (10) The Construction Sub-Account (Channel) (Acc. # 050460);
- (11) The Construction Sub-Account (Corpus Christi) (Acc. # 050461);
- (12) The Construction Sub-Account (Decatur) (Acc. # 050462);
- (13) The Construction Sub-Account (Morgan) (Acc. # 050463);
- (14) The Turbine Purchase Sub-Account (Acc. # 050464);
- (15) The Revenue Account (Acc. # 050465);
- (16) The Revenue Sub-Account (Los Medanos) (Acc. # 050491);
- (17) The Revenue Sub-Account (Baytown) (Acc. # 050490);
- (18) The Revenue Sub-Account (Carville) (Acc. # 050489);
- (19) The Revenue Sub-Account (Panda) (Acc. # 050488);
- (20) The Revenue Sub-Account (Santa Rosa) (Acc. # 050487);
- (21) The Revenue Sub-Account (Delta) (Acc. # 050486);
- (22) The Revenue Sub-Account (Freestone) (Acc. # 050485);
- (23) The Revenue Sub-Account (Broad River) (Acc. # 050484);

- (24) The Revenue Sub-Account (Channel) (Acc. # 050483);
- (25) The Revenue Sub-Account (Corpus Christi) (Acc. # 050482);
- (26) The Revenue Sub-Account (Decatur) (Acc. # 050481);
- (27) The Revenue Sub-Account (Morgan) (Acc. # 050480);
- (28) The Loss Proceeds Account (Acc. # 050466);
- (29) The Loss Proceeds Sub-Account (Los Medanos) (Acc. # 050479);
- (30) The Loss Proceeds Sub-Account (Baytown) (Acc. # 050478);
- (31) The Loss Proceeds Sub-Account (Carville) (Acc. # 050477);
- (32) The Loss Proceeds Sub-Account (Panda) (Acc. # 050476);
- (33) The Loss Proceeds Sub-Account (Santa Rosa) (Acc. # 050475);
- (34) The Loss Proceeds Sub-Account (Delta) (Acc. # 050474);
- (35) The Loss Proceeds Sub-Account (Freestone) (Acc. # 050473);
- (36) The Loss Proceeds Sub-Account (Broad River) (Acc. # 050472);
- (37) The Loss Proceeds Sub-Account (Channel) (Acc. # 050471);
- (38) The Loss Proceeds Sub-Account (Corpus Christi) (Acc. # 050470);
- (39) The Loss Proceeds Sub-Account (Decatur) (Acc. #050469);
- (40) The Loss Proceeds Sub-Account (Morgan) (Acc. # 050468);
- (41) The Working Capital Reserve Account (Acc. # 050467);
- (42) The Working Capital Sub-Account (Los Medanos) (Acc. # 050598);
- (43) The Working Capital Sub-Account (Baytown) (Acc. # 050597);
- (44) The Working Capital Sub-Account (Carville) (Acc. # 050596);
- (45) The Working Capital Sub-Account (Panda) (Acc. # 050595);
- (46) The Working Capital Sub-Account (Santa Rosa) (Acc. # 050594);
- (47) The Working Capital Sub-Account (Delta) (Acc. # 050593);
- (48) The Working Capital Sub-Account (Freestone) (Acc. # 050592);

- (49) The Working Capital Sub-Account (Broad River) (Acc. # 050591);
- (50) The Working Capital Sub-Account (Channel) (Acc. # 050590);
- (51) The Working Capital Sub-Account (Corpus Christi) (Acc. # 050589);
- (52) The Working Capital Sub-Account (Decatur) (Acc. # 050588); and
- (53) The Working Capital Sub-Account (Morgan) (Acc. # 050587).

All moneys, investments and securities at any time on deposit in any of the Accounts shall constitute trust funds to be held in the custody of Depository Agent for the purposes and on the terms set forth in this Agreement.

### **ARTICLE 3**

#### **Deposits into Accounts**

Section 3.1 Deposits. Each of Borrower and Administrative Agent covenants and agrees that all amounts required by the Credit Agreement or the other Credit Documents to be delivered or deposited in any of the Accounts, shall be paid over to Depository Agent directly for deposit into the appropriate Account. Any deposit made to any Account under this Agreement shall be irrevocable and the amount of such deposit and any instrument or security held in such Account and all income or gain earned on such deposits shall be held in trust by Depository Agent and applied solely as provided in this Agreement. In the event Depository Agent receives monies without adequate instruction with respect to the source or proper Account into which such monies are to be deposited, Depository Agent shall deposit such monies into the Revenue Account and notify Borrower and Administrative Agent of the receipt and the source of such monies.

### **ARTICLE 4**

#### **Payments from Accounts**

Section 4.1 Withdrawals by Administrative Agent. As soon as practicable, and in all events within three Banking Days after receipt of a Disbursement Instruction, executed by Administrative Agent, Depository Agent shall distribute or apply monies on deposit in the Accounts specified in such notice, in the manner, in the amount and to the Person or Account specified in such Disbursement Instruction. Notwithstanding anything to the contrary in this Agreement, from and after Depository Agent's receipt of notice from Administrative Agent or Borrower that an Event of Default exists until such time as Depository Agent receives notice from Administrative Agent that such Event of Default no longer exists, Depository Agent shall only withdraw or transfer amounts in the Construction Account or the Loss Process Account at the direction of Administrative Agent. Notwithstanding anything to the contrary in this Agreement, from and after Depository Agent's receipt of notice from Administrative Agent or Borrower that a Non-Fundamental Project Default exists until such time as Depository Agent receives notice from Administrative Agent that such Non-Fundamental Project Default no longer

exists, Depositary Agent shall only withdraw or transfer amounts in the Construction Account or the Loss Proceeds Account for the Project to which such Non-Fundamental Project Default relates at the direction of Administrative Agent. In the event that funds on deposit in any Account exceed the amounts required to be deposited therein, and such excess funds are required to be transferred to the Revenue Account pursuant to the Credit Agreement, Administrative Agent shall, as soon as practicable, deliver a Disbursement Instruction to the Depositary Agent requesting that such excess funds be transferred to the Revenue Account.

**Section 4.2 Withdrawals from Construction Account.** On the same Banking Day on which Depositary Agent receives an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Construction Account or a sub-account therein, Depositary Agent shall distribute or apply monies on deposit in the Construction Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate; provided, however, that in the event that Depositary Agent receives such Account Withdrawal Certificate after 12:00 p.m. eastern standard time of any Banking Day, then Depositary Agent may take the actions specified therein on the next Banking Day.

**Section 4.3 Withdrawals from the Revenue Account.** As soon as practicable and in all events within three Banking Days after receipt of an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Revenue Account or a sub-account therein, Depositary Agent shall distribute or apply monies on deposit in the Revenue Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate.

**Section 4.4 Withdrawals from the Loss Proceeds Account.** As soon as practicable, and in all events within three Banking Days after receipt of an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Loss Proceeds Account or a sub-account therein, Depositary Agent shall distribute or apply monies on deposit in the Loss Proceeds Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate.

**Section 4.5 Withdrawals from the Working Capital Reserve Account.** As soon as practicable, and in all events within three Banking Days after receipt of an Account Withdrawal Certificate from Borrower, duly executed by Borrower and acknowledged and agreed to in writing by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Working Capital Reserve Account or a sub-account therein, Depositary Agent shall distribute or apply monies on deposit in the Working Capital Reserve Account or such sub-account therein in the manner, in the amount and to the Person or Account specified in such Account Withdrawal Certificate.

## **ARTICLE 5**

### **Investment**

Section 5.1 Permitted Investments. Depository Agent shall invest any money held in any Account in such Permitted Investments as directed in writing by Borrower from time to time (or, if Administrative Agent shall have notified Depository Agent that Administrative Agent is exercising its power of attorney to direct investments, by and at the discretion of Administrative Agent). In the event that Depository Agent has not received any such written directions, Depository Agent shall invest all available funds in a money market mutual fund selected by Borrower. Any income or gain realized as a result of any such investment shall be held as part of the applicable Account and reinvested as provided in this Agreement until released in compliance with Article 4. Any income tax payable on account of any such income or gain shall be paid by Borrower. Depository Agent shall have no liability for any loss resulting from any such investment other than solely by reason of its willful misconduct or gross negligence or bad faith or from failure to exercise such care in the custody of any such investments as it does for accounts held by other customers or in the custody of its own investments. Any such investment may be sold (without regard to maturity date) by Depository Agent whenever necessary to make any distribution required by this Agreement. In addition, if an Event of Default has occurred and is continuing, any investment shall be liquidated and sold by Depository Agent if so directed in writing by Administrative Agent.

## **ARTICLE 6**

### **Depository Agent**

Section 6.1 Rights, Duties, etc. The acceptance by Depository Agent of its duties under this Agreement is subject to the following terms and conditions which the parties to this Agreement hereby agree shall govern and control with respect to Depository Agent's rights, duties, liabilities and immunities:

- (a) Depository Agent shall act as an agent only and shall not be responsible or liable in any manner for soliciting any funds or for the sufficiency, correctness, genuineness or validity of any funds or securities deposited with or held by it, except as set forth in Section 6.1(c) hereof;
- (b) Depository Agent shall be protected in acting or refraining from acting upon any written notice, certificate, instruction, request or other paper or document, as to the due execution thereof and the validity and effectiveness of the provisions thereof and as to the truth of any information contained therein, which Depository Agent in good faith believes to be genuine;
- (c) Depository Agent shall not be liable for any error of judgment or for any act done or step taken or omitted except in the case of its gross negligence, willful misconduct or bad faith;

(d) Depository Agent may consult with and obtain advice from counsel in the event of any dispute or question as to the construction of any provision of this Agreement;

(e) Depository Agent shall have no duties as Depository Agent except those which are expressly set forth in this Agreement and in any modification or amendment hereof; provided, however, that no such modification or amendment shall affect Depository Agent's duties unless Depository Agent shall have given its prior written consent to such modification or amendment;

(f) Depository Agent may execute or perform any duties under this Agreement either directly or through agents or attorneys;

(g) Depository Agent may engage or be interested in any financial or other transactions with any party to this Agreement and may act on, or as depositary, trustee or agent for, any committee or body of holders of obligations of such Persons as freely as if it were not Depository Agent hereunder; and

(h) Depository Agent shall not be obligated to take any action which in its reasonable judgment would involve it in expense or liability unless it has been furnished with reasonable indemnity.

#### Section 6.2 Resignation or Removal.

(a) Depository Agent may at any time resign by giving notice to each other party to this Agreement, such resignation to be effective upon the appointment of a successor Depository Agent as provided below.

(b) Administrative Agent may remove Depository Agent at any time by giving notice to each other party to this Agreement, such removal to be effective upon the appointment of successor Depository Agent as provided below.

(c) In the event of any resignation or removal of Depository Agent, a successor Depository Agent, which shall be a bank or trust company organized under the laws of the United States America or of the State of New York, having a corporate trust office in New York and a capital and surplus of not less than \$50,000,000, shall be appointed by Administrative Agent after consultation with Borrower. If a successor Depository Agent shall not have been appointed and accepted its appointment as Depository Agent within 45 days after such notice of resignation of Depository Agent or such notice of removal of Depository Agent, Depository Agent, Administrative Agent or Borrower may apply to any court of competent jurisdiction to appoint a successor Depository Agent to act until such time, if any, as a successor Depository Agent shall have accepted its appointment as provided above. A successor Depository Agent so appointed by such court shall immediately and without further act be superseded by any successor Depository Agent appointed by Administrative Agent as provided above. Any such successor Depository Agent shall be capable of acting as a "securities intermediary" (within the meaning of Section 8-102(14) of the UCC) and shall deliver to each party to this Agreement a written instrument accepting such appointment and thereupon such

successor Depositary Agent shall succeed to all the rights and duties of Depositary Agent under this Agreement and shall be entitled to receive the Accounts from the predecessor Depositary Agent.

## **ARTICLE 7**

### **Determinations**

Section 7.1 Sales of Permitted Investments. Depositary Agent will use its best efforts to sell Permitted Investments so that actual money is available, on each date on which a distribution is to be made pursuant to this Agreement, for Depositary Agent to make such distribution in money on such date.

Section 7.2 Available Cash. In determining the amount of deposit or available money in any Account at any time, in addition to any money then on deposit in such Account, Depositary Agent shall treat as on deposit or as available money the net amount which would have been received by Depositary Agent on such day if Depositary Agent had liquidated all the Permitted Investments (at then prevailing market prices) then on deposit in such Account.

## **ARTICLE 8**

### **Miscellaneous**

Section 8.1 Fees and Indemnification of Depositary Agent. Borrower agrees to pay the fees of Depositary Agent as compensation for its services under this Agreement. In addition, Borrower and Administrative Agent hereby agree that (a) Depositary Agent, its directors, officers, employees and agents (each such Person being called a "Depositary Agent Indemnitee") are released from any and all liabilities to Borrower and Administrative Agent arising from the terms or in connection with this Agreement and the compliance of any Depositary Agent Indemnitee with the terms hereof, except to the extent that such liabilities arise from the negligence or willful misconduct of any Depositary Agent Indemnitee, and (b) Borrower, Administrative Agent and their respective successors and assigns shall at all times indemnify and save harmless the Depositary Agent Indemnitees from and against any and all claims, actions and suits of others arising out of the terms of this Agreement or the compliance of any Depositary Agent Indemnitee with the terms hereof, whether or not any Depositary Agent Indemnitee is a party thereto, except to the extent that such claims, actions or suits arise from the negligence or willful misconduct of any Depositary Agent Indemnitee, and from and against any and all liabilities, losses, damages, costs, charges, reasonable counsel fees and other expenses of every nature and character arising by reason of the same. The provisions of this Section 8.1 shall survive the termination of this Agreement and the resignation or removal of Depositary Agent. All payments made by Borrower hereunder shall be made without setoff or counterclaim.

Section 8.2 Waiver of Right of Set-Off. Depositary Agent waives, with respect to all of its existing and future claims against Borrower or any Affiliate thereof, all existing and future rights of set-off and banker's liens against the Accounts and all items (and proceeds thereof) that come into its possession in connection with the Accounts.

Section 8.3 Termination. Subject to Section 8.1, the provisions of this Agreement shall terminate on the date on which all Obligations shall have been paid in full and the Credit Documents have terminated in accordance with their terms. The termination of this Agreement shall have been deemed to have occurred upon receipt by Depository Agent of a certificate to such effect executed by Administrative Agent. Promptly after receipt of such certificate by Depository Agent, Depository Agent shall distribute all amounts contained in the Accounts to the Borrower and shall be discharged of all obligations hereunder.

Section 8.4 Severability. If any one or more of the covenants or agreements provided in this Agreement on the part of the parties to this Agreement to be performed should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements of this Agreement and shall in no way affect the validity of the remaining provisions.

Section 8.5 Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which taken together shall constitute but one and the same instrument.

Section 8.6 Amendments This Agreement may not be modified or amended without the prior written consent of each of the parties to this Agreement.

Section 8.7 Applicable Law. This Agreement and any instrument or agreement required hereunder (to the extent not expressly provided for therein) shall be governed by, and construed in accordance with, the laws of the State of New York, without reference to conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

Section 8.8 Notices, etc. Except as otherwise provided in this Agreement, notices and other communications under this Agreement shall be in writing and shall be delivered, or mailed by first-class mail, postage prepaid, to the following addresses:

(a) If to Administrative Agent:

Credit Suisse First Boston, New York Branch  
Eleven Madison Avenue  
New York, New York 10010 Attention: Portfolio Management Telephone Number: (212) 325-9126 Telecopier Number: (212) 325-8321

(b) If to Borrower:

Calpine Construction Finance Company II, LLC c/o Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: General Counsel

Telephone No.: (408) 995-5115 Telecopier No.: (408) 995-0505

and

6700 Knoll Center Parkway, Suite 200 Pleasanton, California 94566 Attention: Corporate Asset Management Telephone Number: (925) 600-2000 Telecopier Number: (925) 600-8926

(c) If to Depositary Agent:

The Bank of New York

101 Barclay Street, Floor 2100 New York, New York 10286 Attention: Corporate Trust Administrator Telephone Number: (212) 815-5939 Telecopier Number: (212) 815-5915

All notices or other communications required or permitted to be delivered hereunder, shall be in writing and shall be considered as properly delivered (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, Emery, DHL, Air Borne and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested or (d) if sent by prepaid telegram, or by telecopy confirmed by telephone. Notice so delivered shall be effective upon receipt by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively delivered on the day (if a Banking Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

Section 8.9 Further Information. Depositary Agent shall promptly provide Administrative Agent and Borrower with any information reasonably requested by Administrative Agent or Borrower concerning balances in the Accounts and payments from such Accounts.

Section 8.10 Benefit of Agreement. This Agreement shall inure to the benefit of, and be enforceable by, the parties to this Agreement and their respective successors and permitted assigns.

Section 8.11 Account Balance Statements. Depositary Agent shall on a monthly basis, and at such other times as Administrative Agent or Borrower may from time to time reasonably request, provide Administrative Agent and Borrower account balance statements in respect of each of the Accounts. Such balance statements shall also include deposits and transfers to, withdrawals from and the net investment income or gain received and collected from each Account.

Section 8.12 Authorized Officer of Administrative Agent. All written directions and instructions (which may be provided by facsimile transmission) by Administrative Agent to Depositary Agent pursuant to this Agreement shall be executed by an authorized signatory of Administrative Agent. No person shall be deemed to be an authorized signatory of Administrative Agent unless named on a certificate of incumbency of such person delivered to Depositary Agent on the Closing Date.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have each caused this Depositary Agreement to be duly executed by their duly authorized officers, all as of the day and year first above written.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent for the Banks**

By:

Name:

Title:

By:

Name:

Title:

**THE BANK OF NEW YORK,  
as Depositary Agent**

By:

Name:

Title:

**Exhibit A**

**Form of Account Withdrawal Certificate**

**[LETTERHEAD OF [BORROWER] [AUTHORIZED REPRESENTATIVE OF BORROWER]]**

**[DATE]**

**[THE LANGUAGE IN BRACKETS REPRESENTS ALTERNATIVE DRAWING EVENTS AND THE**

**CERTIFICATE PRESENTED SHOULD RECITE ONLY THE APPLICABLE ALTERNATIVE.]**

Dear Sirs:

Reference is made to that certain Depositary Agreement (the "Depositary Agreement") dated as of October 16, 2000, among Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), The Bank of New York, as Depositary Agent ("Depositary Agent"), and Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks named in that certain Credit Agreement dated as of October 16, 2000, among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Capitalized terms used herein without definition shall have the respective meanings specified in the Depositary Agreement.

Please liquidate investments held in the [NAME OF ACCOUNT] under the Depositary Agreement in an amount sufficient to yield proceeds of \$\_\_\_\_\_, to be used for the payment of [\_\_\_\_\_ COSTS] as set forth in the [CONSTRUCTION DRAWDOWN CERTIFICATE] [TURBINE PURCHASE DRAWDOWN CERTIFICATE]

**[DISBURSEMENT REQUISITION] [SPECIFY ANY OTHER PURPOSES FOR THE WITHDRAWAL],**

attached hereto as Schedule 1. Please [PAY] [TRANSFER] such amounts [BY

**[OFFICIAL BANK CHECK] [WIRE TRANSFER]] to [THE \_\_\_\_\_ ACCOUNT(S)] [THE PERSON(S) SPECIFIED ON SCHEDULE 2 ATTACHED HERETO AT THE ADDRESSES SET FORTH THEREIN].**

The undersigned hereby certifies that:

(a) the undersigned is an officer of the [BORROWER] [AUTHORIZED REPRESENTATIVE OF BORROWER] and, as such, is authorized to execute this Account Withdrawal Certificate on behalf of [BORROWER] [AUTHORIZED REPRESENTATIVE OF BORROWER];

(b) the amounts paid or applied pursuant to this Account Withdrawal Certificate shall be used for the purpose(s) set forth on Schedule 1 attached hereto;

**Exhibit A**

(c) no Event of Default and, with respect to withdrawals from the Construction Account or the Loss Proceeds Account for the Project to which such withdrawal relates, no Non-Fundamental Project Default has occurred and is continuing or will occur after giving effect to the withdrawal of funds requested by this Account Withdrawal Certificate; and

(d) all other conditions to distributions from the [NAME OF ACCOUNT] set forth in the Credit Agreement have been satisfied.

Very truly yours,

**CALPINE CONSTRUCTION FINANCE COMPANY II,  
LLC, a Delaware limited liability company**

By:

Name:

Title:

**ACKNOWLEDGED AND AGREED:**

**CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH,  
as Administrative Agent for the Banks**

By:

Name:

Title:

By:

Name:

Title:

**Exhibit A**

**Schedule 1 to Account Withdrawal Certificate**

**Use of Proceeds of Withdrawal from [NAME OF ACCOUNT]**

**Exhibit A - Schedule 1**

**Schedule 2 to Account Withdrawal Certificate**

**Payees of Proceeds of Withdrawal from [NAME OF ACCOUNT]**

**Exhibit A - Schedule 2**

**Exhibit B**

**Form of Disbursement Instruction**

**[LETTERHEAD OF ADMINISTRATIVE AGENT]**

[DATE]

**[THE LANGUAGE IN BRACKETS REPRESENTS ALTERNATIVE DRAWING EVENTS AND THE**

**CERTIFICATE PRESENTED SHOULD RECITE ONLY THE APPLICABLE ALTERNATIVE.]**

Dear Sirs:

Reference is made to that certain Depositary Agreement (the "Depositary Agreement") dated as of October 16, 2000, among Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), The Bank of New York, as Depositary Agent ("Depositary Agent"), and Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks named in that certain Credit Agreement dated as of October 16, 2000, among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Capitalized terms used herein without definition shall have the respective meanings specified in the Depositary Agreement.

Please liquidate investments held in the [NAME OF ACCOUNT] under the Depositary Agreement in an amount sufficient to yield proceeds of \$\_\_\_\_\_. Please [PAY] [TRANSFER] such amounts [BY [OFFICIAL BANK CHECK] [WIRE TRANSFER]] to [THE \_\_\_\_\_ ACCOUNT(S)] [THE PERSON(S) SPECIFIED ON SCHEDULE 1 ATTACHED HERETO AT THE ADDRESSES SET FORTH THEREIN].

The undersigned hereby certifies that the undersigned is an officer of the Administrative Agent and, as such, is authorized to execute this Disbursement Instruction on behalf of Administrative Agent.

Very truly yours,

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent for the Banks**

By:

Name:

Title:

By:

Name:

Title:

**Exhibit B**

**Schedule 1 to Disbursement Instruction**

**Payees of Proceeds of Withdrawal from [NAME OF ACCOUNT]**

**Exhibit B -- Schedule 1**

# TABLE OF CONTENTS

ARTICLE 1 Definitions; Rules of Interpretation.....	2
Section 1.1 Definitions.....	2
Section 1.2 Rules of Interpretation.....	3
ARTICLE 2 Appointment of Depositary Agent; Establishment of Accounts.....	3
Section 2.1 Appointment of Depositary Agent.....	3
Section 2.2 Security Interest; Control.....	3
Section 2.3 Accounts Maintained as UCC "Securities Accounts.".....	3
Section 2.4 Borrower's Rights.....	4
Section 2.5 Creation of Accounts.....	4
ARTICLE 3 Deposits into Accounts.....	7
Section 3.1 Deposits.....	7
ARTICLE 4 Payments from Accounts.....	7
Section 4.1 Withdrawals by Administrative Agent.....	7
Section 4.2 Withdrawals from Construction Account.....	8
Section 4.3 Withdrawals from the Revenue Account.....	8
Section 4.4 Withdrawals from the Loss Proceeds Account.....	8
Section 4.5 Withdrawals from the Working Capital Reserve Account.....	8
ARTICLE 5 Investment .....	9
Section 5.1 Permitted Investments.....	9
ARTICLE 6 Depositary Agent .....	9
Section 6.1 Rights, Duties, etc. ....	9
Section 6.2 Resignation or Removal.....	10
ARTICLE 7 Determinations .....	11
Section 7.1 Sales of Permitted Investments.....	11
Section 7.2 Available Cash.....	11
ARTICLE 8 Miscellaneous .....	11
Section 8.1 Fees and Indemnification of Depositary Agent.....	11
Section 8.2 Waiver of Right of Set-Off.....	11
Section 8.3 Termination.....	12
Section 8.4 Severability.....	12
Section 8.5 Counterparts.....	12
Section 8.6 Amendments.....	12
Section 8.7 Applicable Law.....	12
Section 8.8 Notices, etc.....	12
Section 8.9 Further Information.....	13
Section 8.10 Benefit of Agreement.....	13
Section 8.11 Account Balance Statements.....	14
Section 8.12 Authorized Officer of Administrative Agent.....	14

**EXHIBIT D2-B  
to the Credit Agreement**

**PROJECT COMPLETION GUARANTY**

THIS PROJECT COMPLETION GUARANTY (this "Guaranty") dated as of October 16, 2000 is made by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks under that certain Credit Agreement (the "Credit Agreement") dated as of October 16, 2000 among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent, The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent.

**RECITALS**

- A. Guarantor owns all the outstanding stock of CCFC II Holdings, Inc., a Delaware corporation, the sole member of Borrower.
- B. Administrative Agent and the Banks have agreed to enter into the Credit Agreement with Borrower on the condition that Guarantor guarantee certain of Borrower's obligations thereunder as provided herein.
- C. Guarantor acknowledges that it will benefit, directly and indirectly, if Administrative Agent and the Banks enter into the Credit Agreement.
- D. The obligations of Guarantor hereunder are being incurred concurrently with the obligations of Borrower under the Credit Agreement.
- E. Capitalized terms used but not defined herein shall have the respective meanings given them in Exhibit A to the Credit Agreement and the Rules of Interpretations contained in said Exhibit A shall apply hereto.

**AGREEMENT**

NOW, THEREFORE, in consideration of the premises set forth above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and as an inducement to Administrative Agent and the Banks to enter into the Credit Agreement with Borrower, Guarantor hereby consents and agrees as follows:

## 1. Guaranty

(a) The undersigned Guarantor, as primary obligor and not merely as surety, unconditionally and irrevocably guarantees to the Banks (i) the performance, when due, of the obligations of Borrower under Section 5.14 of the Credit Agreement to achieve Completion of each of the Initial Projects and the Funded Subsequent Projects (including with respect to any partially owned Projects), (ii) the payment, when due, of the obligations of Borrower under

Section 5.17.1, 5.17.2 and 5.17.3(x) of the Credit Agreement and (iii) if Borrower is unable to obtain a disbursement of Loan proceeds under the Credit Agreement for any Project for which the requirements of Section 5.14 of the Credit Agreement have not been waived in accordance with the terms of the Credit Agreement for a period of 60 consecutive days after a request for the same pursuant to a Drawdown Certificate delivered pursuant to Section 3.4 of the Credit Agreement, the prompt payment, when due, of the Project Costs for which funds were requested in such Drawdown Certificate, in each case together with the payment of all expenses incurred by Administrative Agent or the Banks in enforcing any of such obligations and liabilities or the terms hereof, including, without limitation, reasonable fees and expenses of legal counsel (collectively, the "Obligations"), and agrees that if for any reason Borrower shall fail to pay or perform, as the case may be, when due any of such Obligations, Guarantor will pay or perform, as the case may be, the same forthwith; provide however, if the default giving rise to the potential exercise of remedies is susceptible of cure and the failure to so exercise remedies could not reasonably be expected to have a Material Adverse Effect on Borrower, Administrative Agent and the Banks shall not exercise any remedies in the nature of foreclosure on or sale of any Collateral, appointment of a receiver, entry into possession of any Project or other remedies under the Credit Documents intended to or having the effect of depriving Borrower or any other Portfolio Entity of the use, possession or enjoyment of any of the Projects as a result of an Event of Default thereunder for 90 days so long as Guarantor is diligently pursuing performance of the Obligations and/or diligently attempting to refinance all outstanding Loans under the Credit Agreement; provided, further, that if the Obligations under clause (ii) above have been performed, Guarantor's liability with respect to the Obligations under clause (i) above shall be limited to the excess of the cost of achieving Completion of the applicable Projects over the amounts deposited or contributed pursuant to Section 5.17.3 of the Credit Agreement. Guarantor waives notice of acceptance of this Guaranty and of any obligation to which it applies or may apply under the terms hereof, and waives diligence, presentment, demand of payment or performance, notice of dishonor or non-payment or non-performance, protest, notice of protest, of any such obligations, suit or taking other action by the Banks against, and giving any notice of default or other notice to, or making any demand on, any party liable thereon (including Guarantor).

(b) This Guaranty is a primary obligation of Guarantor and is an absolute, unconditional, continuing and irrevocable guaranty of payment and performance, as the case may be, of the Obligations and not of collectibility, and is in no way conditioned on or contingent upon any attempt to enforce in whole or in part Borrower's or any other Portfolio Entity's liabilities and obligations to the Banks. If Borrower shall fail to pay or perform, as the case may be, any of the Obligations to the Banks as and when they are due, Guarantor shall forthwith pay or perform, as the case may be, such Obligations immediately (in the case of payment obligations, in immediately available funds). Each failure by Borrower to pay or perform, as the case may be, any Obligations shall give rise to a separate cause of action herewith, and separate suits may be brought hereunder as each cause of action arises.

(c) The Banks may, at any time and from time to time (whether or not after revocation or termination of this Guaranty) without the consent of or notice to Guarantor, except such notice as may be required by the Credit Documents or applicable law which cannot be waived, without incurring responsibility to Guarantor, without impairing or releasing the obligations of Guarantor hereunder, upon or without any terms or conditions and in whole or in part, (i) change the manner, place and terms of payment or performance or change or extend the time of payment or performance of, or renew or alter, any Obligation, or any obligations and liabilities (including any of those hereunder)

incurred directly or indirectly in respect thereof or hereof or in any manner modify, amend or supplement the terms of the Credit Documents (including provisions with respect to the Completion of the Projects), any documents, instruments or agreements executed in connection therewith, in each case with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents, and the guaranty herein made shall apply to the Obligations changed, extended, renewed, modified, amended, supplemented or altered in any manner, (ii) exercise or refrain from exercising any rights against Borrower, any other Portfolio Entity or others (including Guarantor) or otherwise act or refrain from acting; (iii) add or release any other guarantor from its obligations without affecting or impairing the obligations of Guarantor hereunder, (iv) settle or compromise any Obligations and/or any obligations and liabilities (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof, and may subordinate the payment or performance of all or any part thereof to the payment or performance of any obligations and liabilities which may be due to the Banks or others; (v) sell, exchange, release, surrender, realize upon or otherwise deal with in any manner or in any order any property by whomsoever pledged or mortgaged to secure or howsoever securing the Obligations or any liabilities or obligations (including any of those hereunder) incurred directly or indirectly in respect thereof or hereof and/or any offset thereagainst; (vi) apply any sums by whomsoever paid or howsoever realized to any obligations and liabilities of Borrower or any other Portfolio Entity to the Banks under the Credit Documents in the manner provided therein regardless of what obligations and liabilities remain unpaid; (vii) consent to or waive any breach of, or any act, omission or default under, the Credit Documents (including provisions with respect to the Completion of the Projects) or otherwise amend, modify or supplement (with the consent of Borrower or such other relevant Portfolio Entity, if required by the Credit Documents) the Credit Documents (including provisions with respect to the Completion of the Projects) or any of such other instruments or agreements; and/or (viii) act or fail to act in any manner referred to in this Guaranty which may deprive Guarantor of its right to subrogation against Borrower to recover full indemnity for any payments or performances made pursuant to this Guaranty or of its right of contribution against any other party.

(d) No invalidity, irregularity or unenforceability of the obligations or liabilities hereby guaranteed shall affect, impair or be a defense to this Guaranty, which is a primary obligation of Guarantor.

(e) This is a continuing Guaranty and all obligations to which it applies or may apply under the terms hereof shall be conclusively presumed to have been created in reliance hereon. In the event that, notwithstanding the provisions of Section 1(a) hereof, this Guaranty shall be deemed revocable in accordance with applicable law, then any such revocation shall become effective only upon receipt by Administrative Agent of written notice of revocation signed by Guarantor. No revocation or termination hereof shall affect in any manner rights arising under this Guaranty with respect to Obligations arising prior to receipt by Administrative Agent of written notice of such revocation or termination.

(f) (i) Except as otherwise required by law, each payment required to be made by Guarantor to the Banks hereunder shall be made without deduction or withholding for or on account of Taxes. If such deduction or withholding is so required, Guarantor shall, upon notice thereof from Administrative Agent, (A) pay the amount required to be deducted or withheld to the appropriate authorities before penalties attach thereto or interest accrues thereon, (B) on or before the 60th day after payment of such amount, forward to the Banks an official receipt evidencing such payment (or a certified copy thereof), and (C) in the case of any such deduction or withholding, forthwith pay to Administrative Agent for the account of the Banks such additional amount as may be necessary to ensure that the net amount actually received by the Banks is free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that the Banks would have received had there been no such deduction or withholding.

(ii) As used herein, the term "Tax" means any present or future tax, levy, impost, duty, charge, assessment or fee of any nature (including interest, penalties and additions thereto) that is imposed by any government or other taxing authority in respect of any payment under this Guaranty other than (A) any income, franchise or similar tax imposed upon the gross or net income of Administrative Agent or any Bank by the United States, New York State, any jurisdiction where Administrative Agent or any Bank is organized and/or the jurisdiction in which is located any office from or at which Administrative Agent or any Bank is making or maintaining any Loans or receiving any payments under any of the Credit Documents and (B) any stamp, registration, documentation or similar tax.

(g) In fulfilling its obligations hereunder with respect to the Obligations set forth in Section 1(a)(i) hereof, but subject to the provisions of Section 5.14 of the Credit Agreement, Guarantor hereby irrevocably and unconditionally guarantees, promises and agrees to perform and comply with

Section 5.14 of the Credit Agreement. The words "perform and comply with" are used in their most comprehensive sense and include without limitation (i) the payment of all costs and expenses with respect to the construction of the Initial Projects and the Funded Subsequent Projects and the construction of such Projects within the time and in the manner set forth in Section 5.14 of the Credit Agreement, (ii) the payment, satisfaction or discharge of all Liens (other than Permitted Liens other than the Liens described in clause (c) of the definition of "Permitted Liens") arising out of or relating to the construction and Completion of, and that are or may be imposed upon or asserted against, the Initial Projects and the Funded Subsequent Projects and (iii) the defense and indemnification of the Banks against all such Liens, whether arising from the furnishing of labor, materials, supplies or equipment, from taxes, assessments, fees or other charges, from injuries or damage to persons or property, or otherwise. Without limiting the generality of the foregoing, Guarantor agrees (A) to cause any and all costs of achieving Completion of each of the Initial Projects and the Funded Subsequent Projects, including without limitation the costs of all labor, materials, supplies and equipment related thereto and any and all costs and cost overruns prior to such Completion, to be funded, paid and satisfied from Guarantor's own resources as the same shall become due and (B) to cause the Completion of each of the Initial Projects and the Funded Subsequent Projects, using Guarantor's own resources, in a timely, good and workmanlike manner, in accordance with the terms of the Credit Documents; provided however, that Guarantor shall not be required to pay any performance and/or other liquidated damages due and owing from a Contractor (other than a Contractor that is an Affiliate of Guarantor) under a Construction Contract; provided further, Guarantor's liability with respect to such liquidated damages shall be limited to the amount specified in clause (vi)(B) of the definition of "Completion" less the amount of any such liquidated damages determined to be due and owing from any applicable Contractors.

2. Representations and Warranties. Guarantor makes the representations and warranties set forth below to Administrative Agent and the Banks as of the date hereof:

(a) Guarantor is duly formed, validly existing and in good standing under the laws of the State of Delaware and has the power and authority to execute and deliver this Guaranty and to perform its obligations hereunder.

(b) Guarantor has taken all necessary corporate action to authorize the execution and delivery of this Guaranty and the performance of its obligations hereunder.

(c) All governmental authorizations and actions necessary in connection with the execution and delivery by Guarantor of this Guaranty and the performance of its obligations hereunder have been obtained or performed and remain valid and in full force and effect.

(d) This Guaranty has been duly executed and delivered by Guarantor and constitutes the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in

accordance with the terms of this Guaranty, subject to applicable bankruptcy, insolvency and other similar laws affecting creditors' rights generally.

(e) The execution, delivery and performance of this Guaranty (i) do not and will not contravene any provisions of Guarantor's certificate of incorporation or bylaws, or any law, rule, regulation, order, judgment or decree applicable to or binding on Guarantor or any of its Affiliates or properties;

(ii) do not and will not contravene, or result in any breach of or constitute any default under, any agreement or instrument to which Guarantor is a party or by which Guarantor or any of its properties may be bound or affected; and (iii) do not and will not require the consent of any Person under any existing law or agreement which has not already been obtained.

(f) There is no pending or, to the best of Guarantor's knowledge, threatened action or proceeding affecting Guarantor before any court, governmental agency or arbitrator, which might reasonably be expected to materially and adversely affect the financial condition, results of operations, business or prospects of Guarantor or the ability of Guarantor to perform its obligations under this Guaranty.

(g) All quarterly and annual financial statements heretofore delivered by Guarantor to Administrative Agent are true, correct and complete, do not fail to disclose any material liabilities, whether direct or contingent, fairly present the financial condition of Guarantor as of the date delivered and are prepared in accordance with generally accepted accounting principles consistently applied.

(h) Guarantor possesses all franchises, certificates, licenses, permits and other governmental authorizations and approvals necessary for it to own its properties, conduct its businesses and perform its obligations under this Guaranty.

(i) Guarantor is not an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and is not subject to, or is exempt from, regulation under the Public Utility Holding Company Act of 1935 and the Federal Power Act.

(j) Guarantor has established adequate means of obtaining financial and other information pertaining to the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties on a continuing basis, and Guarantor now is and hereafter will be completely familiar with the businesses, operations and condition (financial and otherwise) of Borrower and the other Portfolio Entities and their respective properties.

(k) (i) Guarantor is not, and will not as a result of the execution and delivery of this Guaranty, be rendered insolvent, (ii) Guarantor does not intend to incur, or believe it is incurring, obligations beyond its ability to pay or perform and (iii) Guarantor's property remaining after the delivery and performance of this Guaranty will not constitute unreasonably small capital.

(l) Guarantor is not in default under any material agreement relating to the incurrence of debt to which it is a party.

3. Covenants. So long as any Obligations are outstanding, Guarantor agrees that:

(a) It will maintain in full force and effect all consents of any governmental or other authority that are required to be obtained by it with respect to this Guaranty and will obtain any that may become necessary in the future;

(b) It will comply in all material respects with all applicable laws and orders to which it may be subject if failure so to comply would materially impair its ability to perform its obligations under this Guaranty;

(c) Promptly, and in any event within 30 Banking Days after the General Counsel of Guarantor obtains knowledge thereof, Guarantor will give to Administrative Agent notice of the occurrence of any event or of any litigation or governmental proceeding pending (i) against Guarantor or any of its Affiliates which could affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor so as to materially and adversely affect the ability of Guarantor to perform its obligations hereunder or (ii) with respect to this Guaranty, which event or pending proceeding is likely to materially and adversely affect the business, operations, property, assets or condition (financial or otherwise) of Guarantor and its Affiliates taken as a whole;

(d) It will deliver such other documents and other information reasonably requested by Administrative Agent;

(e) It will comply in all material respects with its certificate of incorporation;

(f) Guarantor will not permit its:

(i) Tangible Net Worth to be less than (A) \$1,474,280,000 plus (B) 50% of the consolidated net income of Guarantor and its Subsidiaries (without giving effect to any losses) for each Fiscal Quarter ending on or after September 30, 2000, plus (C) 100% of the Net Equity Proceeds from any equity offering by Guarantor after June 30, 2000;

(ii) Leverage Ratio to be greater than .85 to 1.00 as of the end of any Fiscal Quarter;

(iii) Interest Coverage Ratio as of the end of any Fiscal Quarter to be less than 1.75 to 1.00 for the 12 month period comprising the four previous Fiscal Quarters; or

(iv) Interest Coverage Ratio (Parent Only) as of the end of any Fiscal Quarter to be less than 1.60 to 1.00 for the 12 month period comprising the four previous Fiscal Quarters.

Guarantor shall furnish, or shall cause to be furnished, to Administrative Agent as soon as possible and in any event within 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year and within 120 days after the end of each Fiscal Year, a certificate, executed by a Responsible Officer of Guarantor, showing (in reasonable detail and with appropriate calculations and computations in all respects reasonably satisfactory to Administrative Agent) compliance with the covenants set forth in this Section 3(f).

Capitalized terms used in this Section 3(f) and defined in Appendix A attached hereto shall have the meanings given therein.

4. Waiver. Guarantor hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against Borrower or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other remedy in Administrative Agent's or the Banks' power before proceeding against Guarantor, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability

of Borrower or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of Borrower or any other Person, (c) demand, presentment, protest and notice of any kind except as provided herein, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of Borrower, Administrative Agent, the Banks, any endorser or creditor of Borrower or Guarantor or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Guarantor, the right of Guarantor to proceed against Borrower for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Guarantor for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of Borrower or any other Portfolio Entity of the failure by Borrower or any other Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment or performance in full of the Obligations, this Guaranty shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by Borrower or any other Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Guarantor any facts Administrative Agent or the Banks may now or hereafter know about Borrower or any other Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Guarantor intends to assume, or have reason to believe that such facts are unknown to Guarantor, or have a reasonable opportunity to communicate such facts to Guarantor, since Guarantor acknowledges that Guarantor is fully responsible for being and keeping informed of the financial condition of Borrower and the other Portfolio Entities and of all circumstances bearing on the risk of non-payment or non-performance of any obligations and liabilities hereby guaranteed, (j) the fact that Guarantor may at any time in the future dispose of all or part of its direct or indirect interest in Borrower or any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment or performance under, or in any other term of, the Credit Documents (including provisions with respect to the Completion of the Projects) or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents (including provisions with respect to the Completion of the Projects), (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

5. Subordination. Except as otherwise specifically provided in this Guaranty, all existing and future indebtedness of Borrower or any other Portfolio Entity to Guarantor (except to the extent such indebtedness consists of approved operating expenses or other O&M Costs with respect to materials or services provided consistent with an applicable Annual Operating Budget) and the right of Guarantor to withdraw any capital invested by Guarantor in Borrower or any other Portfolio Entity, is hereby subordinated to all obligations and liabilities hereby guaranteed. Without the prior written consent of Administrative Agent, such subordinated indebtedness shall not be paid or withdrawn in whole or in part, nor shall Guarantor accept any payment of or on account of any such indebtedness or as a withdrawal of capital while the Credit Agreement is in effect except from distributions permitted under Waterfall Level 8 and 10 of Section 7.2 of the Credit Agreement or as permitted under Section 3.10(b) of the Credit Agreement. Any payment by Borrower in violation of this Guaranty shall be received by Guarantor in trust for Administrative Agent and the Banks, and Guarantor shall cause the same to be paid

to Administrative Agent for the benefit of the Banks immediately upon demand by Administrative Agent on account of Borrower's obligations and liabilities hereby guaranteed. Guarantor shall not assign all or any portion of such indebtedness while the Credit Agreement remains in effect except upon prior written notice to Administrative Agent by which the assignee of any such indebtedness agrees that the assignment is made subject to the terms of this Guaranty, and that any attempted assignment of such indebtedness in violation of the provisions hereof shall be void.

6. Subrogation. So long as the Credit Agreement remains in effect, (a) Guarantor shall not have any right of subrogation and waives all rights to enforce any remedy which the Banks now have or may hereafter have against Borrower or any other Portfolio Entity, and waives the benefit of, and all rights to participate in, any security now or hereafter held by Administrative Agent or the Banks from Borrower or any other Portfolio Entity and (b) Guarantor waives any claim, right or remedy which Guarantor may now have or hereafter acquire against Borrower or any other Portfolio Entity that arises hereunder and/or from the performance by Guarantor hereunder including, without limitation, any claim, remedy or right of subrogation, reimbursement, exoneration, contribution, indemnification, or participation in any claim, right or remedy of the Banks against Borrower or any other Portfolio Entity, or any security which the Banks now have or hereafter acquire, whether or not such claim, right or remedy arises in equity, under contract, by statute, under common law or otherwise.

## 7. Bankruptcy.

(a) So long as the Credit Agreement remains in effect, Guarantor shall not, without the prior written consent of Administrative Agent, commence, or join with any other Person in commencing, any bankruptcy, reorganization, or insolvency proceeding against Borrower or any other Portfolio Entity. The obligations of Guarantor under this Guaranty shall not be altered, limited or affected by any proceeding, voluntary or involuntary, involving the bankruptcy, reorganization, insolvency, receivership, liquidation or arrangement of Borrower or any other Portfolio Entity, or by any defense which Borrower or any other Portfolio Entity may have by reason of any order, decree or decision of any court or administrative body resulting from any such proceeding.

(b) So long as the Credit Agreement remains in effect, to the extent of any Obligations, Guarantor shall file, in any bankruptcy or other proceeding in which the filing of claims is required or permitted by law, all claims which Guarantor may have against Borrower or any other Portfolio Entity relating to any indebtedness of Borrower or any other Portfolio Entity to Guarantor, and hereby assigns to Administrative Agent on behalf of the Banks all rights of Guarantor thereunder. If Guarantor does not file any such claim, Administrative Agent, as attorney-in-fact for Guarantor, is hereby authorized to do so in the name of Guarantor or, in Administrative Agent's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of Administrative Agent's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. Administrative Agent or its nominee shall have the sole right to accept or reject any plan proposed in any such proceeding and to take any other action which a party filing a claim is entitled to take. In all such cases, whether in administration, bankruptcy or otherwise, the person authorized to pay such a claim shall pay the same to Administrative Agent to the extent of any Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Guarantor hereby assigns to Administrative Agent all of Guarantor's rights to all such payments or distributions to which Guarantor would otherwise be entitled; provided, however, that Guarantor's obligations hereunder shall not be satisfied except to the extent that Administrative Agent receives cash by reason of any such payment or distribution. If Administrative Agent receives anything hereunder other than cash, the same shall be held as collateral for amounts due under this Guaranty.

## 8. Successions or Assignments.

(a) This Guaranty shall inure to the benefit of the successors or assigns of the Banks who shall have, to the extent of their interest, the rights of the Banks hereunder; provided, however, that the rights of the Banks hereunder, if any be retained by them, shall have priority over and be senior to the rights of its successors or assigns unless Administrative Agent shall otherwise elect.

(b) This Guaranty is binding upon Guarantor and its successors and assigns. Guarantor is not entitled to assign its obligations hereunder to any other person without the written consent of Administrative Agent, and any purported assignment in violation of this provision shall be void.

## 9. Waivers.

(a) No delay on the part of Administrative Agent or the Banks in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by Administrative Agent or the Banks, with or without notice to Guarantor or anyone else, shall constitute a waiver of any rights or shall affect or impair this Guaranty.

(b) GUARANTOR HEREBY WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS GUARANTY OR RELATING TO THE SUBJECT MATTER OF THIS GUARANTY AND THE RELATIONSHIP BETWEEN GUARANTOR AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT ADMINISTRATIVE AGENT HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT ADMINISTRATIVE AGENT WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. GUARANTOR FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

10. Interpretation. The section headings in this Guaranty are for the convenience of reference only and shall not affect the meaning or construction of any provision hereof.

11. Notices. All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service by the addressee, except that communication or notice so transmitted by telecopy or other direct written electronic means shall be deemed to have been validly and effectively given on the day (if a Bank Day and, if not, on the next following Banking Day) on which it is transmitted if transmitted before 4:00 p.m., recipient's time, and if transmitted after that time, on the next following Banking Day; provided, however, that if any notice is tendered to an addressee and the delivery thereof is refused by such addressee, such notice shall be effective upon such tender. Any party shall have the right to change its address for notice hereunder to any other location within the continental United States by giving of 30 days' notice to the other parties in the manner set forth hereinabove.

12. Amendments. This Guaranty may be amended only with the written consent of the parties hereto.

13. Jurisdiction: Governing Law.

(a) Any action or proceeding relating in any way to this Guaranty may be brought and enforced in the courts of the State of New York or of the United States for the Southern District of New York. Any such process or summons in connection with any such action or proceeding may be served by mailing a copy thereof by certified or registered mail, or any substantially similar form of mail, addressed to Guarantor as provided for notices hereunder.

(b) This Guaranty and the rights and obligations of Administrative Agent and of Guarantor shall be governed by and construed in accordance with the law of the State of New York without reference to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

14. Integration of Terms. This Guaranty contains the entire agreement between Guarantor and the Banks relating to the subject matter hereof and supersedes all oral statements and prior writing with respect hereto.

15. Addresses.

(a) The address of Guarantor for notices is:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: General Counsel Telephone Number: (408) 995-5115  
Telecopier Number: (408) 995-0505

(b) The address of Administrative Agent for notices is:

Credit Suisse First Boston New York Branch Eleven Madison Avenue New York, New York 10010-3629 Attn: Portfolio Management  
Telephone No.(212) 325-9126 Telecopy No.: (212) 325-8321

16. Interest; Collection Expenses. Any amount required to be paid by Guarantor pursuant to the terms hereof shall bear interest at the Default Rate or the maximum rate permitted by law, whichever is less, from the date due until paid in full. If Administrative Agent or the Banks are required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to Administrative Agent or the Banks, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by Administrative Agent or the Banks in enforcing this Guaranty.

17. Termination; Reinstatement of Guaranty. Upon the indefeasible payment in full of all Obligations owing under the Credit Agreement, this Guaranty shall terminate in its entirety. Notwithstanding the foregoing, this Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment to or on behalf of Borrower or to Administrative Agent by Borrower or any other Person in respect of the Obligations (as such term is defined in the Credit Agreement) or by Guarantor hereunder is rescinded or must otherwise be returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, dissolution or liquidation of Borrower or any other Portfolio Entity or otherwise, all as though such payment had not been made.

18. Counterparts. The Guaranty may be executed in one or more duplicate counterparts, and when executed and delivered by all of the parties listed below shall constitute a single binding agreement.

19. No Benefit to Borrower. This Guaranty is for the benefit of only Administrative Agent and is not for the benefit of Borrower or any other Portfolio Entity. Notwithstanding that, pursuant to the Credit Agreement, Guarantor may treat any amounts actually paid hereunder as a loan to Borrower, the Guaranty shall not be deemed to be a contract to make a loan, or extend other debt financing or financial accommodation, for the benefit of Borrower, in each case within the meaning of Section 365(e) of the Federal Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, Guarantor has caused this Guaranty to be duly executed and delivered as of the day and year first written above.

**CALPINE CORPORATION,**  
a Delaware corporation

By:

Name:

Title:

Agreed and accepted.

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH, as  
Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

## APPENDIX A TO PROJECT COMPLETION GUARANTY

"Asset Sale" means any sale, transfer, lease or other disposition pursuant to which (a) Guarantor or a Subsidiary receives consideration at the time of such sale, transfer, lease contribution or conveyance at least equal to the fair market value of assets being sold, transferred, leased, contributed or conveyed, (b) at least 60% of the consideration received by Guarantor or such Subsidiary is in the form of cash or cash equivalents and (c) an amount equal to 100% of Net Available Cash is either (x) reinvested in additional assets within 365 days of such asset sale or (y) used by Guarantor to prepay the loans and to permanently reduce the commitments under the Guarantor Credit Agreement.

"Capital Expenditures" means, for any period, the aggregate amount of all expenditures of Guarantor and its Subsidiaries for fixed or capital assets made during such period which, in accordance with GAAP, would be classified as capital expenditures.

"Capitalized Lease Liabilities" means all rental obligations of Guarantor or any of its Subsidiaries under any leasing or similar arrangement which, in accordance with GAAP, would be classified as capitalized leases, where (a) the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and (b) the stated maturity thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be terminated by the lessee without payment of a penalty.

"Cogen America" means Cogeneration Corporation of America, a Delaware corporation of which Guarantor owns not less than 50% of the outstanding voting stock.

"Consolidated EBITDA" means, for any period, as applied to Guarantor, the sum of Consolidated Net Income (Loss) (but without giving effect to adjustments, accruals, deductions or entries resulting from purchase accounting, extraordinary losses or gains and any gains or losses from any Asset Sales), plus the following to the extent included in calculating Consolidated Net Income (Loss): (a) Consolidated Income Tax Expense, (b) Consolidated Interest Expense, (c) depreciation expense, (d) amortization expense and (e) all other non-cash items reducing Consolidated Net Income, less all non-cash items increasing Consolidated Net Income, in each case for such period; provided that, if Guarantor has any Subsidiary that is not a Wholly Owned Subsidiary, Consolidated EBITDA shall be reduced (to the extent not otherwise reduced by GAAP) by an amount equal to (A) the consolidated net income (loss) of such Subsidiary (to the extent included in Consolidated Net Income (Loss)) multiplied by (B) the quotient of (1) the number of shares of outstanding common stock of such Subsidiary not owned on the last day of such period by Guarantor or any Wholly Owned Subsidiary divided by (2) the total number of shares of outstanding common stock of such Subsidiary on the last day of such period.

"Consolidated Income Tax Expense" means, for any period, as applied to Guarantor, the provision for local, state, federal or foreign income taxes on a consolidated basis for such period determined in accordance with GAAP.

"Consolidated Interest Expense" means, for any period, as applied to Guarantor, the sum of (a) the total interest expense of Guarantor and its consolidated Subsidiaries for such period as determined in accordance with GAAP, plus (b) all but the principal component of rentals in respect of Capitalized Lease Liabilities paid, accrued, or scheduled to be paid or accrued by Guarantor or its consolidated Subsidiaries, plus (c) one-third of all operating lease obligations paid, accrued, and/or scheduled to be paid by Guarantor and its consolidated Subsidiaries, plus (d) capitalized interest, plus (e) dividends paid in respect of preferred stock of Guarantor or any Subsidiary held by Persons other than Guarantor or a Wholly Owned Subsidiary, including, without limitation, but without duplication of payments by Guarantor to a Trust, all payments by a Trust of dividends and distributions with respect to the

Guaranteed Preferred Securities, plus (f) cash contributions to any employee stock ownership plan to the extent such contributions are used by such employee stock ownership plan to pay interest or fees to any Person (other than Guarantor or a Subsidiary) in connection with loans incurred by such employee stock ownership plan to purchase capital stock of Guarantor.

"Consolidated Net Income (Loss)" means, for any period, as applied to Guarantor, the Consolidated Net Income (Loss) of Guarantor and its consolidated Subsidiaries for such period, determined in accordance with GAAP, adjusted by excluding (without duplication), to the extent included in such net income

(loss), the following: (i) all extraordinary gains or losses; (ii) any net income of any Person if such Person is not incorporated or organized in the United States, a state thereof or the District of Columbia, except that (A) Guarantor's equity in the net income of any such Person for such period shall be included in Consolidated Net Income (Loss) up to the aggregate amount of cash actually distributed by such Person during such period to Guarantor or a Subsidiary incorporated or organized in the United States, a state thereof or the District of Columbia, as a dividend or other distribution and (B) the equity of Guarantor or a Subsidiary in a net loss of any such Person for such period shall be included in determining Consolidated Net Income (Loss); (iii) the net income of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary of such income is not at the time thereof permitted, directly or indirectly, by operation of the terms of its charter or by-laws or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or its stockholders; (iv) any net income (or loss) of any Person combined with Guarantor or any of its Subsidiaries on a "pooling of interests" basis attributable to any period prior to the date of such combination; (v) any gain (but not loss) realized upon the sale or other disposition of any property, plant or equipment of Guarantor or its Subsidiaries (including pursuant to any sale-and-leaseback arrangement) which is not sold or otherwise disposed of in the ordinary course of business and any gain (but not loss) realized upon the sale or other disposition by Guarantor or any Subsidiary of any capital stock of any Person, provided that losses shall be included on an after-tax basis; and (vi) the cumulative effect of a change in accounting principles; and further adjusted by subtracting from such net income the tax liability of any parent of Guarantor to the extent of payments made to such parent by Guarantor pursuant to any tax sharing agreement or other arrangement for such period.

"Contingent Liability" means any agreement, undertaking or arrangement by which any Person guarantees, endorses or otherwise becomes or is contingently liable upon (by direct or indirect agreement, contingent or otherwise, to provide funds for payment, to supply funds to, or otherwise to invest in, a debtor, or otherwise to assure a creditor against loss) the indebtedness, obligation or any other liability of any other Person (other than by endorsements of instruments in the course of collection), or guarantees the payment of dividends or other distributions upon the shares of any other Person. The amount of any Person's obligation under any Contingent Liability shall be calculated on a net basis (i.e., after taking into effect agreements, undertakings and other arrangements between the Person whose obligations are being guaranteed and the counterparty to such Person's obligations) and shall (subject to any limitation set forth therein) be deemed to be the outstanding net principal amount (or maximum net principal amount, if larger) of the debt, obligation or other liability guaranteed thereby, or, if the principal amount is not stated or determinable, the maximum reasonably anticipated net liability in respect thereof as determined by the Person in good faith, provided that (y) the amount of any Contingent Liability arising out of any indebtedness, obligation or liability other than the items described in clauses (a), (b) and (c) of the definition of "Indebtedness" (as defined in this Appendix A) and (z) the amount of any Contingent Liability consisting of a "keep-well," "make well" or other similar arrangement shall be deemed to be zero unless and until Guarantor is required to make any payment with respect thereto (and shall thereafter be deemed to be the amount required to be paid).

"Debt" means the outstanding principal amount of all Indebtedness of Guarantor and its consolidated Subsidiaries of the nature referred to in clauses (a) (b), (c) and (f) of the definition of "Indebtedness" (as

defined in this Appendix A), and (without duplication) all Contingent Liabilities in respect of any of the foregoing.

"Facility" means a power generation facility or energy producing facility, including any related fuel reserve.

"Fiscal Quarter" means any period of three consecutive months ending on March 31, June 30, September 30 or December 31 of any year.

"Fiscal Year" means any period of twelve consecutive calendar months ending on December 31.

"Guaranteed Preferred Securities" means the preferred securities issued by one of the Trusts, from time to time, including, without limitation the \$276,000,000 of principal amount of such securities issued in October, 1999, the \$300,000,000 of principal amount of such securities issued in January, 2000 and the \$60,000,000 of principal amount of such securities issued in February, 2000.

"Guarantor EBITDA" means, for any period, the Consolidated EBITDA of Guarantor and its Subsidiaries, minus that portion of Consolidated Interest Expense payable by the consolidating Subsidiaries, minus the principal payments of the consolidating Subsidiaries, minus the consolidated non-discretionary Capital Expenditures (i.e., Capital Expenditures which are expressly required to be made under any agreement, contract, instrument, permit, license, law, regulation, judgment or other arrangement (other than those arrangements and contracts that relate to the performance of the work for which the Capital Expenditure is being made) binding on Guarantor or any Subsidiary) of Guarantor and its Subsidiaries, plus, without duplication, cash and Permitted Investments of Guarantor's Wholly Owned Subsidiaries and Cogen America that are legally and contractually available to each such Subsidiary for the payment of dividends, but only to the extent the source of such cash and Permitted Investments is from that portion of Consolidated EBITDA attributable to such Subsidiary or from repayments to such Subsidiary of loans made by such Subsidiary.

"Guarantor Credit Agreement" means that certain First Amended and Restated Credit Agreement (as amended, amended and restated or otherwise modified from time to time), dated as of May 23, 2000, among Guarantor, certain commercial lending institutions party thereto (the "Guarantor Lenders") and The Bank of Nova Scotia, as agent for the Guarantor Lenders or, if the Guarantor Credit Agreement has been terminated, any replacement thereof.

"Guarantor Interest Expense" means, for any period, as applied to Guarantor, the sum of (a) the total interest expense of Guarantor for such period as determined in accordance with GAAP, including, without limitation, all interest paid by Guarantor under its subordinated debt securities issued to a Trust, plus (b) all but the principal component of rentals in respect of Capitalized Lease Liabilities paid, accrued, or scheduled to be paid or accrued by Guarantor, plus (c) one-third of all operating lease obligations paid, accrued and/or scheduled to be paid by Guarantor, plus (d) capitalized interest, plus (e) dividends paid in respect of preferred stock of Guarantor held by Persons other than Guarantor, plus (f) cash contributions to any employee stock ownership plan to the extent such contributions are used by such employee stock ownership plan to pay interest or fees to any person (other than Guarantor) in connection with loans incurred by such employee stock ownership plan to purchase capital stock of Guarantor.

"Hedging Obligations" means, with respect to any Person, the net liabilities of such Person under (a) interest rate swap agreements, interest rate cap agreements and interest rate collar agreements, foreign exchange contracts, currency swap agreements and all other agreements or arrangements designed to protect such Person against fluctuations in interest rates or currency exchange rates and (b) commodity or power swap or exchange agreements.

"Indebtedness" of any Person means, without duplication:

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;
- (b) all obligations, contingent or otherwise, relative to the stated amount of all letters of credit and banker's acceptances issued for the account of such Person (excluding Guarantor's subordinated debt securities issued to a Trust and the Guaranteed Preferred Securities, or any similar securities); provided, however, that if a letter of credit or banker's acceptance has been issued to support or secure any other form of Indebtedness, only the greater of the stated amount of such letter of credit or banker's acceptance or the outstanding principal amount of Indebtedness supported or secured, but not both, will be considered Indebtedness hereunder;
- (c) all obligations of such Person as lessee under leases which have been or should be, in accordance with GAAP, recorded as Capitalized Lease Liabilities;
- (d) all other items other than deferred taxes, deferred revenue and deferred leases which, in accordance with GAAP, would be included as liabilities on the liability side of the balance sheet of such Person as of the date at which Indebtedness is to be determined;
- (e) net liabilities of such Person under all Hedging Obligations;
- (f) whether or not so included as liabilities in accordance with GAAP, all net obligations of such Person to pay the deferred purchase price of property or services (excluding accounts payable incurred in the ordinary course of business), and indebtedness (excluding prepaid interest thereon) secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse, but excluding any royalties or similar payments to be made by such Person which are based on production or performance; and
- (g) all Contingent Liabilities of such Person in respect of any of the foregoing.

For all purposes of this Guaranty, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer, unless the indebtedness of such partnership or joint venture is expressly nonrecourse to such Person.

"Interest Coverage Ratio" means, for any period of four Fiscal Quarters, the ratio of (x) the Consolidated EBITDA of Guarantor and its Subsidiaries during such period to (y) the Consolidated Interest Expense of Guarantor and its Subsidiaries (excluding from Consolidated Interest Expense for purposes of this clause interest capitalized in connection with the construction of a new Facility which interest is capitalized during the construction of such Facility) incurred during such period.

"Interest Coverage Ratio (Parent Only)" means, for any period of four Fiscal Quarters, the ratio of (x) the Guarantor EBITDA during such period to (y) Guarantor Interest Expense (excluding from Guarantor Interest Expense for purposes of this clause interest capitalized in connection with the construction of a new Facility which interest is capitalized during the construction of such Facility) during such period.

"Leverage Ratio" means the ratio of (a) Debt to (b) Debt plus Tangible Net Worth.

"Lien" means any security interest, mortgage, pledge, hypothecation, assignment for security, deposit arrangement, encumbrance, lien (statutory or otherwise), charge against or interest in property to secure payment of a debt or performance of an obligation or other priority or preferential arrangement of any kind or nature whatsoever.

"Net Available Cash" means, with respect to any Asset Sale, the cash or cash equivalent payments received by Guarantor or a Subsidiary in connection with such Asset Sale (including any cash received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as or when received and also including the proceeds of other property received when converted to cash or cash equivalents) net of the sum of, without duplication,

(i) all reasonable legal, title and recording tax expenses, reasonable commissions, and other reasonable fees and expenses incurred directly relating to such Asset Sale, (ii) all local, state, federal and foreign taxes required to be paid or accrued as a liability by Guarantor or any of its Subsidiaries as a consequence of such Asset Sale, (iii) payments made to repay Indebtedness which is secured by any assets subject to such Asset Sale in accordance with the terms of any Lien upon or other security agreement of any kind with respect to such assets, or which must by its terms, or by applicable law, be repaid out of the proceeds from such Asset Sale and (iv) all distributions required by any contract entered into other than in contemplation of such Asset Sale to be paid to any holder of a minority equity interest in such Subsidiary as a result of such Asset Sale, so long as such distributions do not exceed such minority holder's pro rata portion (based on such minority holder's proportionate equity interest) of the cash or cash equivalent payments described above, net of the amounts set forth in clauses (i)-(iii) above.

"Net Equity Proceeds" means, with respect to any issuance by Guarantor or a Trust of any equity securities (including the Guaranteed Preferred Securities), the gross consideration received by or for the account of Guarantor minus underwriting and brokerage commissions, discounts and fees relating to such issuance that are payable by Guarantor.

"Person" means any natural person, corporation, partnership, limited liability company, firm, association, trust, government, governmental agency or any other entity, whether acting in an individual, fiduciary or other capacity.

"Subsidiary" means, with respect to any Person, any corporation, partnership or other Person of which more than 50% of the outstanding capital stock or other comparable ownership interest having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.

"Tangible Net Worth" means the consolidated net worth of Guarantor and its Subsidiaries, including the aggregate outstanding face amount of the Guaranteed Preferred Securities, after subtracting therefrom the aggregate amount of any intangible assets of Guarantor and its Subsidiaries, including goodwill, franchises, licenses, patents, trademarks, trade names, copyrights, service marks and brand names.

"Trust" means Calpine Capital Trust and Calpine Capital Trust I, each a Delaware business trust.

"Wholly Owned Subsidiary" means a Subsidiary all the capital stock (or other comparable ownership interests) of which (other than directors' qualifying shares) is owned by Guarantor or another Wholly Owned Subsidiary.

## EXHIBIT D4-D

### CCFC II EQUIPMENT FINANCE COMPANY SECURITY AGREEMENT

This CCFC II EQUIPMENT FINANCE COMPANY SECURITY AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, \_\_\_\_\_, is entered into by and between CCFC II EQUIPMENT FINANCE COMPANY, LLC, a Delaware limited liability company ("Owner"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks (as defined below).

#### PREFACE

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), the financial institutions listed on Exhibit H to the Credit Agreement (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, have entered into that certain Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks agreed to make certain advances of credit to Borrower in the amounts specified and on the terms and subject to the conditions set forth therein. For purposes of this Agreement, the term "Banks" shall include the Administrative Agent, the Lead Arrangers, the Co-Syndication Agents, the Bookrunner, the Co-Documentation Agents and the Banks (as such terms are defined in the Credit Agreement).

B. Owner is a wholly-owned Subsidiary of Borrower and each of the Equipment Finance Companies are Subsidiaries of Owner. Each Equipment Finance Company intends to finance certain Costs associated with such entity's purchase of equipment with funds borrowed from Owner. Owner intends to borrow such funds from Borrower and Borrower intends to borrow such funds pursuant to the Credit Agreement.

C. As a condition precedent to the Banks' making the advances of credit contemplated by the Credit Agreement, the Banks require that Owner shall have executed this Agreement.

#### AGREEMENT

In consideration of the promises contained herein, and in order to induce the Banks to enter into the Credit Agreement and to make the advances of credit pursuant to the terms thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner hereby agrees with Administrative Agent for the benefit of Administrative Agent and the Banks as follows:

## 1. DEFINITIONS.

1.1 "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.2 All capitalized terms used, but not otherwise defined herein, shall have the meanings provided in the Credit Agreement. All other terms used herein (whether or not capitalized) shall have the meanings given them in the UCC. The rules of interpretation contained in Exhibit A to the Credit Agreement shall apply to this Agreement.

## 2. ASSIGNMENT, PLEDGE AND GRANT OF SECURITY INTEREST.

2.1 To secure the timely payment and performance of the Obligations (as defined in Section 3 hereof) Owner does hereby assign, grant and pledge to, and subject to a security interest in favor of, Administrative Agent, on behalf of and for the benefit of Administrative Agent and the Banks, all the estate, right, title and interest of Owner, whether now owned or hereafter acquired, in, to and under:

2.1.1 The following agreements and documents, as amended from time to time (individually, an "Assigned Agreement," and collectively, the "Assigned Agreements") and all of Owner's rights thereunder:

- (a) all Project Documents and Equipment Leases with respect to which Owner is or may become a party from time to time;
- (b) the insurance policies maintained or required to be maintained by Owner or any other Person under any Operative Document; and
- (c) all amendments, supplements, substitutions and renewals to any of the aforesaid agreements.

2.1.2 the Portfolio Entity Notes from each Equipment Finance Company (collectively, the "Equipment Finance Company Portfolio Entity Notes");

2.1.3 all other personal property and fixtures of Owner, including without limitation personal property and fixtures relating to any equipment or Equipment Lease, whether now owned or existing or hereafter acquired or arising, or in which Owner may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, including without limitation all machinery, tools, engines, turbines (including combustion turbines and steam turbine generators), boilers, fuel storage tanks, control

equipment, appliances, mechanical and electrical systems, elevators, lighting, alarm systems, fire control systems, furnishings, furniture, as-extracted, collateral, equipment, service equipment, motor vehicles, building or maintenance equipment, building or maintenance materials, pipes and pipelines supplies, goods and property covered by any warehouse receipts or bills of lading or other such documents, spare parts, maps, plans, specifications, architectural, engineering, construction or shop drawings, manuals or similar documents, copyrights, trademarks and trade names, and any replacements, renewals or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by Owner;

2.1.4 all goods, money, instruments, investment securities, investment property, accounts, contract rights, commercial tort claims, letters of credit, letter of credit rights, payment intangibles, promissory notes, software, supporting obligations, documents, deposit accounts, chattel paper (including tangible and electronic chattel paper), general intangibles, and inventory, including without limitation those relating to any equipment or Equipment Lease; and

2.1.5 the proceeds of all of the foregoing (all of the collateral described in clauses 2.1.1 through 2.1.5, being herein collectively referred to as the "Collateral"), including without limitation, (a) all rights of Owner to receive moneys due and to become due under or pursuant to the Collateral; (b) all rights of Owner to receive the return of any premiums for, or proceeds of, any insurance, indemnity, warranty or guaranty with respect to the Collateral or to receive any condemnation proceeds; (c) all claims of Owner for damages arising out of, or for breach of or default under, the Assigned Agreements or any other Collateral; (d) all rights of Owner to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (e) to the extent not included in the foregoing, all proceeds receivable or received when any and all of the foregoing Collateral is sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily.

2.2 In order to effectuate the foregoing, Owner has heretofore delivered, or concurrently with the delivery hereof, is delivering to Administrative Agent an executed counterpart or certified copy of each of the Assigned Agreements. Owner will likewise deliver to Administrative Agent an executed counterpart of each future lease, construction agreement, operation agreement and other agreement, including without limitation those relating to any equipment or Equipment Lease or any part thereof, and amendments and supplements to the foregoing, included in the Collateral, as they are entered into by Owner promptly upon the execution thereof. Notwithstanding anything to the contrary contained herein, no such future lease, construction agreement, operation agreement or other material agreement may be entered into by Owner except as permitted under the Credit Documents.

2.3 Notwithstanding anything to the contrary contained herein, Owner shall remain liable under each of the Assigned Agreements to perform all of the obligations undertaken by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and Administrative Agent shall have no obligation or liability under any of such Assigned Agreements by reason of or arising out of this Agreement, nor shall Administrative Agent be required or obligated in any manner to perform or fulfill any obligations of Owner thereunder or to make any payment or inquiry as to the nature or sufficiency of any payment

received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

2.4 If any default by Owner under any of the Assigned Agreements shall occur and be continuing, then Administrative Agent shall, at its option and after the expiration of the applicable cure periods under Section 8.1.7 of the Credit Agreement, be permitted (but shall not be obligated) to remedy any such default by giving written notice of such intent to Owner and to the parties to the Assigned Agreement or Assigned Agreements for which Administrative Agent intends to remedy the default. After giving such notice of its intent to cure such default and upon the commencement thereof, Administrative Agent will proceed diligently to cure such default. Any cure by Administrative Agent of Owner's default under any of the Assigned Agreements shall not be construed as an assumption by Administrative Agent or any of the Banks of any obligations, covenants or agreements of Owner under such Assigned Agreement, and neither Administrative Agent nor any of the Banks shall be liable to Owner or any other Person as a result of any actions undertaken by Administrative Agent in curing or attempting to cure any such default, except as set forth in Section 12.13 of the Credit Agreement. This Agreement shall not be deemed to release or to affect in any way the obligations of Owner under the Assigned Agreements.

3. OBLIGATIONS SECURED. Without limiting the generality of the foregoing, this Agreement and all of the Collateral secure the payment and performance when due of the Obligations (as defined in the Credit Agreement) of each of the Portfolio Entities (including Owner) under the Credit Documents, including Borrower's Obligations under the Credit Agreement and the other Credit Documents to which Borrower is a party to the Administrative Agent and the Banks (the "Obligations"); provided, however, the Obligations as defined in this Section 3 shall not include any Obligations (as defined in the Credit Agreement) of any Portfolio Entity under the Credit Documents relating to or arising from Projects (as defined in the Credit Agreement) that have achieved Operation prior to the effective date of this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants as of the date hereof as follows:

4.1 Owner has not assigned any of its rights under the Assigned Agreements except as provided in the Credit Documents.

4.2 Owner has not executed and is not aware of any effective financing statement, security agreement or other instrument similar in effect covering all or any part of the Collateral, except such as may have been filed pursuant to this Agreement and the other Credit Documents or pursuant to the documents evidencing Permitted Liens.

4.3 Except as permitted by the Credit Agreement, Owner is lawfully possessed of ownership of the Collateral and has full right, title and interest in and to all rights purported to be granted to it under the Assigned Agreements, not subject to any mortgages, liens, charges, or encumbrances except Permitted Liens. Owner has full power and lawful authority to grant and assign the Collateral hereunder.

5. COVENANTS OF OWNER. Owner covenants as follows:

5.1 Any action or proceeding to enforce this Agreement or any Assigned Agreement may be taken by Administrative Agent either in Owner's name or in Administrative Agent's name, as Administrative Agent may deem necessary.

5.2 Owner will, so long as any Obligations shall be outstanding, warrant and defend its title to the Collateral and the interest of Administrative Agent in the Collateral against any claim or demand of any persons (other than Permitted Liens) which could reasonably be expected to materially adversely affect Owner's title to, or Administrative Agent's right or interest in, such Collateral.

5.3 Owner will at all times keep accurate and complete records of the Collateral. Owner shall permit representatives of Administrative Agent upon reasonable prior notice, and in accordance with Section 5.6 of the Credit Agreement, at any time during normal business hours of Owner to inspect and make abstracts from Owner's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at Administrative Agent's request, Owner shall promptly deliver copies of any and all such records to Administrative Agent.

5.4 Unless waived in writing by Administrative Agent, Owner shall give Administrative Agent at least 45 days' notice before it changes the location of its principal place of business, chief executive office or state of organization and shall at the expense of Owner execute and deliver such instruments and documents as may reasonably be required by Administrative Agent to maintain a prior perfected security interest in the Collateral.

6. EVENTS OF DEFAULT. The occurrence of an Event of Default under the Credit Agreement, whatever the reason therefor and whether it shall be voluntary or involuntary or be effected by operation of law, or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, shall constitute an event of default hereunder (an "Event of Default").

7. REMEDIES UPON EVENT OF DEFAULT.

7.1 If any Event of Default has occurred and is continuing, Administrative Agent may (a) proceed to protect and enforce the rights vested in it by this Agreement, including but not limited to, the right to cause all revenues pledged hereby as security and all other moneys pledged hereunder to be paid directly to it, and to enforce its rights hereunder to such payments and all other rights hereunder by such appropriate judicial proceedings as it shall deem most effective to protect and enforce any of such rights, either at law or in equity or otherwise, whether for specific enforcement of any covenant or agreement contained in any of the Assigned Agreements, or in aid of the exercise of any power therein or herein granted, or for any foreclosure hereunder and sale under a judgment or decree in any judicial proceeding, or to enforce any other legal or equitable right vested in it by this Agreement or by law; (b) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any Obligations or rights hereunder or included in the Collateral, or to foreclose or

enforce any other agreement or other instrument by or under or pursuant to which such Obligations are issued or secured, subject in each case to the provisions and requirements thereof; (c) sell or otherwise dispose of any or all of the Collateral or cause the Collateral to be sold or otherwise disposed of in one or more sales or transactions, at such prices and in such manner as Administrative Agent may deem commercially reasonable, and for cash or on credit or for future delivery, without assumption of any credit risk at any broker's board or at public or private sale, with or without a warranty of title, without demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), it being agreed that Administrative Agent may be a purchaser on behalf of the Banks or on its own behalf at any such sale and that Administrative Agent, any Bank, or any other Person who may be a bona fide purchaser for value and without notice of any claims of any or all of the Collateral so sold shall thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of Owner, any such demand, notice or right and equity being hereby expressly waived and released to the extent permitted by law; (d) incur reasonable expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement; (e) perform any obligation of Owner hereunder or under any other Credit Document, and make payments, purchase, contest or compromise any encumbrance, charge or lien, and pay taxes and expenses without, however, any obligation to do so; (f) in connection with any acceleration and foreclosure, take possession of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon any Site or any other location where the same may be located for that purpose, control, manage, operate, rent and lease the Collateral, either separately or in conjunction with a Project, collect all rents and income from the Collateral and apply the same to reimburse the Banks for any cost or expenses incurred hereunder or under any of the Credit Documents and to the payment or performance of Owner's obligations hereunder or under any of the Credit Documents, and apply the balance to the Loans of Borrower as provided for in the Credit Agreement and any remaining excess balance to whomsoever is legally entitled thereto; (g) secure the appointment of a receiver of the Collateral or any part thereof; or (h) exercise any other or additional rights or remedies granted to a secured party under the UCC. If pursuant to applicable law prior notice of any such action is required to be given to Owner, Owner hereby acknowledges that the minimum time required by such applicable law, or if no minimum time is specified, 10 Banking Days, shall be deemed a reasonable notice period.

7.2 All reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Administrative Agent in connection with any such suit or proceeding or in connection with the performance by Administrative Agent of any of Owner's agreements contained in any of the Assigned Agreements or any exercise of its rights or remedies hereunder, pursuant to the terms of this Agreement, together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the Default Rate from the date on which such costs or expenses are incurred to the date of payment thereof, shall constitute additional indebtedness secured by this Agreement and shall be paid by Owner to Administrative Agent on behalf of the Banks on demand.

## 8. REMEDIES CUMULATIVE; DELAY NOT WAIVER.

8.1 No right, power or remedy herein conferred upon or reserved to Administrative Agent is intended to be exclusive of any other right, power or remedy and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Administrative Agent may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

8.2 No delay or omission of Administrative Agent to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Administrative Agent.

9. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by and due and owing to Administrative Agent and the Banks under the Credit Agreement, the other Credit Documents or the Collateral Documents; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); third, to the principal amounts of the Obligations outstanding; fourth, to any other Obligations of Owner owing to Administrative Agent or the Banks; and fifth, to, or as directed by, Owner.

10. ATTORNEY-IN-FACT. Owner hereby constitutes and appoints Administrative Agent, acting for and on behalf of itself and the Banks and each successor or assign of Administrative Agent and the Banks, the true and lawful attorney-in-fact of Owner, with full power and authority in the place and stead of Owner and in the name of Owner, Administrative Agent or otherwise to enforce all rights, interests and remedies of Owner with respect to the Collateral, including, without limitation, the right:

10.1 to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Assigned Agreements or any of the other Collateral, including without limitation, any insurance policies;

10.2 to elect remedies thereunder and to endorse any checks or other instruments or orders in connection therewith;

10.3 to file any claims or take any action or institute any proceedings in connection therewith which Administrative Agent may reasonably deem to be necessary or advisable;

10.4 to pay, settle or compromise all bills and claims which may be or become liens or security interests against any or all of the Collateral, or any part thereof, unless a bond or other security satisfactory to Administrative Agent has been provided; and

10.5 upon foreclosure and to the extent provided in the Consents, to do any and every act which Owner may do on its behalf with respect to the Collateral or any part thereof and to exercise any or all of Owner's rights and remedies under any or all of the Assigned Agreements;

provided, however, that Administrative Agent shall not exercise any such rights except upon the occurrence and continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable.

11. ADMINISTRATIVE AGENT MAY PERFORM. Upon the occurrence and during the continuance of an Event of Default, if Owner fails to perform any agreement contained herein, Administrative Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of Administrative Agent incurred in connection therewith shall be part of the Obligations.

## 12. PERFECTION; FURTHER ASSURANCES.

12.1 Owner agrees that from time to time, at the expense of Owner, Owner shall promptly execute and deliver all instruments and documents, and take all action, that may be reasonably necessary, or that Administrative Agent may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Owner shall (a) with respect to the Equipment Finance Company Portfolio Entity Notes and any other Collateral evidenced by a promissory note or other instrument in excess of \$5,000, deliver and pledge to Administrative Agent for the benefit of the Banks such note duly endorsed without recourse, and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Administrative Agent; and (b) execute and deliver to Administrative Agent such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as Administrative Agent may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

12.2 Owner hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Owner where permitted by law.

12.3 Owner shall pay all filing, registration and recording fees and all re-filing, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in

connection with the execution and delivery of this Agreement, any agreement supplemental hereto, any financing statements, and any instruments of further assurance.

12.4 Owner shall, promptly upon request, provide to Administrative Agent all information and evidence it may reasonably request concerning the Collateral to enable Administrative Agent to enforce the provisions of this Agreement.

13. **PLACE OF BUSINESS; LOCATION OF RECORDS.** Unless Administrative Agent is otherwise notified under Section 5.4, the place of business and chief executive office of Owner is, and all records of Owner concerning the Collateral are and will be, located at the address set forth in Schedule 4.24 to the Credit Agreement and Owner is, and will be, a limited liability company organized under the laws of the state of Delaware.

14. **CONTINUING ASSIGNMENT AND SECURITY INTEREST.** This Agreement shall create a continuing assignment of, and security interest in, the Collateral and shall (a) remain in full force and effect until payment in full of the Obligations, (b) be binding upon Owner, its successors and assigns; provided, however, that the obligations of Owner, its successors and assigns hereunder may not be assigned without the prior written consent of Administrative Agent; and (c) inure, together with the rights and remedies of Administrative Agent, to the benefit of Administrative Agent, the Banks and their respective successors, transferees and assigns. Without limiting the generality of the foregoing but subject to the terms of the Credit Agreement, Administrative Agent or any of the Banks may assign or otherwise transfer all or any part of or interest in the Notes and the other Credit Documents or other evidence of indebtedness held by them to any other Person to the extent permitted by and in accordance with the Credit Agreement, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Banks herein or otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by Administrative Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any person on the indebtedness secured hereby. If this Agreement shall be terminated or revoked by operation of law, Owner will indemnify and save Administrative Agent and the Banks harmless from any loss which may be suffered or incurred by Administrative Agent and the Banks in acting hereunder prior to the receipt by Administrative Agent, its successors, transferees, or assigns of notice of such termination or revocation.

15. **TERMINATION OF SECURITY INTEREST.** Upon the indefeasible payment in full of the Obligations, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Owner. Upon any such termination, Administrative Agent will, at Owner's expense, execute and, subject to Section 21 hereof, deliver to Owner such documents (including, without limitation, UCC-3 termination statements) as Owner shall reasonably request to evidence such termination.

16. **ATTORNEYS' FEES.** In the event any legal action or proceeding (including, without limitation, any of the remedies provided for herein or at law) is commenced to enforce or interpret this Agreement or any provision thereof, unless Owner is the prevailing party, Owner shall indemnify each of Administrative Agent and the Banks for their reasonable attorneys' fees and other costs and expenses incurred therein, and if a judgment or award is entered in any such

action or proceeding, such reasonable attorneys' fees and other costs and expenses may be made a part of such judgment or award.

17. **LIABILITY.** Recourse against the Owner, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Agreement shall be limited to the extent provided in Article 9 of the Credit Agreement.

18. **AMENDMENTS; WAIVERS; CONSENTS.** No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by Owner therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Owner.

19. **NOTICES.** All notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall be effective if given in accordance with the provisions of Section 12.1 of the Credit Agreement. Notices to Owner may be given at the address of Borrower set forth in such Section 12.1.

20. **GOVERNING LAW.** This Agreement, including all matters of construction, validity, performance and the creation, validity, enforcement or priority of the lien of, and security interests created by, this Agreement in or upon the Collateral shall be governed by the laws of the state of New York, without reference to conflicts of law (other than Section 5-1401 of the New York General Obligations Law), except as required by mandatory provisions of law and except to the extent that the validity or perfection of the lien and security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the state of New York.

21. **REINSTATEMENT.** This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Administrative Agent in respect of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, liquidation of Owner or any general partner of Owner or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, Owner or any general partner of Owner or any substantial part of Owner's or any of its general partners' assets, or otherwise, all as though such payments had not been made.

22. **SEVERABILITY.** The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

23. **SURVIVAL OF PROVISIONS.** All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the Credit Agreement and the making of the Loans and extensions of credit thereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of

Owner set forth herein shall terminate only upon payment of the Obligations, and the termination of all Commitments and other obligations of the Banks under the Credit Documents.

24. HEADINGS DESCRIPTIVE. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

25. ENTIRE AGREEMENT. This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

26. TIME. Time is of the essence of this Agreement.

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

28. WAIVER OF JURY TRIAL. OWNER AND ADMINISTRATIVE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP AMONG OWNER AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. OWNER AND ADMINISTRATIVE AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. OWNER AND ADMINISTRATIVE AGENT FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

29. ADDITIONAL WAIVERS. Owner hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against any Portfolio Entity or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other remedy in Administrative Agent's or the Banks' power before proceeding against Owner, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of any Portfolio Entity or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any Portfolio Entity or any other Person, (c) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of any Portfolio Entity, Administrative Agent, the Banks, any endorser or creditor of the foregoing or on the part of any other Person

under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks, including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Owner, the right of Owner to proceed against a Portfolio Entity or another Person for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Owner for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of a Portfolio Entity of the failure by a Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Agreement shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by a Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Owner any facts Administrative Agent or the Banks may now or hereafter know about any Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Owner intends to assume, or have reason to believe that such facts are unknown to Owner, or have a reasonable opportunity to communicate such facts to Owner, since Owner acknowledges that Owner is fully responsible for being and keeping informed of the financial condition of the Portfolio Entities and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) the fact that any Portfolio Entity may at any time in the future dispose of all or part of its direct or indirect interest in any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Credit Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents, (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned has caused this CCFC II Equipment Finance Company Security Agreement to be duly executed and delivered as of the day and year first above written.

**CCFC II EQUIPMENT FINANCE COMPANY, LLC,**  
a Delaware limited liability company

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

By:

Name:

Title:

By:

Name:

Title:

**EXHIBIT D-4D  
to the Credit Agreement**

**FORM**

**OF**

**CCFC II EQUIPMENT FINANCE COMPANY SECURITY AGREEMENT**

**Dated as of \_\_\_\_\_, \_\_\_\_\_**

between

**CCFC II EQUIPMENT FINANCE COMPANY, LLC**  
a Delaware limited liability company

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

## TABLE OF CONTENTS

	<u>PAGE</u>
1. Definitions.....	2
2. Assignment, Pledge and Grant of Security Interest.....	2
3. Obligations Secured.....	4
4. Representations and Warranties of Owner.....	4
5. Covenants of Owner.....	5
5 Owner covenants as follows:.....	5
6. Events of Default.....	5
7. Remedies Upon Event of Default.....	5
8. Remedies Cumulative; Delay Not Waiver.....	7
9. Application of Proceeds.....	7
10. Attorney-In-Fact.....	7
11. Administrative Agent May Perform.....	8
12. Perfection; Further Assurances.....	8
13. Place of Business; Location of Records.....	9
14. Continuing Assignment and Security Interest.....	9
15. Termination of Security Interest.....	9
16. Attorneys' Fees.....	9
17. Liability.....	10
18. Amendments; Waivers; Consents.....	10
19. Notices.....	10
20. Governing Law.....	10
21. Reinstatement.....	10
22. Severability.....	10
23. Survival of Provisions.....	10
24. Headings Descriptive.....	11
25. Entire Agreement.....	11
26. Time.....	11
27. Counterparts.....	11
28. Waiver of Jury Trial.....	11
29. Additional Waivers.....	11

## EXHIBIT D4-E

### EQUIPMENT FINANCE COMPANY SECURITY AGREEMENT

This EQUIPMENT FINANCE COMPANY SECURITY AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 200\_\_, is entered into by and between \_\_\_\_\_, a Delaware \_\_\_\_\_ ("Owner"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks (as defined below).

#### PREFACE

A. Owner intends to purchase certain equipment (the "Equipment") to be leased to a Project Owner pursuant to one or more Equipment Leases and incorporated into a Project.

B. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), the financial institutions listed on Exhibit H to the Credit Agreement (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, have entered into that certain Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks agreed to make certain advances of credit to Borrower in the amounts specified and on the terms and subject to the conditions set forth therein. For purposes of this Agreement, the term "Banks" shall include the Administrative Agent, the Lead Arrangers, the Co-Syndication Agents, the Bookrunner, the Co-Documentation Agents and the Banks (as such terms are defined in the Credit Agreement).

C. Owner intends to finance certain Costs associated with Owner's purchase of the Equipment with funds borrowed by Borrower pursuant to the Credit Agreement.

D. As a condition precedent to the Banks' making the advances of credit contemplated by the Credit Agreement, the Banks require that Owner shall have executed this Agreement.

#### AGREEMENT

In consideration of the promises contained herein, and in order to induce the Banks to enter into the Credit Agreement and to make the advances of credit pursuant to the terms thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Owner hereby agrees with Administrative Agent for the benefit of Administrative Agent and the Banks as follows:

## 1. DEFINITIONS.

1.1 "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.2 All capitalized terms used, but not otherwise defined herein, shall have the meanings provided in the Credit Agreement. All other terms used herein (whether or not capitalized) shall have the meanings given them in the UCC. The rules of interpretation contained in Exhibit A to the Credit Agreement shall apply to this Agreement.

## 2. ASSIGNMENT, PLEDGE AND GRANT OF SECURITY INTEREST.

2.1 To secure the timely payment and performance of the Obligations (as defined in Section 3 hereof) Owner does hereby assign, grant and pledge to, and subject to a security interest in favor of, Administrative Agent, on behalf of and for the benefit of Administrative Agent and the Banks, all the estate, right, title and interest of Owner, whether now owned or hereafter acquired, in, to and under:

2.1.1 The following agreements and documents, as amended from time to time (individually, an "Assigned Agreement," and collectively, the "Assigned Agreements") and all of Owner's rights thereunder:

(a) Owner's interest in any Equipment Lease or Project Document;

(b) the insurance policies maintained or required to be maintained by Owner or any other Person under the Credit Agreement or Project Documents;

(c) to the extent assignable, all other agreements, including vendor warranties, running to Owner or assigned to Owner, relating to the purchase of the Equipment or any part thereof, or transport of material, equipment and other parts of the Equipment or any part thereof; and

(d) all amendments, supplements, substitutions and renewals to any of the aforesaid agreements;

2.1.2 all other personal property and fixtures of Owner, including without limitation the Equipment and personal property and fixtures relating to the Equipment, whether now owned or existing or hereafter acquired or arising, or in which Owner may have an interest, and wheresoever located, whether or not of a type which may be subject to a security interest under the UCC, including without limitation all machinery, tools, engines, turbines

(including combustion turbines and steam turbine generators), boilers, fuel storage tanks, control equipment, appliances, mechanical and electrical systems, elevators, lighting, alarm systems, fire control systems, furnishings, furniture, as-extracted collateral, equipment, service equipment, motor vehicles, building or maintenance equipment, building or maintenance materials, pipes and pipelines supplies, goods and property covered by any warehouse receipts or bills of lading or other such documents, spare parts, maps, plans, specifications, architectural, engineering, construction or shop drawings, manuals or similar documents, copyrights, trademarks and trade names, and any replacements, renewals or substitutions for any of the foregoing or additional tangible or intangible personal property hereafter acquired by Owner;

2.1.3 all goods, money, instruments, investment securities, investment property, accounts, contract rights, commercial tort claims, letters of credit, letter of credit rights, payment intangibles, promissory notes, software, supporting obligations, documents, deposit accounts, chattel paper (including tangible and electronic chattel paper), general intangibles, and inventory, including without limitation those relating to the Equipment; and

2.1.4 the proceeds of all of the foregoing (all of the collateral described in clauses 2.1.1 through 2.1.4, being herein collectively referred to as the "Collateral"), including without limitation, (a) all rights of Owner to receive moneys due and to become due under or pursuant to the Collateral; (b) all rights of Owner to receive the return of any premiums for, or proceeds of, any insurance, indemnity, warranty or guaranty with respect to the Collateral or to receive any condemnation proceeds; (c) all claims of Owner for damages arising out of, or for breach of or default under, the Assigned Agreements or any other Collateral; (d) all rights of Owner to terminate, amend, supplement, modify or waive performance under the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (e) to the extent not included in the foregoing, all proceeds receivable or received when any and all of the foregoing Collateral is sold, collected, exchanged or otherwise disposed of, whether voluntarily or involuntarily.

2.2 In order to effectuate the foregoing, Owner has heretofore delivered, or concurrently with the delivery hereof, is delivering to Administrative Agent an executed counterpart or certified copy of each of the Assigned Agreements. Owner will likewise deliver to Administrative Agent an executed counterpart of each future lease, construction agreement, operation agreement and other agreement, including without limitation those relating to the purchase of the Equipment or any part thereof, and amendments and supplements to the foregoing, included in the Collateral, as they are entered into by Owner promptly upon the execution thereof. Notwithstanding anything to the contrary contained herein, no such future lease, construction agreement, operation agreement or other material agreement may be entered into by Owner except as permitted under the Credit Documents.

2.3 Notwithstanding anything to the contrary contained herein, Owner shall remain liable under each of the Assigned Agreements to perform all of the obligations undertaken by it thereunder, all in accordance with and pursuant to the terms and provisions thereof, and Administrative Agent shall have no obligation or liability under any of such Assigned Agreements by reason of or arising out of this Agreement, nor shall Administrative Agent be required or obligated in any manner to perform or fulfill any obligations of Owner

thereunder or to make any payment or inquiry as to the nature or sufficiency of any payment received by it, or present or file any claim or take any action to collect or enforce the payment of any amounts which may have been assigned to it or to which it may be entitled at any time.

2.4 If any default by Owner under any of the Assigned Agreements shall occur and be continuing, then Administrative Agent shall, at its option and after the expiration of the applicable cure periods under Section 8.1.7 of the Credit Agreement, be permitted (but shall not be obligated) to remedy any such default by giving written notice of such intent to Owner and to the parties to the Assigned Agreement or Assigned Agreements for which Administrative Agent intends to remedy the default. After giving such notice of its intent to cure such default and upon the commencement thereof, Administrative Agent will proceed diligently to cure such default. Any cure by Administrative Agent of Owner's default under any of the Assigned Agreements shall not be construed as an assumption by Administrative Agent or any of the Banks of any obligations, covenants or agreements of Owner under such Assigned Agreement, and neither Administrative Agent nor any of the Banks shall be liable to Owner or any other Person as a result of any actions undertaken by Administrative Agent in curing or attempting to cure any such default, except as set forth in Section 12.13 of the Credit Agreement. This Agreement shall not be deemed to release or to affect in any way the obligations of Owner under the Assigned Agreements.

3. OBLIGATIONS SECURED. Without limiting the generality of the foregoing, this Agreement and all of the Collateral secure the payment and performance when due of the Obligations (as defined in the Credit Agreement) of each of the Portfolio Entities (including Owner) under the Credit Documents, including Borrower's Obligations under the Credit Agreement and the other Credit Documents to which Borrower is a party to the Administrative Agent and the Banks (the "Obligations"); provided, however, the Obligations as defined in this Section 3 shall not include any Obligations (as defined in the Credit Agreement) of any Portfolio Entity under the Credit Documents relating to or arising from Projects (as defined in the Credit Agreement) that have achieved Operation prior to the effective date of this Agreement.

4. REPRESENTATIONS AND WARRANTIES OF OWNER. Owner represents and warrants as of the date hereof as follows:

4.1 Owner has not assigned any of its rights under the Assigned Agreements except as provided in the Credit Documents.

4.2 Owner has not executed and is not aware of any effective financing statement, security agreement or other instrument similar in effect covering all or any part of the Collateral, except such as may have been filed pursuant to this Agreement and the other Credit Documents or pursuant to the documents evidencing Permitted Liens.

4.3 Except as permitted by the Credit Agreement, Owner is lawfully possessed of ownership of the Collateral and has full right, title and interest in and to all rights purported to be granted to it under the Assigned Agreements, not subject to any mortgages, liens, charges, or encumbrances except Permitted Liens. Owner has full power and lawful authority to grant and assign the Collateral hereunder.

5. COVENANTS OF OWNER. Owner covenants as follows:

5.1 Any action or proceeding to enforce this Agreement or any Assigned Agreement may be taken by Administrative Agent either in Owner's name or in Administrative Agent's name, as Administrative Agent may deem necessary.

5.2 Owner will, so long as any Obligations shall be outstanding, warrant and defend its title to the Collateral and the interest of Administrative Agent in the Collateral against any claim or demand of any persons (other than Permitted Liens) which could reasonably be expected to materially adversely affect Owner's title to, or Administrative Agent's right or interest in, such Collateral.

5.3 Owner will at all times keep accurate and complete records of the Collateral. Owner shall permit representatives of Administrative Agent upon reasonable prior notice, and in accordance with Section 5.6 of the Credit Agreement, at any time during normal business hours of Owner to inspect and make abstracts from Owner's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at Administrative Agent's request, Owner shall promptly deliver copies of any and all such records to Administrative Agent.

5.4 Unless waived in writing by Administrative Agent, Owner shall give Administrative Agent at least 45 days' notice before it changes the location of its principal place of business, chief executive office or state of organization and shall at the expense of Owner execute and deliver such instruments and documents as may reasonably be required by Administrative Agent to maintain a prior perfected security interest in the Collateral.

6. EVENTS OF DEFAULT. The occurrence of an Event of Default under the Credit Agreement, whatever the reason therefor and whether it shall be voluntary or involuntary or be effected by operation of law, or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, shall constitute an event of default hereunder (an "Event of Default").

7. REMEDIES UPON EVENT OF DEFAULT.

7.1 If any Event of Default has occurred and is continuing, Administrative Agent may (a) proceed to protect and enforce the rights vested in it by this Agreement, including but not limited to, the right to cause all revenues pledged hereby as security and all other moneys pledged hereunder to be paid directly to it, and to enforce its rights hereunder to such payments and all other rights hereunder by such appropriate judicial proceedings as it shall deem most effective to protect and enforce any of such rights, either at law or in equity or otherwise, whether for specific enforcement of any covenant or agreement contained in any of the Assigned Agreements, or in aid of the exercise of any power therein or herein granted, or for any foreclosure hereunder and sale under a judgment or decree in any judicial proceeding, or to enforce any other legal or equitable right vested in it by this Agreement or by law; (b) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any Obligations or rights hereunder or included in the Collateral, or to foreclose or

enforce any other agreement or other instrument by or under or pursuant to which such Obligations are issued or secured, subject in each case to the provisions and requirements thereof; (c) sell or otherwise dispose of any or all of the Collateral or cause the Collateral to be sold or otherwise disposed of in one or more sales or transactions, at such prices and in such manner as Administrative Agent may deem commercially reasonable, and for cash or on credit or for future delivery, without assumption of any credit risk at any broker's board or at public or private sale, with or without a warranty of title, without demand of performance or notice of intention to sell or of time or place of sale (except such notice as is required by applicable statute and cannot be waived), it being agreed that Administrative Agent may be a purchaser on behalf of the Banks or on its own behalf at any such sale and that Administrative Agent, any Bank, or any other Person who may be a bona fide purchaser for value and without notice of any claims of any or all of the Collateral so sold shall thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of Owner, any such demand, notice or right and equity being hereby expressly waived and released to the extent permitted by law; (d) incur reasonable expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement; (e) perform any obligation of Owner hereunder or under any other Credit Document, and make payments, purchase, contest or compromise any encumbrance, charge or lien, and pay taxes and expenses without, however, any obligation to do so; (f) in connection with any acceleration and foreclosure, take possession of the Collateral and render it usable and repair and renovate the same without, however, any obligation to do so, and enter upon any Site or any other location where the same may be located for that purpose, control, manage, operate, rent and lease the Collateral, collect all rents and income from the Collateral and apply the same to reimburse the Banks for any cost or expenses incurred hereunder or under any of the Credit Documents and to the payment or performance of Owner's obligations hereunder or under any of the Credit Documents, and apply the balance to the Loans of Borrower as provided for in the Credit Agreement and any remaining excess balance to whomsoever is legally entitled thereto; (g) secure the appointment of a receiver of the Collateral or any part thereof; or (h) exercise any other or additional rights or remedies granted to a secured party under the UCC. If pursuant to applicable law prior notice of any such action is required to be given to Owner, Owner hereby acknowledges that the minimum time required by such applicable law, or if no minimum time is specified, 10 Banking Days, shall be deemed a reasonable notice period.

7.2 All reasonable costs and expenses (including reasonable attorneys' fees and expenses) incurred by Administrative Agent in connection with any such suit or proceeding or in connection with the performance by Administrative Agent of any of Owner's agreements contained in any of the Assigned Agreements or any exercise of its rights or remedies hereunder, pursuant to the terms of this Agreement, together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the Default Rate from the date on which such costs or expenses are incurred to the date of payment thereof, shall constitute additional indebtedness secured by this Agreement and shall be paid by Owner to Administrative Agent on behalf of the Banks on demand.

8. REMEDIES CUMULATIVE; DELAY NOT WAIVER.

8.1 No right, power or remedy herein conferred upon or reserved to Administrative Agent is intended to be exclusive of any other right, power or remedy and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder or otherwise shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Administrative Agent may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

8.2 No delay or omission of Administrative Agent to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein; and every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Administrative Agent.

9. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by and due and owing to Administrative Agent and the Banks under the Credit Agreement, the other Credit Documents or the Collateral Documents; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); third, to the principal amounts of the Obligations outstanding; fourth, to any other Obligations of Owner owing to Administrative Agent or the Banks; and fifth, to, or as directed by, Owner.

10. ATTORNEY-IN-FACT. Owner hereby constitutes and appoints Administrative Agent, acting for and on behalf of itself and the Banks and each successor or assign of Administrative Agent and the Banks, the true and lawful attorney-in-fact of Owner, with full power and authority in the place and stead of Owner and in the name of Owner, Administrative Agent or otherwise to enforce all rights, interests and remedies of Owner with respect to the Collateral, including, without limitation, the right:

10.1 to ask, require, demand, receive and give acquittance for any and all moneys and claims for moneys due and to become due under or arising out of the Assigned Agreements or any of the other Collateral, including without limitation, any insurance policies;

10.2 to elect remedies thereunder and to endorse any checks or other instruments or orders in connection therewith;

10.3 to file any claims or take any action or institute any proceedings in connection therewith which Administrative Agent may reasonably deem to be necessary or advisable;

10.4 to pay, settle or compromise all bills and claims which may be or become liens or security interests against any or all of the Collateral, or any part thereof, unless a bond or other security satisfactory to Administrative Agent has been provided; and

10.5 upon foreclosure and to the extent provided in the Consents, to do any and every act which Owner may do on its behalf with respect to the Collateral or any part thereof and to exercise any or all of Owner's rights and remedies under any or all of the Assigned Agreements;

provided, however, that Administrative Agent shall not exercise any such rights except upon the occurrence and continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable.

11. ADMINISTRATIVE AGENT MAY PERFORM. Upon the occurrence and during the continuance of an Event of Default, if Owner fails to perform any agreement contained herein, Administrative Agent may itself perform, or cause performance of, such agreement, and the reasonable expenses of Administrative Agent incurred in connection therewith shall be part of the Obligations.

## 12. PERFECTION; FURTHER ASSURANCES.

12.1 Owner agrees that from time to time, at the expense of Owner, Owner shall promptly execute and deliver all instruments and documents, and take all action, that may be reasonably necessary, or that Administrative Agent may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Owner shall

(a) if any Collateral shall be evidenced by a promissory note or other instrument in excess of \$5,000, deliver and pledge to Administrative Agent for the benefit of the Banks such note duly endorsed without recourse, and accompanied by duly executed instruments of transfer or assignment, all in form and substance satisfactory to Administrative Agent; and (b) execute and deliver to Administrative Agent such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as Administrative Agent may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

12.2 Owner hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Owner where permitted by law.

12.3 Owner shall pay all filing, registration and recording fees and all re-filing, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, any agreement supplemental hereto, any financing statements, and any instruments of further assurance.

12.4 Owner shall, promptly upon request, provide to Administrative Agent all information and evidence it may reasonably request concerning the Collateral to enable Administrative Agent to enforce the provisions of this Agreement.

13. PLACE OF BUSINESS; LOCATION OF RECORDS. Unless Administrative Agent is otherwise notified under Section 5.4, the place of business and chief executive office of Owner is, and all records of Owner concerning the Collateral are and will be, located at the address set forth in Schedule 4.24 to the Credit Agreement and Owner is, and will be, a \_\_\_\_\_ organized under the laws of the state of Delaware.

14. CONTINUING ASSIGNMENT AND SECURITY INTEREST. This Agreement shall create a continuing assignment of, and security interest in, the Collateral and shall (a) remain in full force and effect until payment in full of the Obligations, (b) be binding upon Owner, its successors and assigns; provided, however, that the obligations of Owner, its successors and assigns hereunder may not be assigned without the prior written consent of Administrative Agent; and (c) inure, together with the rights and remedies of Administrative Agent, to the benefit of Administrative Agent, the Banks and their respective successors, transferees and assigns. Without limiting the generality of the foregoing but subject to the terms of the Credit Agreement, Administrative Agent or any of the Banks may assign or otherwise transfer all or any part of or interest in the Notes and the other Credit Documents or other evidence of indebtedness held by them to any other Person to the extent permitted by and in accordance with the Credit Agreement, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Banks herein or otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by Administrative Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any person on the indebtedness secured hereby. If this Agreement shall be terminated or revoked by operation of law, Owner will indemnify and save Administrative Agent and the Banks harmless from any loss which may be suffered or incurred by Administrative Agent and the Banks in acting hereunder prior to the receipt by Administrative Agent, its successors, transferees, or assigns of notice of such termination or revocation.

15. TERMINATION OF SECURITY INTEREST. Upon the indefeasible payment in full of the Obligations, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to Owner. Upon any such termination, Administrative Agent will, at Owner's expense, execute and, subject to Section 21 hereof, deliver to Owner such documents (including, without limitation, UCC-3 termination statements) as Owner shall reasonably request to evidence such termination.

16. ATTORNEYS' FEES. In the event any legal action or proceeding (including, without limitation, any of the remedies provided for herein or at law) is commenced to enforce or interpret this Agreement or any provision thereof, unless Owner is the prevailing party, Owner shall indemnify each of Administrative Agent and the Banks for their reasonable attorneys' fees and other costs and expenses incurred therein, and if a judgment or award is entered in any such action or proceeding, such reasonable attorneys' fees and other costs and expenses may be made a part of such judgment or award.

17. **LIABILITY.** Recourse against the Owner, the other Portfolio Entities, the Member and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Agreement shall be limited to the extent provided in Article 9 of the Credit Agreement.

18. **AMENDMENTS; WAIVERS; CONSENTS.** No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by Owner therefrom, shall in any event be effective without the written concurrence of Administrative Agent and the Owner.

19. **NOTICES.** All notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall be effective if given in accordance with the provisions of Section 12.1 of the Credit Agreement. Notices to Owner may be given at the address of Borrower set forth in such Section 12.1.

20. **GOVERNING LAW.** This Agreement, including all matters of construction, validity, performance and the creation, validity, enforcement or priority of the lien of, and security interests created by, this Agreement in or upon the Collateral shall be governed by the laws of the state of New York, without reference to conflicts of law (other than Section 5-1401 of the New York General Obligations Law), except as required by mandatory provisions of law and except to the extent that the validity or perfection of the lien and security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the state of New York.

21. **REINSTATEMENT.** This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Administrative Agent in respect of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, liquidation of Owner or any general partner of Owner or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, Owner or any general partner of Owner or any substantial part of Owner's or any of its general partners' assets, or otherwise, all as though such payments had not been made.

22. **SEVERABILITY.** The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

23. **SURVIVAL OF PROVISIONS.** All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the Credit Agreement and the making of the Loans and extensions of credit thereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of Owner set forth herein shall terminate only upon payment of the Obligations, and the termination of all Commitments and other obligations of the Banks under the Credit Documents.

24. **HEADINGS DESCRIPTIVE.** The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.
25. **ENTIRE AGREEMENT.** This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.
26. **TIME.** Time is of the essence of this Agreement.
27. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which shall together constitute one and the same agreement.
28. **WAIVER OF JURY TRIAL.** OWNER AND ADMINISTRATIVE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP AMONG OWNER AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. OWNER AND ADMINISTRATIVE AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. OWNER AND ADMINISTRATIVE AGENT FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.
29. **ADDITIONAL WAIVERS.** Owner hereby waives and relinquishes all rights and remedies accorded by applicable law to sureties or guarantors and agrees not to assert or take advantage of any such rights or remedies, including without limitation (a) any right to require Administrative Agent or the Banks to proceed against any Portfolio Entity or any other Person or to proceed against or exhaust any security held by Administrative Agent or the Banks at any time or to pursue any other remedy in Administrative Agent's or the Banks' power before proceeding against Owner, (b) any defense that may arise by reason of the incapacity, lack of power or authority, death, dissolution, merger, termination or disability of any Portfolio Entity or any other Person or the failure of Administrative Agent or the Banks to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any Portfolio Entity or any other Person, (c) demand, presentment, protest and notice of any kind, including without limitation notice of the existence, creation or incurring of any new or additional indebtedness or obligation or of any action or non-action on the part of any Portfolio Entity, Administrative Agent, the Banks, any endorser or creditor of the foregoing or on the part of any other Person under this or any other instrument in connection with any obligation or evidence of indebtedness held by Administrative Agent or the Banks as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by Administrative Agent or the Banks,

including without limitation an election to proceed by non-judicial rather than judicial foreclosure, which destroys or otherwise impairs the subrogation rights of Owner, the right of Owner to proceed against a Portfolio Entity or another Person for reimbursement, or both, (e) any defense based on any offset against any amounts which may be owed by any Person to Owner for any reason whatsoever, (f) any defense based on any act, failure to act, delay or omission whatsoever on the part of a Portfolio Entity of the failure by a Portfolio Entity to do any act or thing or to observe or perform any covenant, condition or agreement to be observed or performed by it under the Credit Documents, (g) any defense based upon any statute or rule of law which provides that the obligation of a surety must be neither larger in amount nor in other respects more burdensome than that of the principal provided, that, upon payment in full of the Obligations, this Agreement shall no longer be of any force or effect, (h) any defense, setoff or counterclaim which may at any time be available to or asserted by a Portfolio Entity against Administrative Agent, the Banks or any other Person under the Credit Documents, (i) any duty on the part of Administrative Agent or the Banks to disclose to Owner any facts Administrative Agent or the Banks may now or hereafter know about any Portfolio Entity, regardless of whether Administrative Agent or the Banks have reason to believe that any such facts materially increase the risk beyond that which Owner intends to assume, or have reason to believe that such facts are unknown to Owner, or have a reasonable opportunity to communicate such facts to Owner, since Owner acknowledges that Owner is fully responsible for being and keeping informed of the financial condition of the Portfolio Entities and of all circumstances bearing on the risk of non-payment of any obligations and liabilities hereby guaranteed, (j) the fact that any Portfolio Entity may at any time in the future dispose of all or part of its direct or indirect interest in any other Portfolio Entity, (k) any defense based on any change in the time, manner or place of any payment under, or in any other term of, the Credit Documents or any other amendment, renewal, extension, acceleration, compromise or waiver of or any consent or departure from the terms of the Credit Documents, (l) any defense arising because of Administrative Agent's or the Banks' election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code, and (m) any defense based upon any borrowing or grant of a security interest under Section 364 of the Federal Bankruptcy Code.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned has caused this Equipment Finance Company Security Agreement to be duly executed and delivered as of the day and year first above written.

---

**a Delaware** \_\_\_\_\_

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

Name:

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

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

Name:

Title:

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

Name:

Title:

**EXHIBIT D-4E  
to the Credit Agreement**

**FORM**

**OF**

**EQUIPMENT FINANCE COMPANY SECURITY AGREEMENT**

**Dated as of \_\_\_\_\_, 200\_\_**

between

---

**a Delaware \_\_\_\_\_**

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

## TABLE OF CONTENTS

	<u>PAGE</u>
1. Definitions.....	2
2. Assignment, Pledge and Grant of Security Interest.....	2
3. Obligations Secured.....	4
4. Representations and Warranties of Owner.....	4
5. Covenants of Owner.....	5
6. Events of Default.....	5
7. Remedies Upon Event of Default.....	5
8. Remedies Cumulative; Delay Not Waiver.....	6
9. Application of Proceeds.....	7
10. Attorney-In-Fact.....	7
11. Administrative Agent May Perform.....	8
12. Perfection; Further Assurances.....	8
13. Place of Business; Location of Records.....	9
14. Continuing Assignment and Security Interest.....	9
15. Termination of Security Interest.....	9
16. Attorneys' Fees.....	9
17. Liability.....	10
18. Amendments; Waivers; Consents.....	10
19. Notices.....	10
20. Governing Law.....	10
21. Reinstatement.....	10
22. Severability.....	10
23. Survival of Provisions.....	10
24. Headings Descriptive.....	11
25. Entire Agreement.....	11
26. Time.....	11
27. Counterparts.....	11
28. Waiver of Jury Trial.....	11
29. Additional Waivers.....	11

**EXHIBIT D-6  
to Credit Agreement**

**SCHEDULE OF SECURITY FILINGS**

**KEY TO ABBREVIATIONS**

The abbreviations and words listed below when used herein have the meanings assigned to them below.

"ALSS"	=	The Office of the Alabama Secretary of State
"Administrative Agent"	=	Credit Suisse First Boston, acting through its New York Branch
"BIP1"	=	Calpine Baytown Energy Center GP, LLC, a Delaware limited liability company, as the general partner of BPO
"BIP2"	=	Calpine Baytown Energy Center LP, LLC, a Delaware limited liability company, as the limited partner of BPO
"BMCO"	=	The Office of the Clerk of Boston, Massachusetts
"BPO"	=	Baytown Energy Center, LP, a Delaware limited partnership, as Baytown Project Owner
"BRPO"	=	Broad River Investors LLC, a Delaware limited liability company, as Broad River Project Owner
"CAPO"	=	Carville Energy LLC, a Delaware limited liability company, as Carville Project Owner
"CASS"	=	The Office of the California Secretary of State
"CCFC II"	=	Calpine Construction Finance Company II, LLC, a Delaware limited liability company
"CCIP"	=	Clerk of the Court of the Iberville Parish, Louisiana
"CCOC"	=	County Clerk of Oklahoma County, Oklahoma
"CCRO"	=	The Contra Costa County, California, Recorder's Office

"CHIP1" = Calpine Channel Energy Center GP, LLC, a Delaware limited liability company, as the general partner of CHPO

"CHIP2" = Calpine Channel Energy Center LP, LLC, a Delaware limited liability company, as the limited partner of CHPO

"CHPO" = Channel Energy Center, LP, a Delaware limited partnership, as Channel Project Owner

"COIP1" = Nueces Bay Energy LLC, a Delaware limited liability company, as the general partner of COPO

"COIP2" = SkyGen SouthCoast Investors LLC, a Delaware limited liability company, as the limited partner of COPO

"COPO" = Corpus Christi Cogeneration LP, a Delaware limited partnership, as Corpus Project Owner

"COMPANY" = CCFC II Project Equipment Finance Company One, LLC, a Delaware limited liability company

"DESS" = The Office of the Delaware Secretary of State

"DEVELOPMENT" = CCFC II Development Company LLC, a Delaware limited liability company

"DPO" = Decatur Energy Center, LLC, a Delaware limited liability company, as Decatur Project Owner

"EQUIPMENT" = CCFC II Equipment Finance Company, LLC, a Delaware limited liability company

"FINANCE" = CCFC II Equipment Finance Holdings, LLC, a Delaware limited liability company

"FIP1" = Calpine Freestone, Inc., a Delaware corporation, as the general partner of FPO and TO

"FIP2" = CPN Freestone, Inc. a Delaware corporation, as the limited partner of FPO and TO

"FLSS" = The Office of the Florida Secretary of State

"FPO" = Freestone Power Generation, LP, a Texas limited partnership, as Freestone Project Owner

"HOLDINGS"	=	Calpine CCFC II Holdings, Inc., a Delaware corporation, as sole member of Borrower
"LMPO"	=	Los Medanos Energy Center LLC, a Delaware limited liability company, as Los Medanos Project Owner
"MPO"	=	Morgan Energy Center, LLC, a Delaware limited liability company, as Morgan Project Owner
"MSS"	=	The Office of the Massachusetts Secretary of State
"PIP1"	=	Calpine Oneta Power I, LLC, a Delaware limited liability company, as the general partner of PPO
"PIP2"	=	Calpine Oneta Power II, LLC, a Delaware limited liability company, as the limited partner of PPO
"PPO"	=	Calpine Oneta Power, L.P. a Delaware limited partnership, as Panda Oneta Project Owner
"SCSS"	=	The Office of the South Carolina Secretary of State
"SRPO"	=	Santa Rosa Energy LLC, a Delaware limited liability company, as Santa Rosa Project Owner
"TO"	=	Calpine Power Equipment, L.P., a Texas limited partnership
"TXSS"	=	The Office of the Texas Secretary of State

## UCC-1 FINANCING STATEMENTS

Debtor -----	Secured Party -----	Granting Document -----	Collateral -----	Filing Office -----
CCFC II	Administrative Agent (on behalf of the Banks)	Credit Agreement, Borrower Security Agreement, Depositary Agreement and Pledge and Security Agreement (Pledged Equity Interests)	All personal property, including Accounts and Equity Interests of Development and Finance	CASS, DESS

Debtor ----- BIP1	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of BPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- BIP2	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of BPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- BPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS, TXSS
Debtor ----- BRPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS, SCSS, MSS, BMCO
Debtor ----- CAPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, CCIP, DESS, TXSS
Debtor ----- CHIP1	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of CHPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- CHIP2	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of CHPO	Filing Office ----- CASS, DESS, TXSS

Debtor ----- CHPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS, TXSS
Debtor ----- COIP1	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of COPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- COIP2	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of COPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- COPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS, TXSS
Debtor ----- COMPANY	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Company One Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS
Debtor ----- DEVELOP- MENT	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Development Company Security Agreement and Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- All personal property, including Equity Interests of - Intermediate Parents, BRPO, CAPO, DPO, LMPO, MPO and SRPO	Filing Office ----- CASS, DESS
Debtor ----- DPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- ALSS, CASS, DESS, TXSS

Debtor ----- EQUIP- MENT	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Equipment Finance Security Agreement and Pledge and Security Agreement, (Pledge Equity Interests)	Collateral ----- All personal property, including equity interests of Company	Filing Office ----- CASS, DESS
Debtor ----- FINANCE	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement	Collateral ----- Pledged Equity of Equipment	Filing Office ----- CASS, DESS
Debtor ----- FIP1	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of FPO and TC	Filing Office ----- CASS, DESS, TXSS
Debtor ----- FIP2	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of FPO and TO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- FPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, TXSS
Debtor ----- HOLDINGS	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of CCFC II	Filing Office ----- CASS, DESS
Debtor ----- LMPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS

Debtor ----- MPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- ALSS, CASS, DESS, TXSS
Debtor ----- PIP1	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of PPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- PIP2	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Pledge and Security Agreement (Pledged Equity Interests)	Collateral ----- Equity Interests of PPO	Filing Office ----- CASS, DESS, TXSS
Debtor ----- PPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, CCOC, DESS, TXSS
Debtor ----- SRPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property	Filing Office ----- CASS, DESS, FLSS, BMCO, MSS
Debtor ----- TO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Project/Turbine Owner Security Agreement	Collateral ----- All personal property, including Turbine Purchase Contract	Filing Office ----- CASS, DESS, TXSS

## FIXTURE FILINGS

Debtor ----- LMPO	Secured Party ----- Administrative Agent (on behalf of the Banks)	Granting Document ----- Security Agreement	Collateral ----- All fixtures relating to the Los Medanos Project	Filing Office ----- CCRO
-------------------------	---	--	---	--------------------------------

**EXHIBIT D-7  
to Credit Agreement**

**FORM**

**OF**

**DEBT SUBORDINATION AGREEMENT**

between

---

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

## **DEBT SUBORDINATION AGREEMENT**

This SUBORDINATION AGREEMENT ("Agreement"), dated as of \_\_\_\_\_, is made by and between \_\_\_\_\_, a \_\_\_\_\_ ("Junior Claimant"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent (the "Administrative Agent") for the Senior Claimants (as defined below).

### **PREFACE**

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), has entered into that certain Credit Agreement ("Credit Agreement"), dated as of October 16, 2000, by and among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks" and, together with Administrative Agent, Lead Arrangers, Arrangers, Syndication Agents, Documentation Agents, Bookrunner and LC Bank, the "Senior Claimants"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, pursuant to which the Senior Claimants will, subject to the terms and conditions contained therein and in the other Credit Documents, provide credit facilities to Borrower in connection with Borrower's development, construction and ownership of the Projects.

B. Borrower and Junior Claimant have and/or will enter into one or more promissory notes and/or other documents and instruments (collectively, the "Subordinated Agreement") pursuant to which, subject to the terms and conditions contained therein and herein, Junior Claimant has and/or will lend to Borrower funds in a principal amount up to the amount of Contributions required or permitted to be made by Borrower under the Credit Agreement (the "Junior Claimant Loan").

C. The Senior Claimants have agreed that Borrower may incur such indebtedness to Junior Claimant under the Subordinated Agreement only if Junior Claimant shall join in this Agreement and Junior Claimant shall subordinate, to the extent and in the manner hereinafter set forth, all claims and rights in respect of the Subordinated Debt (as defined below) to all Senior Claims (as defined below) to the extent set forth in this Agreement.

### **AGREEMENT**

NOW THEREFORE, in consideration of the premises and as an inducement to the Senior Claimants to grant financial accommodations to Borrower, and in consideration of the granting thereof, the parties hereby agree as follows:

1. DEFINITIONS. All capitalized terms used herein and not otherwise defined herein shall have the meaning given in the Credit Agreement as in effect on the date hereof. As used in this Agreement, the following terms shall have the following respective meanings:

"Proceeding" means any (a) insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding of or against Borrower, its property or its creditors as such, (b) proceeding for any liquidation, dissolution or other winding-up of Borrower, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings, (c) general assignment for the benefit of creditors of Borrower or (d) other marshalling of the assets of Borrower.

"Senior Claims" means, subject in each case to Sections 3 and 8 hereof, (a) the principal of, and premium, if any, and interest on, the Loans under the Credit Agreement (including, without limitation, any interest accruing thereon at the legal rate after the commencement of any Proceeding and any additional interest that would have accrued thereon but for the commencement of such Proceeding); and (b) all other Obligations of Borrower to any Senior Claimants, whether now existing or hereafter incurred or created, under or with respect to the Credit Documents or any replacement, supplement to, or refinancing of the Loans and other Obligations of the Borrower to any Senior Claimants permitted under Section 3 hereof.

"Subordinated Debt" means all indebtedness owing to Junior Claimant arising under or in respect of the Subordinated Debt Documents.

"Subordinated Debt Documents" means the Subordinated Agreement, any promissory note or other instrument relating thereto and any other documents or instruments directly relating to the foregoing (including any amendments, replacements or substitutions thereof).

2. CERTAIN SUBORDINATION TERMS. Until all Senior Claims shall have been paid in full and the Senior Claimants' commitments irrevocably terminated under the Credit Documents, and notwithstanding anything in the Subordinated Debt Documents to the contrary:

2.1 Except as permitted under the Credit Agreement (including Sections 3.10(b) and 7.2.1(8) thereof), Borrower shall not, directly or indirectly, make any payment of principal, interest or otherwise on or in respect of the Subordinated Debt.

2.2 Except for the right to demand and accept payments permitted under the Credit Agreement or as provided in Section 2.1 or 2.5.2 of this Agreement, Junior Claimant shall not demand, sue for, or accept from Borrower or any other Person any such payment or collateral, nor take any other action to enforce or collect upon any such payment or to enforce its rights to receive any such payment, in either case in respect of the Subordinated Debt, provided, however, that nothing herein shall limit the right or ability of Junior Claimant (i) to receive payments from Borrower in respect of the Subordinated Debt as provided in Section 2.1 so long as no Event of Default under the Credit Agreement has occurred and is continuing, or

(ii) to accelerate the maturity of the Subordinated Debt at any time after the Loans under the Credit Agreement have been accelerated; and provided further that in the event that the Senior Claimants rescind the acceleration of the Loans and provide written notice to Junior Claimant thereof, or the Junior Claimant otherwise becomes aware of such rescission, Junior Claimant shall rescind the acceleration of the Subordinated Debt.

2.3 Neither Borrower nor the Junior Claimant shall take any action prejudicial to or inconsistent with the Senior Claimants' priority position over Junior Claimant created by this Agreement, including, without limitation, any action which will hinder, delay or otherwise prevent the Senior Claimants from taking any action they deem necessary to enforce rights with respect to the Senior Claims or the Lien of the Collateral Documents. Junior Claimant shall not take any action or otherwise act to contest on account of the Subordinated Debt (i) the validity or priority of any Liens or security interests granted to, or for the benefit of, the Senior Claimants, (ii) the relevant rights and duties of the Senior Claimants with respect to the Junior Claimant on account of any Subordinated Debt as established in this Agreement or (iii) Senior Claimants' exercise of remedies in accordance with the Credit Agreement and the other Credit Documents.

2.4 Each document or instrument evidencing Subordinated Debt shall bear a legend providing that payment of the Subordinated Debt thereunder has been subordinated to prior payment of the Senior Claims in the manner and to the extent set forth in this Agreement.

2.5 Without the prior written consent of the Administrative Agent, acting in its sole discretion, Junior Claimant shall not commence or join with any other creditor or creditors of Borrower in commencing any Proceeding against Borrower or the Member, but may join in any Proceeding after it has commenced. At any general meeting of creditors of Borrower or the Member, or in the event of any Proceeding, if all Senior Claims have not been paid in full at such time, Administrative Agent on behalf of the Senior Claimants is hereby irrevocably authorized at any such meeting or in any such Proceeding:

2.5.1 To enforce claims comprising Subordinated Debt in the name of Junior Claimant, by proof of debt, proof of claim, suit or otherwise;

2.5.2 To collect any assets of Borrower distributed, divided or applied by way of dividend or payment as a result of a Proceeding, or such securities issued, on account of Subordinated Debt as a result thereof and apply the same, or the proceeds of any realization upon the same that the Senior Claimants in their discretion elect to effect, to Senior Claims until all Senior Claims shall have been paid in full (the Senior Claimants hereby agreeing to render any surplus to Junior Claimant and/or other subordinated creditors, as their interests appear, or to interplead such surplus with a court of competent jurisdiction); and

2.5.3 To take generally any action in connection with any such meeting or proceeding which Junior Claimant might otherwise take in respect of the Subordinated Debt and claims relating thereto; provided, however, that Junior Claimant shall retain, to the exclusion of Senior Claimants and Administrative Agent, the right to vote claims

comprising or arising out of the Subordinated Debt in any Proceeding, including the right to vote to accept or reject any plan of partial or complete liquidation, reorganization, readjustment, arrangement, composition or extension.

After the commencement of any such Proceeding, Junior Claimant may inquire in writing of Administrative Agent on behalf of the Senior Claimants whether the Senior Claimants intend to exercise the foregoing rights with respect to the Subordinated Debt. Should the Senior Claimants fail, at least 20 days before the deadline therefor, either to file a proof of claim with respect to the Subordinated Debt and to furnish a copy thereof to the Junior Claimant, or to inform such Junior Claimant in writing that the Senior Claimants intend to exercise their rights to assert the Subordinated Debt in the manner hereinabove provided, Junior Claimant may, but shall not be required to, proceed to file a proof of claim with respect to the Subordinated Debt and take such further steps with respect thereto, not inconsistent with this Agreement, as Junior Claimant may deem proper.

2.6 Upon the occurrence and during the continuation of an Event of Default, Junior Creditor may, but shall have no obligation to, upon not less than 10 days prior written notice to Administrative Agent, purchase all of the outstanding Loans and other Obligations of Borrower owing to the Senior Claimants by irrevocably tendering, in immediately available funds, full payment of the Purchase Price (as defined below) to Senior Claimants:

2.6.1 The Purchase Price shall be equal to the total amount of Senior Claims at the time of acceleration (assuming such obligations have been accelerated);

2.6.2 Any such purchase by Junior Claimant shall be without warranty by, or recourse to, the Senior Claimants, except with respect to the legal and beneficial ownership by the Senior Claimants of the Obligations so purchased, free and clear of all Liens and rights of others; and

2.6.3 Concurrently with any such purchase the Senior Claimants shall forthwith sell, assign, transfer and convey to Junior Claimant all of their right, title and interest in and to the Credit Documents and all Liens and other security interests in favor of the Senior Claimants securing the obligations of Borrower in connection therewith.

3. CREDIT AGREEMENT AND CREDIT DOCUMENTS. Junior Claimant acknowledges that it has been provided with a copy of the Credit Agreement and has read and is familiar with the provisions of the Credit Agreement, including without limitation Article 7 thereof. Junior Claimant hereby consents to the application of Project Revenues in accordance with the Credit Agreement, including without limitation Article 7 thereof, notwithstanding anything in the Subordinated Debt Documents to the contrary.

4. TIME OF FILING. Notwithstanding the time of filing, attachment or recording of any document or other instrument, it is agreed by Junior Claimant that any liens arising under or pursuant to the Collateral Documents (as defined in the Credit Documents) shall be senior to any liens arising in favor of Junior Claimant as part of or relating to the

Subordinated Debt Documents; provided, however, that nothing herein shall be deemed to permit Junior Claimant to obtain any such liens.

5. **WRONGFUL COLLECTIONS.** Should any payment on account of, or any collateral for any part of, the Subordinated Debt be received by Junior Claimant in violation of this Agreement, such payment or collateral shall be delivered forthwith to Administrative Agent on behalf of the Senior Claimants by the recipient for application to Senior Claims, in the form received. Administrative Agent is irrevocably authorized to supply any required endorsement or assignment which may have been omitted. Until so delivered, any such payment or collateral shall be held by the recipient in trust for the Senior Claimants and shall not be commingled with other funds or property of the recipient.

6. **OWNERSHIP OF SUBORDINATED DEBT; AMENDMENT OF SUBORDINATED DEBT DOCUMENTS.**

6.1 Junior Claimant represents and warrants that it is the lawful owner of the Subordinated Debt and no part thereof has been assigned to or subordinated or subjected to any other security interest in favor of anyone other than the Senior Claimants. Junior Claimant agrees that it may not assign all or any portion of the Subordinated Debt or any of its rights or remedies under the Subordinated Debt Documents except upon the execution and delivery to Administrative Agent of an agreement by any such assignee to be bound by the terms of this Agreement (including provisions relating to assignment), in form and substance the same as this Agreement, or otherwise as may be reasonably satisfactory to Administrative Agent.

6.2 Without the prior written consent of Administrative Agent and the Required Banks, the Subordinated Debt Documents may not be amended so as to have an adverse effect upon the Senior Claims or Borrower's ability to pay the Senior Claims at any time.

7. **WAIVERS.** Administrative Agent and the Senior Claimants are hereby authorized to demand specific performance of this Agreement, whether or not Borrower shall have complied with the provisions hereof applicable to it, at any time when Junior Claimant shall have failed to comply with any provision hereof applicable to it. Junior Claimant hereby irrevocably waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance hereof in any action brought therefor by the Senior Claimants. Junior Claimant (a) further waives presentment, notice and protest in connection with all negotiable instruments evidencing Senior Claims or Subordinated Debt to which Junior Claimant may be a party, notice of the acceptance of this Agreement by the Senior Claimants, notice of any loan made, extension granted or other action taken in reliance hereon, and all demands and notices of every kind in connection with this Agreement, Senior Claims or time of payment of Senior Claims or Subordinated Debt and (b) hereby assents to any renewal, extension or postponement of the time of payment of Senior Claims or any other indulgence with respect thereto, to any increase in the amount of Senior Claims, to any substitution, exchange or release of collateral therefor and to the addition or release of any person primarily or secondarily liable thereon and assents to the provisions of any instrument, security or other writing evidencing Senior Claims.

8. **SUBROGATION; NO IMPAIRMENT OF BORROWER'S OBLIGATIONS.** Subject to and from and after the payment in full of all Senior Claims and the irrevocable termination of Senior Claimants' commitments under the Credit Documents, Junior Claimant shall be subrogated to the rights of the Senior Claimants to receive payments or distributions of cash, property or securities of Borrower applicable to the Senior Claims until all amounts owing on the Subordinated Debt shall be paid in full. For purposes of such subrogation, no payments or distributions to the Senior Claimants to which Junior Claimant would be entitled but for the provisions of this Agreement, and no payments paid over by Junior Claimant to Senior Claimants pursuant to this Agreement shall, as among the Borrower, its creditors other than the Senior Claimants, and Junior Claimant, be deemed to be a payment or distribution on account of the Subordinated Debt, it being understood that the provisions of this Agreement are intended solely for the purpose of defining the relative rights of Junior Claimant and the Senior Claimants. Nothing contained in this Agreement is intended to or shall impair, as between Borrower and Junior Claimant, the obligation of Borrower, which is absolute and unconditional, to pay to Junior Claimant the principal of and the premium, if any, and the interest on the Subordinated Debt, and all other amounts payable by Borrower under the Subordinated Debt Documents, as and when the same shall become due and payable, or to affect the relative rights of Junior Claimant and creditors of Borrower other than the Senior Claimants.

9. **REINSTATEMENT.** The obligations of Junior Claimant under this Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Claim, or any other payment to any holder of any Senior Claim in its capacity as such, is rescinded or must otherwise be restored or returned by the holder of such Senior Claims upon the occurrence of any Proceeding, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Borrower or any substantial part of its property, or otherwise, all as though such payment had not been made.

10. **BANKRUPTCY.** This Agreement shall remain in full force and effect as between the Junior Claimant and Senior Claimant notwithstanding the occurrence of any Proceeding affecting Borrower.

11. **FURTHER ASSURANCES.** Borrower and Junior Claimant shall execute and deliver to the Senior Claimants such further instruments and shall take such further action as the Senior Claimants may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

12. **SUCCESSORS AND ASSIGNS.** The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Neither the Junior Claimant nor the Senior Claimants shall have a duty to preserve rights against prior parties in any property of any kind received hereunder. Nothing contained herein shall impose on the Senior Claimants any duties with respect to any property of Borrower or Junior Claimant received hereunder.

13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, but all such counterparts shall together constitute but one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart signed by each of the parties hereto.

14. GOVERNING LAW. This Agreement is intended to take effect as a sealed instrument, shall be binding upon the parties hereto and their respective executors, administrators, other legal representatives, successors and assigns, and shall inure to the benefit of the Senior Claimants, their respective successors and assigns and shall be governed by the laws of the State of New York without reference to principles of conflict of laws (other than Section 5-1401 of the New York General Obligations Law). The parties hereto intend and agree that this Agreement shall remain binding on such parties (other than Borrower) notwithstanding the termination (except upon the payment in full of Senior Claims) or unenforceability of this Agreement as against Borrower.

**[REMINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this Subordination Agreement to be duly executed as of the date first above written.

**[JUNIOR CLAIMANT]**

a \_\_\_\_\_

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

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

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

Name:

Title:

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

Name:

Title:

**Acknowledged and Agreed:**

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

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

Name:

Title:

## TABLE OF CONTENTS

### PAGE

1.	Definitions.....	2
2.	Certain Subordination Terms.....	2
3.	Credit Agreement and Credit Documents.....	4
4.	Time of Filing.....	4
5.	Wrongful Collections.....	5
6.	Ownership of Subordinated Debt; Amendment of Subordinated Debt Documents..	5
7.	Waivers.....	5
8.	Subrogation; No Impairment of Borrower's Obligations.....	6
9.	Reinstatement.....	6
10.	Bankruptcy.....	6
11.	Further Assurances.....	6
12.	Successors and Assigns.....	6
13.	Counterparts.....	7
14.	Governing Law.....	7

**to Credit Agreement**

**AFFILIATE**

**SUBORDINATION AGREEMENT**

**Dated as of \_\_\_\_\_, 200\_**

between

\_\_\_\_\_,  
a \_\_\_\_\_,

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

## SUBORDINATION AGREEMENT

This AFFILIATE SUBORDINATION AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 200\_ is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ (the "Junior Claimant"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Senior Claimants (as defined below).

### PREFACE

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent (the Banks, Administrative Agent, the Lead Arrangers, the Arrangers, the Syndication Agents, the Documentation Agents, the Bookrunner and all financial institutions parties to the Credit Agreement, the "Senior Claimants"), have entered into that certain Credit Agreement dated as of October 16, 2000 ("Credit Agreement"), pursuant to which the Senior Claimants will, subject to the terms and conditions contained therein, provide credit facilities to Borrower in connection with the development, construction and ownership of the Projects. Pursuant to the Credit Agreement, (i) proceeds of such credit facilities will be utilized by Borrower for, among other things, distribution to Project Owner for the payment of Project Costs associated with the \_\_\_\_ Project, (ii) all Project Revenues received by Project Owner will be transferred to the Accounts held by Borrower and (iii) all O&M Costs, including the Subordinated O&M Costs, will be paid by Project Owner from funds available for such purposes in accordance with Article 7 of the Credit Agreement.

B. \_\_\_\_\_ a \_\_\_\_\_ ("Project Owner") and Junior Claimant have entered into (i) that certain \_\_\_\_\_ (the "\_\_\_\_\_") and (ii) that certain \_\_\_\_\_ (the "\_\_\_\_\_" and together with the \_\_\_\_\_, the "Subordinated Contracts") pursuant to which, subject to the terms and conditions contained therein and herein, Project Owner has agreed to pay certain fees for the [OPERATION, MAINTENANCE AND MANAGEMENT] of the \_\_\_\_ Project by Junior Claimant (the "O&M Costs"). That portion of the O&M Costs which are designated in Section \_\_\_\_ of the \_\_\_\_\_, or Section \_\_\_\_ of the \_\_\_\_\_ is referred to herein as the "Subordinated O&M Costs."

C. Project Owner and Administrative Agent, on behalf of the Banks, have entered into the Project Owner Guaranty dated as of \_\_\_\_, 200\_ (the "Guaranty") pursuant to which Project Owner has guaranteed the obligations of each of the other Portfolio Entities under

the Credit Documents, including Borrower's Obligations under the Credit Agreement and the other Credit Documents to which Borrower is a party.

D. The Senior Claimants have agreed that Project Owner may enter into each of the Subordinated Contracts only if Junior Claimant shall join in this Agreement and Junior Claimant shall subordinate, to the extent and in the manner hereinafter set forth, all claims and rights in respect of the Subordinated O&M Costs to all Senior Claims (as defined below) to the extent set forth in this Agreement.

## **AGREEMENT**

NOW THEREFORE, in consideration of the premises and as an inducement to the Senior Claimants to grant financial accommodations to Borrower, and in consideration of the granting thereof, the parties hereby agree as follows:

1. **DEFINITIONS.** All capitalized terms used herein and not otherwise defined herein shall have the meaning given in the Credit Agreement. As used in this Agreement, the following terms shall have the following respective meanings:

"Proceeding" means any (a) insolvency, bankruptcy, receivership, liquidation, reorganization, readjustment, composition or other similar proceeding relating to Project Owner, its property or its creditors as such, (b) proceeding for any liquidation, dissolution or other winding-up of Project Owner, voluntary or involuntary, whether or not involving insolvency or bankruptcy proceedings, (c) assignment for the benefit of creditors of Project Owner or (d) other marshaling of the assets of Project Owner.

"Senior Claims" means (a) the principal of, and premium, if any, and interest on the Loans under the Credit Agreement (including, without limitation, any interest accruing thereon at the legal rate after the commencement of any Proceeding and any additional interest that would have accrued thereon but for the commencement of such Proceeding) and all other Obligations of Borrower to any Senior Claimants, whether now existing or hereafter incurred or created, under or with respect to the Credit Documents and any related documents; and (b) all of the Obligations of Project Owner to the Senior Claimants, whether now existing or hereafter incurred or created, under or with respect to the Credit Documents, including without limitation the Guaranty, and any related documents.

2. **CERTAIN SUBORDINATION TERMS.** Until all Senior Claims shall have been paid in full and the Senior Claimants' commitments irrevocably terminated under the Credit Documents, and notwithstanding anything in either of the Subordinated Contracts to the contrary:

2.1 Junior Claimant acknowledges that, notwithstanding anything in either of the Subordinated Contracts to the contrary, Project Owner may pay to Junior Claimant Subordinated O&M Costs due to Junior Claimant with funds available for distribution by Borrower to Project Owner under Waterfall Level 6 of Section 7.2 of the Credit Agreement only if and to the extent monies are sufficient for the payment thereof pursuant to such Section 7.2.

Except as provided in this Section 2.1, Project Owner shall not, directly or indirectly, make any payment on or in respect of the Subordinated O&M Costs, and Project Owner shall not in any event transfer any collateral for any part of, the Subordinated O&M Costs.

2.2 Except for the right to demand and accept payments set forth in Section 2.1 hereof, Junior Claimant shall not demand, sue for, or accept directly or indirectly from Project Owner any such payment or collateral, nor take any other action to enforce or collect upon any such payment or to enforce its rights, in either case in respect of the Subordinated O&M Costs, nor set off against obligations owed to Project Owner under either of the Subordinated Contracts or otherwise against any part of the Subordinated O&M Costs. Notwithstanding anything in either of the Subordinated Contracts to the contrary, the failure by Project Owner to pay any Subordinated O&M Costs shall not under any circumstances, except where the funds are available therefor and payment is permitted under Section 2.1 hereof, constitute a breach or default under either of the Subordinated Contracts.

2.3 Neither Project Owner nor Junior Claimant shall otherwise take any action prejudicial to or inconsistent with the Senior Claimants' priority position over Junior Claimant created by this Agreement.

2.4 Each negotiable instrument or promissory note evidencing a Subordinated O&M Cost or a lien, if any, in respect thereof shall bear a legend (or otherwise include provisions satisfactory to Administrative Agent) providing that payment of the Subordinated O&M Costs thereunder and the priority of any such lien have been subordinated to prior payment of the Senior Claims and the liens in respect thereof in the manner and to the extent set forth in this Agreement.

2.5 Junior Claimant shall not commence or voluntarily permit Project Owner to commence or join with any other creditor or creditors of Project Owner in commencing any Proceeding against Project Owner or any other Portfolio Entity or member or partner thereof; provided that Junior Claimant shall not be so restricted with respect to claims arising directly out of Project Owner's failure to perform its obligations or make any payments of O&M Costs under either of the Subordinated Contracts other than the Subordinated O&M Costs. At any general meeting of creditors of Project Owner or in the event of any Proceeding, if all Senior Claims have not been paid in full at such time, Administrative Agent on behalf of the Senior Claimants is hereby irrevocably authorized at any such meeting or in any such Proceeding:

2.5.1 to enforce claims comprising the Subordinated O&M Costs in the name of Junior Claimant, by proof of debt, proof of claim, suit or otherwise;

2.5.2 to collect any assets of Project Owner distributed, divided or applied by way of dividend or payment as a result of a Proceeding, or such securities issued, on account of the Subordinated O&M Costs as a result thereof and apply the same, or the proceeds of any realization upon the same that the Senior Claimants in their discretion elect to effect, to Senior Claims until all Senior Claims shall have been paid in full (the Senior Claimants hereby agreeing to render any surplus as a court of competent jurisdiction may direct); and

2.5.3 other than voting claims comprising the Subordinated O&M Costs, to take generally any action in connection with any such meeting or proceeding which Junior Claimant might otherwise take in respect of the Subordinated O&M Costs and claims relating thereto.

After the commencement of any such Proceeding, Junior Claimant may inquire of Administrative Agent in writing whether Administrative Agent intends to exercise the foregoing rights with respect to the Subordinated O&M Costs. Should Administrative Agent fail, within a reasonable time after receipt of such inquiry, either to file a proof of claim with respect to the Subordinated O&M Costs and to furnish a copy thereof to Junior Claimant, or to inform Junior Claimant in writing that the Senior Claimants intend to exercise their rights to assert the Subordinated O&M Costs in the manner hereinabove provided, Junior Claimant may, but shall not be required to, proceed to file a proof of claim with respect to the Subordinated O&M Costs and take such further steps with respect thereto, not inconsistent with this Agreement, as Junior Claimant may deem proper.

2.6 In the event that (a) the Senior Claimants foreclose on any or all of their liens on all or a substantial portion of the assets constituting one or more of the Projects (or succeed to such assets by way of a transfer in lieu of foreclosure), and (b) Senior Claimants assume either of the Subordinated Contracts in accordance with the terms of the Consent and Agreement dated as of \_\_\_\_\_, 200\_ among Junior Claimant, Administrative Agent and Project Owner (the "Consent") (or enter into a new agreement pursuant to Section 1(d) of the Consent), then notwithstanding anything in either of the Subordinated Contracts to the contrary, (i) Project Owner (or any successor or assign) shall not be obligated to pay the Subordinated O&M Costs, if any, then due, except as set forth in Section 2.6.1 or 2.6.2, as applicable, (ii) each of the Subordinated Contracts shall remain in full force and effect notwithstanding any such foreclosure (but subject to the terms and conditions thereof), and (iii) the following shall apply:

2.6.1 In the event that the Senior Claimants (including, for purposes of this Section 2.6.1, their Affiliates) or any of them become the owners of one or more of the Projects, the Senior Claimants shall apply to the outstanding balance, if any, of the Subordinated O&M Costs relating to such Project(s) on (or promptly after) the last day of each calendar quarter all Project Operating Revenues relating to such Project(s) received in excess of amounts applied during such quarterly period to (a) the payment or application of all costs for the operation and maintenance of such Projects in the nature of those costs defined as "Senior O&M Costs" payable under Waterfall Level 1 of Section 7.2 of the Credit Agreement, which expenditures shall not be materially greater than as are consistent with operation of such Project(s) in accordance with prudent operating practices (as determined with reference to similar facilities under similar operating conditions), (b) the payment of a return of and on the investment of the Senior Claimants, whether such investment is in the form of equity or debt (and whether or not the Senior Claimants have foreclosed on their liens by way of a partial or full credit bid or otherwise), which payments shall not be greater than the periodic payments which would have been payable under the priorities specified in Waterfall Levels 2 through 5 and 8 of Section 7.2 of the Credit Agreement as in effect immediately prior to such foreclosure, as reasonably determined by the Senior Claimants (assuming for purposes of calculating such payment that (i) Loans had been extended to Borrower at the Base Rate in the amount of the

unpaid balance of all Loans owed to the Senior Claimants immediately prior to the exercise by such parties of their remedies, (ii) such deemed Loans have not been repaid upon foreclosure, (iii) such deemed Loans are to be deemed amortized straight line through the Loan Maturity Date (without giving effect to any acceleration) and (iv) all outstanding Letters of Credit were fully drawn upon by the respective LC Beneficiaries immediately prior to foreclosure) and (c) funding of reserves in an amount which would have been available for the benefit of the Senior Claimants under Waterfall Level 5 of Section 7.2 of the Credit Agreement as in effect immediately prior to such foreclosure. Upon such foreclosure by the Senior Claimants, each of the Subordinated Contracts, as applicable, shall be deemed to be amended to reflect such arrangement.

2.6.2 In the event that the Senior Claimants sell one or more of the Projects to a third party ("New Owner"), the New Owner shall apply to the outstanding balance, if any, of the Subordinated O&M Costs relating to such Project(s) on (or promptly after) the last day of each calendar quarter all Project Operating Revenues relating to such Project(s) received in excess of amounts applied during such quarterly period to (a) the payment of all costs for the operation and maintenance of such Project(s) in the nature of those costs defined as "Senior O&M Costs" payable under Waterfall Level 1 of Section 7.2 of the Credit Agreement, which expenditures shall not be materially greater than as are consistent with operation of such Project(s) in accordance with prudent operating practices (as determined with reference to similar facilities under similar operating conditions), (b) the periodic payment of fees, interest and principal as required by the lenders to the New Owner, which payments shall not be materially greater on an annual basis than such amounts payable by Borrower to the Senior Claimants under the Credit Agreement as in effect immediately prior to foreclosure by the Senior Claimants, as reasonably determined by the lenders to the New Owner; provided that greater payments shall be permitted so long as the payment of such excess amounts is subordinated to the Subordinated O&M Costs and (c) the funding of reserves not materially in excess of the amounts which would have been available for the benefit of the Senior Claimants under Waterfall Level 5 of Section 7.2 the Credit Agreement as in effect immediately prior to such foreclosure. The lenders to such New Owner shall be deemed to be Senior Claimants hereunder, and the payments specified in clause (b) and (c) of this Section 2.6.2 shall be deemed to be Senior Claims under this Agreement. Subject to Junior Claimant's rights under Section \_\_\_\_ of the \_\_\_\_\_, Section \_\_\_\_\_ of the \_\_\_\_\_ and Section \_\_\_\_ of the \_\_\_\_\_, [SECTION REFERENCES RELATING TO JUNIOR CLAIMANT'S RIGHT TO TERMINATE UPON CHANGE OF CONTROL] Junior Claimant agrees that it will execute and deliver to New Owner's lenders such new subordination agreement, such amendments to each of the Subordinated Contracts, and such other instruments, in each case consistent with the terms of this Agreement, and Junior Claimant shall take such further action, as the lenders to the New Owner reasonably request in furtherance of this Section 2.6.2.

3. CREDIT AGREEMENT. Junior Claimant acknowledges that it has been provided with a copy of the Credit Agreement and the Guaranty and has read and is familiar with the provisions of the Credit Agreement, including without limitation Article 7 thereof. Junior Claimant hereby consents to the application of Project Revenues in the order of priority set forth in the Credit Agreement and Guaranty, including without limitation Article 7 of the Credit Agreement, notwithstanding anything in either of the Subordinated Contracts to the contrary.

4. TIME OF FILING. Notwithstanding the time of filing, attachment or recording of any document or other instrument, it is agreed by Junior Claimant that any liens arising under or pursuant to the Collateral Documents (as defined in the Credit Documents) shall be senior to any liens arising in favor of Junior Claimant as part of or relating to either of the Subordinated Contracts.

5. WRONGFUL COLLECTIONS. Should any payment on account of, or any collateral for any part of, the Subordinated O&M Costs be received by Junior Claimant in violation of this Agreement, such payment or collateral shall be delivered forthwith to Administrative Agent on behalf of the Senior Claimants by the recipient for application to Senior Claims, in the form received. Administrative Agent is irrevocably authorized to supply any required endorsement or assignment which may have been omitted. Until so delivered, any such payment or collateral shall be held by the recipient in trust for the Senior Claimants and shall not be commingled with other funds or property of the recipient.

6. OWNERSHIP OF SUBORDINATED O&M COSTS; AMENDMENT OF SUBORDINATED CONTRACTS.

6.1 Junior Claimant represents and warrants that it is the lawful owner of the right to receive the Subordinated O&M Costs and no part thereof has been assigned to or subordinated or subjected to any other security interest in favor of anyone other than the Senior Claimants. Junior Claimant shall not assign all or any portion of the Subordinated O&M Costs, its commitment under, or any of its rights or remedies under, either of the Subordinated Contracts without the prior written consent of Administrative Agent and the Required Banks, which may be granted or withheld in their sole discretion, and in any event only upon the execution and delivery to Administrative Agent of an agreement by any such assignee to be bound by the terms of this Agreement (including provisions relating to assignment), in form and substance the same as this Agreement, or otherwise as may be reasonably satisfactory to Administrative Agent.

6.2 Subject to Section 6.13.1 of the Credit Agreement and Section 3(f) of the Guaranty, Junior Claimant shall not amend either of the Subordinated Contracts without Administrative Agent's prior written consent.

7. WAIVERS. Administrative Agent and the Senior Claimants are hereby authorized to demand specific performance of this Agreement, whether or not Project Owner shall have complied with the provisions hereof applicable to it, at any time when Junior Claimant shall have failed to comply with any provision hereof applicable to it. Junior Claimant hereby irrevocably waives any defense based on the adequacy of a remedy at law which might be asserted as a bar to the remedy of specific performance hereof in any action brought therefor by the Senior Claimants. Junior Claimant further waives presentment, notice and protest in connection with all negotiable instruments evidencing Senior Claims or Subordinated O&M Costs to which Junior Claimant may be a party, notice of the acceptance of this Agreement by the Senior Claimants, notice of any loan made, extension granted or other action taken in reliance hereon, and all demands and notices of every kind in connection with this Agreement, Senior Claims or time of payment of Senior Claims or Subordinated O&M Costs. Junior Claimant hereby assents to any renewal, extension or postponement of the time of payment of Senior

Claims or any other indulgence with respect thereto, to any increase in the amount of Senior Claims, to any substitution, exchange or release of collateral therefor and to the addition or release of any person primarily or secondarily liable thereon and assents to the provisions of any instrument, security or other writing evidencing Senior Claims.

8. **SUBROGATION; NO IMPAIRMENT OF PROJECT OWNER'S OBLIGATIONS.** Subject to and from and after the indefeasible payment in full of all Senior Claims and the irrevocable termination of Senior Claimants' commitments under the Credit Documents, Junior Claimant shall be subrogated to the rights of the Senior Claimants to receive payments or distributions of cash, property or securities of Project Owner applicable to the Senior Claims until all amounts owing on the Subordinated O&M Costs shall be paid in full, it being understood that the provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of Junior Claimant and the Senior Claimants; provided that such rights of subrogation shall be nonexclusive, and shall be shared with any other subordinated creditor of the Project Owner which has entered into an agreement with the Administrative Agent providing similar rights of subrogation. Nothing contained in this Agreement is intended to or shall impair, as between Project Owner, its creditors other than the Senior Claimants and Junior Claimant, the obligation of Project Owner, which is absolute and unconditional, to pay to Junior Claimant the principal of and the premium, if any, and the interest on the Subordinated O&M Costs as and when the same shall become due and payable in accordance with the terms of this Agreement and the Subordinated Contracts, or to affect the relative rights of Junior Claimant and creditors of Project Owner other than the Senior Claimants.

9. **REINSTATEMENT.** The obligations of Junior Claimant under this Agreement shall continue to be effective, or be reinstated, as the case may be, if at any time any payment in respect of any Senior Claim, or any other payment to any holder of any Senior Claim in its capacity as such, is rescinded or must otherwise be restored or returned by the holder of such Senior Claims upon the occurrence of any Proceeding, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, Project Owner or any substantial part of its property, or otherwise, all as though such payment had not been made.

10. **BANKRUPTCY.** This Agreement shall remain in full force and effect as between the Junior Claimant and Senior Claimant notwithstanding the occurrence of any Proceeding affecting Project Owner.

11. **FURTHER ASSURANCES.** Project Owner and Junior Claimant shall execute and deliver to the Senior Claimants such further instruments and shall take such further action as the Senior Claimants may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

12. **SUCCESSORS AND ASSIGNS.** The rights granted to the Senior Claimants hereunder are solely for their protection and nothing herein contained shall impose on the Senior Claimants any duties with respect to any property of Project Owner or Junior Claimant received hereunder. The Senior Claimants shall have no duty to preserve rights against prior parties in any property of any kind received hereunder.

13. COUNTERPARTS. This Agreement may be executed in any number of counterparts, but all such counterparts shall together constitute but one agreement. In making proof of this Agreement, it shall not be necessary to produce or account for more than one counterpart signed by each of the parties hereto.

14. GOVERNING LAW. This Agreement is intended to take effect as a sealed instrument, shall be binding upon the parties hereto and their respective executors, administrators, other legal representatives, successors and assigns, and shall inure to the benefit of the Senior Claimants, their respective successors and assigns and shall be governed by the laws of the State of New York without reference to principles of conflict of laws (other than Section 5-1401 of the New York General Obligations Law). The parties hereto intend and agree that this Agreement shall remain binding on such parties (other than Project Owner) notwithstanding the termination (except upon the payment in full of Senior Claims) or unenforceability of this Agreement as against Project Owner.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

\_\_\_\_\_, a \_\_\_\_\_, as Junior Claimant

By: \_\_\_\_\_, a \_\_\_\_\_, its General Partner

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

Title:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent**

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

Name:

Title:

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

Name:

Title:

The undersigned acknowledges and agrees to the foregoing:

**[NAME OF PROJECT OWNER],**

a \_\_\_\_\_

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

Name:

Title:

**EXHIBIT D-9**

**PLEDGE AND SECURITY AGREEMENT (PLEDGED EQUITY INTERESTS)**

This PLEDGE AND SECURITY AGREEMENT (PLEDGED EQUITY INTERESTS) (this "Agreement"), dated as of \_\_\_\_\_, 200\_\_, is entered into by and among \_\_\_\_\_, a Delaware \_\_\_\_\_ ("Pledgor"), \_\_\_\_\_ a Delaware \_\_\_\_\_ (the "Pledged Portfolio Entity"), and CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks (as defined below). [FORM MAKES ASSUMPTION THAT PLEDGOR IS A PORTFOLIO ENTITY. IN CASE OF PLEDGE BY NON-AFFILIATE PARENT OR MEMBER, AMEND ACCORDINGLY]

**PREFACE**

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), has entered into that certain Credit Agreement, dated as of October 16, 2000 (as modified, supplemented or amended from time to time, the "Credit Agreement"), among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities, LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, pursuant to which the Banks agreed to make certain advances of credit to Borrower in the amounts specified and on the terms and subject to the conditions set forth therein. For purposes of this Agreement the term "Banks" shall include the Administrative Agent, the Lead Arrangers, the Arrangers, the Syndication Agents, the Documentation Agents, the Bookrunner and the Banks (as such terms are defined in the Credit Agreement).

B. Borrower is the \_\_\_\_\_ of Pledgor. [DESCRIBE RELATIONSHIP]

C. Pledgor is the [GENERAL PARTNER][LIMITED PARTNER][SOLE MEMBER] of the Pledged Portfolio Entity pursuant to that certain \_\_\_\_\_ Agreement of \_\_\_\_\_, dated as of \_\_\_\_\_ (as modified, supplemented or amended from time to time in accordance with its terms, the "Constituent Agreement").

D. Each of Pledgor and the Pledged Portfolio Entity acknowledges that it will benefit, directly and indirectly, if Administrative Agent and the Banks enter into the Credit Agreement.

E. As a condition precedent to the Banks' making the advances of credit contemplated by the Credit Agreement, the Banks require that the Pledged Portfolio Entity and Pledgor shall have executed this Agreement.

## AGREEMENT

In consideration of the premises herein, and in order to induce the Banks to enter into the Credit Agreement and to make the advances of credit pursuant to the terms thereof, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Pledged Portfolio Entity and Pledgor hereby agree with Administrative Agent for the benefit of Administrative Agent and the Banks as follows:

### 1. DEFINITIONS.

1.1 "UCC" shall mean the Uniform Commercial Code as the same may, from time to time, be in effect in the State of New York; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of New York, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

1.2 All capitalized terms used, but not otherwise defined herein, shall have the meanings provided in the Credit Agreement. The rules of interpretation contained in Exhibit A to the Credit Agreement shall apply to this Agreement.

### 2. ASSIGNMENT, PLEDGE AND GRANT OF SECURITY INTEREST.

2.1 To secure the timely payment and performance of the Obligations (as defined below), Pledgor hereby assigns and pledges to Administrative Agent for the benefit of Administrative Agent and the Banks, and grants to Administrative Agent for the benefit of Administrative Agent and the Banks a security interest in all the estate, right, title and interest of Pledgor, now owned or hereafter acquired, in, to and under any and all of the following (the "Collateral"):

Any and all of Pledgor's [PARTNERSHIP][LIMITED LIABILITY COMPANY] interest(s), whether now owned or subsequently acquired, in the Pledged Portfolio Entity, including, without limitation, the certificates representing such interest(s) and Pledgor's share of (i) all rights to receive all income, gain, profit, loss or other items allocated or distributed to Pledgor under the Constituent Agreement; (ii) all rights to receive all income, profit or other distributions of any nature whatsoever by the Pledged Portfolio Entity with respect to such interest(s); (iii) all of Pledgor's capital or ownership interest, including capital accounts, in the Pledged Portfolio Entity, and all accounts, deposits or credits of any kind with the Pledged Portfolio Entity; (iv) all of Pledgor's voting rights in or rights to control or direct the affairs of the Pledged Portfolio Entity; (v) all of Pledgor's right, title and interest in the Pledged Portfolio Entity, in or to any and all of the Pledged Portfolio Entity's assets or properties; (vi) all other right, title and interest in or to the Pledged Portfolio Entity, as such rights are derived from Pledgor's interest in the Pledged Portfolio Entity; (vii) all claims of Pledgor for damages arising out of or for breach of or default relating to the Collateral; and (viii) all rights of Pledgor to

terminate, amend, supplement, modify or waive performance under the Constituent Agreement, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder; and (ix) all proceeds of any of the above.

**[ADD FOR MEMBER PLEDGE AGREEMENT] [PROVIDED, HOWEVER, THAT "COLLATERAL" SHALL NOT INCLUDE ANY CASH OR OTHER PROPERTY DISTRIBUTED TO PLEDGOR FOLLOWING A DISTRIBUTION MADE PURSUANT TO WATERFALL LEVELS 8 OR 10, AS THE CASE MAY BE, OF THE CREDIT AGREEMENT.]**

**[ADD FOR NON-AFFILIATE PARENT PLEDGE AGREEMENT] [PROVIDED, HOWEVER, THAT "COLLATERAL" SHALL NOT INCLUDE ANY CASH OR OTHER PROPERTY DISTRIBUTED TO PLEDGOR FOLLOWING A DISTRIBUTION MADE PURSUANT TO WATERFALL LEVEL 7 OF THE CREDIT AGREEMENT.]**

2.2 If any default by Pledgor under the Constituent Agreement (a "Constituent Agreement Default") shall occur, Administrative Agent shall, at its option, be permitted (but shall not be obligated) to remedy any such Constituent Agreement Default by giving written notice of such intent to the Pledged Portfolio Entity and Pledgor. Administrative Agent shall have a period of 60 days after giving such notice in which to cure such Constituent Agreement Default. In the event that any such Constituent Agreement Default (except monetary defaults) shall not be reasonably curable within such sixty-day period, neither the Pledged Portfolio Entity nor any Person acting on behalf of the Pledged Portfolio Entity, including, without limitation, a general partner of the Pledged Portfolio Entity, shall exercise any remedies thereunder if Administrative Agent shall, within such 60-day period, initiate action to cure such Constituent Agreement Default and proceed diligently to the curing thereof within 120 days after giving written notice of a Constituent Agreement Default. Any cure by Administrative Agent of a Constituent Agreement Default shall not be construed as an assumption by Administrative Agent or any of the Banks of any obligations, covenants or agreements of Pledgor under the Constituent Agreement, and, subject to Section 12.13 of the Credit Agreement, neither Administrative Agent nor any of the Banks shall be liable for any action taken pursuant to this subsection 2.2 to cure any such Constituent Agreement Default, except as set forth in Section 12.13 of the Credit Agreement. This Agreement shall not be deemed to release or to affect in any way the obligations of Pledgor under the Constituent Agreement.

3. OBLIGATIONS SECURED. Without limiting the generality of the foregoing, this Agreement and all of the Collateral secure the payment and performance when due of all Obligations (as defined in the Credit Agreement) of Borrower and each other Portfolio Entity (including Pledgor) to the Administrative Agent and the Banks pursuant to the Credit Documents (the "Obligations"); provided, however, the Obligations as defined in this Section 3 shall not include any Obligations relating to or arising from Projects that have achieved Operation prior to the effective date of this Agreement.

4. EVENTS OF DEFAULT. The occurrence of any of the following events (each, an "Event of Default," and collectively the "Events of Default"), whatever the reason for such Event of Default, and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body, shall entitle Administrative Agent to exercise any and all of its rights and remedies hereunder or at law:

4.1 The occurrence (whether as a result of acts or omissions by the Pledged Portfolio Entity or any other Person) of an Event of Default (as "Event of Default" is defined under the Credit Agreement or the respective Credit Document) under the Credit Agreement or any of the other Credit Documents; or

4.2 The failure on the part of Pledgor to observe or perform any covenant contained in this Agreement on its part to be observed or performed, and such failure shall continue unremedied for a period of 30 days after Pledgor becomes aware thereof or receives written notice thereof from Administrative Agent; provided, however, that, if (i) such failure cannot be cured within such 30 day period, (ii) such failure is susceptible of cure, (iii) Pledgor is proceeding with diligence and in good faith to cure such failure, (iv) the existence of such failure has not had and cannot after considering the nature of the cure be reasonably expected to have a Material Adverse Effect on Borrower and (v) Administrative Agent shall have received an officer's certificate signed by a Responsible Officer of Pledgor to the effect of clauses (i), (ii), (iii) and (iv) above and stating what action Pledgor is taking to cure such failure, then such 30 day cure period shall be extended to such date, not to exceed a total of 90 days, as shall be necessary for Pledgor diligently to cure such failure; or

4.3 Any representation or warranty of Pledgor contained in this Agreement shall contain an untrue or misleading statement of a material fact or shall fail to state a material fact necessary to make the statements therein not misleading as of the date made which could reasonably be expected to result in a Material Adverse Effect on Borrower; or

4.4 The impairment of the priority of the security interest in the Collateral granted herein.

5. REPRESENTATIONS AND WARRANTIES OF PLEDGOR. Pledgor represents and warrants as follows as of the date hereof:

5.1 Pledgor (i) is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of the State of Delaware with all requisite corporate power and authority under the laws of such state to enter into the Constituent Agreement and to perform its obligations thereunder and to consummate the transactions contemplated thereby, (ii) is duly qualified, authorized to do business and in good standing in each jurisdiction where the character of its properties or the nature of its activities makes such qualification necessary, [AND] (iii) has the power (A) to carry on its business as now being conducted and as proposed to be conducted by it, (B) to execute, deliver and perform each Operative Document to which it is a party, in its individual capacity, (C) to take all action as may be necessary to consummate the transactions contemplated thereunder, and (D) to grant the liens and security interest provided for in this Agreement [AND (iv) [INSERT IF CONSTITUENT DOCUMENTS GRANT PLEDGOR SIGNATORY POWERS] HAS THE POWER AND AUTHORITY UNDER THE CONSTITUENT AGREEMENT TO EXECUTE AND DELIVER, ON BEHALF OF THE PLEDGED PORTFOLIO ENTITY, EACH OPERATIVE DOCUMENT TO WHICH THE PLEDGED PORTFOLIO ENTITY IS A PARTY].

5.2 Pledgor has the full right, power and authority to execute, deliver and perform this Agreement and to pledge and assign the Collateral. **[INSERT IF PLEDGOR IS**

SOLE MEMBER, GENERAL PARTNER OR OTHERWISE CONTROLS PLEDGED PORTFOLIO ENTITY: PLEDGOR HAS (i) TAKEN ALL NECESSARY ACTION TO AUTHORIZE THE EXECUTION, DELIVERY AND PERFORMANCE OF THE CONSTITUENT AGREEMENT, THIS AGREEMENT AND EACH OTHER OPERATIVE DOCUMENT TO WHICH THE PLEDGED PORTFOLIO ENTITY IS A PARTY; AND (ii) DULY EXECUTED AND DELIVERED THE CONSTITUENT AGREEMENT, THIS AGREEMENT AND EACH OPERATIVE DOCUMENT TO WHICH THE PLEDGED PORTFOLIO ENTITY IS A PARTY, IN EACH CASE ON BEHALF OF THE PLEDGED PORTFOLIO ENTITY]. Neither Pledgor's execution and delivery of any Operative Document nor its consummation of the transactions contemplated thereby nor its compliance with the terms thereof (x) does or will contravene the Constituent Agreement, the governing or other constituent documents of Pledgor or any other Legal Requirement applicable to or binding on Pledgor or any of its properties, or (y) does or will contravene or result in any breach of or constitute any default under, or result in or require the creation of any Lien (other than Permitted Liens) upon any of its property under, any agreement or instrument to which it is a party or by which it or any of its properties may be bound or affected.

5.3 The Constituent Agreement has been duly authorized, executed and delivered by Pledgor, has not been amended or otherwise modified, is in full force and effect, and is binding upon and enforceable against Pledgor in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and by the effect of general equitable principles. There exists no default under the Constituent Agreement by Pledgor, or to the best of Pledgor's knowledge, by any other party thereto that, with respect to such other party, could reasonably be expected to have a Material Adverse Effect on Borrower or the Project directly or indirectly owned by the Pledged Portfolio Entity.

5.4 No consent of any other party (including, without limitation, any creditor, shareholder or partner of Pledgor) and no consent, authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the pledge by Pledgor of the Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by Pledgor or (ii) for the exercise by the Administrative Agent of the voting or other rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement (except as has been obtained or made or as may be required in connection with disposition of any Collateral by laws affecting the offering and sale of securities generally).

5.5 Pledgor is the lawful owner of and has full right, title and interest in and to, its interest in the Pledged Portfolio Entity together with the other rights and interests comprising the Collateral described above, subject to no mortgages, liens, charges, or encumbrances of any kind except Permitted Liens.

5.6 Pledgor has not previously assigned any of its rights under the Constituent Agreement or any of the Collateral except as specifically permitted by the Credit Documents.

5.7 Pledgor has not executed and is not aware of any effective financing statement, security agreement or other instrument similar in effect covering all or any part of the

Collateral on file in any recording office, except such as may have been filed pursuant to this Agreement and the other Credit Documents.

5.8 This Agreement is the legal, valid and binding obligation of Pledgor, enforceable against Pledgor in accordance with its terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, moratorium, reorganization or other similar laws affecting the enforcement of creditors' rights and by the effect of general equitable principles. Upon filing the UCC-1 financing statements executed by Pledgor with respect to the Collateral at the office of the Secretary of State for the States of Delaware and \_\_\_\_\_ pursuant to this Agreement, the delivery of all certificates or instruments representing or evidencing the Collateral and the execution of this Agreement by the Pledged Portfolio Entity, Administrative Agent will have a valid and perfected first priority security interest in the Collateral, securing payment of the Obligations.

5.9 Pledgor is in compliance with all Legal Requirements pertaining to it in connection with the Operative Documents to which it is a party, the failure to comply with which could reasonably be expected to have a Material Adverse Effect on Borrower or the Project owned directly or indirectly by the Pledged Portfolio Entity, and no notices of violation of any Legal Requirement or Operative Document relating to any Project or any Site have been issued to or received by Pledgor.

5.10 Except as set forth on Exhibit G-7 to the Credit Agreement, there are no pending or, to Pledgor's knowledge, threatened actions, suits, proceedings or investigations of any kind, including actions or proceedings of or before any Governmental Authority, relating to the Collateral or to which Pledgor is a party or is subject, or by which it or its properties are bound that, if adversely determined to or against Pledgor could reasonably be expected to have a Material Adverse Effect on Borrower or the Project owned directly or indirectly by the Pledged Portfolio Entity.

5.11 The financial statements of Pledgor delivered to the Administrative Agent pursuant to Article 3 and Section 5.5 of the Credit Agreement, if any, are, and, in the case of financial statements to be delivered after the date hereof, will be, true, complete and correct in all material respects as of the date of such statements and fairly present the financial condition, results of operations and cash flow of Pledgor as of the date thereof. Such financial statements have been prepared in accordance with GAAP.

5.12 Pledgor has filed all federal, state and local tax returns that it is required to file, has paid all taxes it is required to pay to the extent due (other than those taxes that it is contesting in good faith and by appropriate proceedings, with adequate reserves established for such taxes) and, to the extent such taxes are not due, has established reserves that are adequate for the payment thereof and are required by GAAP. Except as set forth on Exhibit G-8 to the Credit Agreement, Pledgor has no knowledge of any past or existing violations of any Environmental Laws by any Person relating in any way to any Site, Improvements or Easements.

5.13 INSERT UNLESS PLEDGOR IS CALPINE CCFC II HOLDINGS, INC.]  
[PLEDGOR HAS NOT CONDUCTED ANY BUSINESS OTHER THAN THE BUSINESS CONTEMPLATED BY THE OPERATIVE DOCUMENTS;] Pledgor does not have any outstanding Debt or other material liabilities

other than pursuant to or allowed by the Operative Documents; Pledgor is not a party to or bound by any material contract other than the Operative Documents to which it is a party.

5.14 Neither Pledgor nor any of its Affiliates is an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended.

5.15 The chief executive offices of Pledgor are located at the address set forth on Schedule 4.24 of the Credit Agreement with respect to Pledgor.

5.16 Pledgor is not, and will not be, solely as a result of the construction, ownership, leasing or operation of any Project owned directly or indirectly by the Pledged Portfolio Entity, the sale of electricity therefrom or the entering into any Operative Document or any transaction contemplated hereby or thereby, subject to, or not exempt from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities or will not be deemed by any Governmental Authority having jurisdiction to be subject to financial, organizational or rate regulation as an "electric utility," "electric corporation," "electrical company," "public utility," "public utility holding company" or any similar entity under any existing law, rule or regulation of any Governmental Authority.

6. COVENANTS OF PLEDGOR. Pledgor covenants and agrees as follows:

6.1 Pledgor shall perform and comply with all obligations and conditions on its part to be performed hereunder, under the Constituent Agreement and with respect to the Collateral.

6.2 Pledgor shall, so long as any Obligations shall be outstanding, defend its title to the Collateral and the interest of Administrative Agent in the Collateral pledged hereunder against the claims and demands of all persons whomsoever.

6.3 Pledgor shall not directly or indirectly create, incur, assume or suffer to exist any liens on or with respect to any part of the Collateral (other than the Lien created by this Agreement and other Permitted Liens).

6.4 Pledgor will not file or authorize or permit to be filed in any jurisdiction any financing statements under the UCC or any like statement relating to the Collateral in which Administrative Agent is not named as the sole secured party.

6.5 Except as permitted by the Credit Agreement or this Agreement, Pledgor will not cause, suffer or permit the sale, assignment, conveyance or other transfer of all or any portion of Pledgor's ownership interest or interests in the Pledged Portfolio Entity. As used herein, the transfer of an ownership interest in the Pledged Portfolio Entity includes (i) the sale, assignment, pledge, hypothecation, transfer or other disposition (voluntarily or involuntarily, by gift or otherwise, and whether as security or otherwise) of an equity interest in any Person substantially all of the assets of which consist directly or indirectly of an interest in the Pledged

Portfolio Entity, or (ii) the merger or consolidation of a Person referred to in clause (i), with another Person.

6.6 Except as permitted by the Credit Agreement, Pledgor shall not terminate, modify or amend the Constituent Agreement.

6.7 Pledgor shall give to Administrative Agent prompt notice of

(i) each material demand or notice received or given by it relating to the Constituent Agreement; and (ii) any Default, Event of Default or event which with the giving of notice or the passage of time or both might become an Event of Default (as "Default" and "Event of Default" are defined in the Constituent Agreement) under the Constituent Agreement, whether by the Pledged Portfolio Entity, Pledgor or any other Person, of which Pledgor has knowledge or has received notice.

6.8 If Pledgor in its capacity as an owner of the Pledged Portfolio Entity receives any income or distribution of money or property of any kind from the Pledged Portfolio Entity other than as permitted hereby or by

Section 7.2 of the Credit Agreement, Pledgor shall hold such income or distribution as trustee for and shall deliver the same to Administrative Agent.

6.9 Pledgor will, at all times, keep accurate and complete records of the Collateral. Pledgor shall permit representatives of Administrative Agent, upon reasonable prior notice, at any time during normal business hours of Pledgor to inspect and make abstracts from Pledgor's books and records pertaining to the Collateral. Upon the occurrence and during the continuation of any Event of Default, at Administrative Agent's request, Pledgor shall promptly deliver copies of any and all such records to Administrative Agent.

6.10 Pledgor shall give Administrative Agent at least 45 days' notice before it changes the location of its place of business, chief executive office or state of organization and shall at the expense of the Pledged Portfolio Entity execute and deliver such instruments and documents as may be required by Administrative Agent to maintain a prior perfected security interest in the Collateral.

## 7. REMEDIES UPON EVENT OF DEFAULT.

7.1 If any Event of Default has occurred and is continuing, Administrative Agent shall have the right, at its election, but not the obligation, to do any of the following: (i) in connection with any acceleration and foreclosure, vote or exercise any and all of Pledgor's rights or powers under the Constituent Agreement, including any rights or powers to manage or control the Pledged Portfolio Entity; (ii) demand, sue for, collect or receive any money or property at any time payable to or receivable by Pledgor on account of or in exchange for all or any part of the Collateral; (iii) cause any action at law or suit in equity or other proceeding to be instituted and prosecuted to collect or enforce any Obligations or rights hereunder or included in the Collateral, including specific enforcement of any covenant or agreement contained herein or in the Constituent Agreement, or to foreclose or enforce the security interest in all or any part of the Collateral granted herein, or to enforce any other legal or equitable right vested in it by this Agreement or by law; (iv) sell or otherwise dispose of all or any part of the Collateral or cause all or any part of the Collateral to be sold or otherwise disposed of in one or more sales or transactions, at such prices and in such manner as Administrative Agent may deem appropriate,

and for cash or on credit or for future delivery, without assumption of any credit risk, at any broker's board or at public or private sale, without demand of performance or notice of intention to sell or of time or place of sale (except such notice which under applicable law cannot be waived) it being agreed that Administrative Agent may be a purchaser on behalf of the Banks or on its own behalf at any such sale and that Administrative Agent, any Bank or any other Person who may be a bona fide purchaser for value and without notice of any claims of any or all of the Collateral so sold shall thereafter hold the same absolutely free from any claim or right of whatsoever kind, including any equity of redemption, of Pledgor or the Pledged Portfolio Entity, any such demand, notice or right and equity being hereby expressly waived and released; (v) incur expenses, including reasonable attorneys' fees, reasonable consultants' fees, and other costs appropriate to the exercise of any right or power under this Agreement; (vi) perform any obligation of Pledgor hereunder or under the Constituent Agreement; (vii) secure the appointment of a receiver for Pledgor without notice to the Pledged Portfolio Entity or Pledgor; or (viii) exercise any other or additional rights or remedies granted to a secured party under the UCC. If, pursuant to applicable law, prior notice of any such action is required to be given to Pledgor or the Pledged Portfolio Entity, Pledgor and the Pledged Portfolio Entity hereby acknowledge and agree that the minimum time required by such applicable law, or if no minimum is specified, of 10 Banking Days, shall be deemed a reasonable notice period.

7.2 In addition to the foregoing remedies, Administrative Agent may, but shall not be obligated to, cure any Event of Default and incur reasonable fees, costs and expenses in doing so, in which event the Pledged Portfolio Entity shall immediately reimburse Administrative Agent on demand for all such fees, costs and expenses, together with interest thereon at the Default Rate from the date incurred until the date repaid in full.

7.3 All costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Administrative Agent in connection with exercising any remedy provided for herein or at law, curing any Event of Default or any Constituent Agreement Default, performing any of Pledgor's agreements contained herein or in the Constituent Agreement or in respect of any part of the Collateral, together with interest thereon (to the extent permitted by law) computed at a rate per annum equal to the Default Rate from the date on which such costs or expenses are incurred to the date of payment thereof, shall constitute indebtedness secured by this Agreement and shall be paid by the Pledged Portfolio Entity to Administrative Agent on demand.

7.4 If Administrative Agent shall decide to exercise its right to sell any or all of the Collateral, and if in the opinion of counsel for the Administrative Agent it is necessary to have such Collateral, or that portion thereof to be sold, registered under the provisions of the Securities Act of 1933, as amended, or otherwise registered or qualified under any federal or state securities laws or regulations (collectively, the "Securities Laws") Pledgor and the Pledged Portfolio Entity will execute and deliver, all at Pledgor's and the Pledged Portfolio Entity's expense, all such instruments and documents which, in the opinion of Administrative Agent, are necessary to register or qualify such Collateral, or that portion thereof to be sold, under the provisions of the Securities Laws. Pledgor and the Pledged Portfolio Entity will execute and will use best efforts to cause any registration statement relating thereto to become effective and to remain effective for a period of not less than six months from the date of the first public offering of such Collateral, or that portion thereof to be sold, and to make all amendments thereto and/or

to any related prospectus or similar document which, in the reasonable opinion of Administrative Agent, are necessary, all in conformity with the Securities Laws applicable thereto. Without limiting the generality of the foregoing, the Pledged Portfolio Entity agrees to comply with the provisions of the securities or "Blue Sky" laws of any jurisdiction(s) which Administrative Agent shall reasonably designate and to make available to its security holders, as soon as practicable, an earnings statement which will satisfy the provisions of Section 11(a) of the Securities Act of 1933.

7.5 So long as no Event of Default has occurred and is continuing, Pledgor reserves the right to exercise all of its rights under the Constituent Agreement (except as limited by the Credit Documents) and to receive all income and other distributions from the Collateral (except as limited by the Credit Documents).

#### 8. REMEDIES CUMULATIVE; DELAY NOT WAIVER.

8.1 No right, power or remedy herein conferred upon or reserved to Administrative Agent or the Banks is intended to be exclusive of any other right, power or remedy, and every such right, power and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right, power and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder shall not prevent the concurrent assertion or employment of any other appropriate right or remedy. Resort to any or all security now or hereafter held by Administrative Agent, may be taken concurrently or successively and in one or several consolidated or independent judicial actions or lawfully taken nonjudicial proceedings, or both.

8.2 No delay or omission of Administrative Agent to exercise any right or power accruing upon the occurrence and during the continuance of any Event of Default as aforesaid shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or an acquiescence therein. Every power and remedy given by this Agreement may be exercised from time to time, and as often as shall be deemed expedient, by Administrative Agent.

9. APPLICATION OF PROCEEDS. Upon the occurrence and during the continuation of an Event of Default, the proceeds of any sale of or other realization upon, all or any part of the Collateral shall be applied: first, to all fees, costs and expenses incurred by and due and owing to Administrative Agent and the Banks with respect to the Credit Agreement, the other Credit Documents or the Collateral Documents; second, to accrued and unpaid interest on the Obligations (including any interest which, but for the provisions of the Bankruptcy Code, would have accrued on such amounts); third, to the principal amounts of the Obligations outstanding; fourth, to any other Obligations of the Pledged Portfolio Entity or Pledgor owing to Administrative Agent or the Banks; and fifth, to or as directed by Pledgor.

#### 10. CERTAIN CONSENTS AND WAIVERS.

10.1 [INSERT IF OTHER OWNERS OF PLEDGED PORTFOLIO ENTITY: PLEDGOR HEREBY CONSENTS TO THE EXECUTION, BY THE OTHER PARTNER OR PARTNERS IN THE PLEDGED PORTFOLIO ENTITY, OF AN AGREEMENT SIMILAR TO THIS AGREEMENT IN FAVOR OF

ADMINISTRATIVE AGENT FOR THE BENEFIT OF ADMINISTRATIVE AGENT AND THE BANKS. PLEDGOR SPECIFICALLY AGREES THAT SUCH OTHER AGREEMENT MAY, AMONG OTHER THINGS, ASSIGN OR DELEGATE TO ADMINISTRATIVE AGENT RIGHTS TO CURE DEFAULTS UNDER THE CONSTITUENT AGREEMENT, TO EXERCISE VOTING RIGHTS AND OTHER RIGHTS TO MANAGE OR CONTROL THE PLEDGED PORTFOLIO ENTITY, AND TO ACT AS SUCH OTHER PARTNER'S ATTORNEY IN FACT IN A MANNER SIMILAR TO THE ASSIGNMENT AND DELEGATION OF SUCH RIGHTS PROVIDED HEREIN AND THAT PLEDGOR WILL RECOGNIZE AND ACCEPT SUCH ASSIGNMENT AND DELEGATION AND THE EXERCISE OF SUCH RIGHTS BY ADMINISTRATIVE AGENT IN CONNECTION WITH ANY ACTIONS BY OR BUSINESS OF THE PLEDGED PORTFOLIO ENTITY.]

10.2 Pledgor hereby waives, to the maximum extent permitted by law

(i) all rights under any law limiting remedies, including recovery of a deficiency, under an obligation secured by a mortgage or deed of trust on real property if the real property is sold under a power of sale contained in the mortgage, and all defenses based on any loss whether as a result of any such sale or otherwise, of Pledgor's right to recover any amount from any Portfolio Entity or any other Person, whether by right of subrogation or otherwise; (ii) all rights under any law to require Administrative Agent to pursue any Portfolio Entity or any other Person, any security which Administrative Agent may hold, or any other remedy before proceeding against Pledgor; (iii) all rights of reimbursement or subrogation, all rights to enforce any remedy that Administrative Agent or the Banks may have against any Portfolio Entity or any other Person, and all rights to participate in any security held by Administrative Agent until the Obligations have been paid and the covenants of the Credit Documents have been performed in full; (iv) all rights to require Administrative Agent to give any notices of any kind, including, without limitation, notices of nonpayment, nonperformance, protest, dishonor, default, delinquency or acceleration, or to make any presentments, demands or protests, except as set forth herein or expressly provided in the Credit Agreement; (v) all rights to assert the bankruptcy or insolvency of any Portfolio Entity or any other Person as a defense hereunder or as the basis for rescission hereof; (vi) subject to Section 16 hereof, all rights under any law purporting to reduce Pledgor's obligations hereunder if the Obligations are reduced; (vii) all defenses based on the disability or lack of authority of any Portfolio Entity or any other Person, the repudiation of the Credit Documents by any Portfolio Entity or any other Person, the failure by Administrative Agent or the Banks to enforce any claim against any Portfolio Entity or any other Person, or the unenforceability in whole or in part of any Credit Documents; (viii) all suretyship and guarantor's defenses generally; (ix) all rights to insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets, redemption or similar law, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by Pledgor of its obligations under, or the enforcement by Administrative Agent of, this Agreement; (x) any requirement on the part of Administrative Agent or the holder of any of the Notes to mitigate the damages resulting from any default; and (xi) except as otherwise specifically set forth herein, all rights of notice and hearing of any kind prior to the exercise of rights by Administrative Agent upon the occurrence and during the continuation of an Event of Default to repossess with judicial process or to replevy, attach or levy upon the Collateral. To the extent permitted by law, Pledgor waives the posting of any bond otherwise required of Administrative Agent in connection with any judicial process or proceeding to obtain possession of, replevy, attach, or levy upon the Collateral, to enforce any judgment or other security for the Obligations, to enforce any judgment or other court order entered in favor of Administrative Agent, or to enforce by specific performance, temporary restraining order, preliminary or permanent injunction, this Agreement or any other agreement or document

between Pledgor, Administrative Agent and Banks. Pledgor further agrees that upon the occurrence and during the continuation of an Event of Default under the Credit Agreement, Administrative Agent may elect to nonjudicially or judicially foreclose against any real or personal property security it holds for the Obligations or any part thereof, or to exercise any other remedy against any Portfolio Entity or any other Person, any security or any guarantor, even if the effect of that action is to deprive Pledgor of the right to collect reimbursement from any Portfolio Entity or any other Person for any sums paid by Pledgor to Administrative Agent or any Bank.

10.3 If Administrative Agent may, under applicable law, proceed to realize its benefits under any of the Credit Documents giving Administrative Agent a Lien upon any Collateral, whether owned by any Portfolio Entity or by any other Person, either by judicial foreclosure or by nonjudicial sale or enforcement, Administrative Agent may, at its sole option, determine which of its remedies or rights it may pursue without affecting any of the rights and remedies of Administrative Agent under this Agreement. If, in the exercise of any of such rights and remedies, Administrative Agent shall forfeit any of its rights or remedies, including any right to enter a deficiency judgment against any Portfolio Entity or any other Person, whether because of any applicable laws pertaining to "election of remedies" or the like, Pledgor hereby consents to such action by Administrative Agent and, to the extent permitted by applicable law, waives any claim based upon such action, even if such action by Administrative Agent shall result in a full or partial loss of any rights of subrogation, indemnification or reimbursement which Pledgor might otherwise have had but for such action by Administrative Agent or the terms herein. Any election of remedies which results in the denial or impairment of the right of Administrative Agent to seek a deficiency judgment against any of the parties to any of the Credit Documents or Security Documents shall not, to the extent permitted by applicable law, impair Pledgor's obligation hereunder. In the event Administrative Agent shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Credit Documents, Administrative Agent may bid all or less than the amount of the Obligations. To the extent permitted by applicable law, the amount of the successful bid at any such sale, whether Administrative Agent or any other party is the successful bidder, shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations.

11. **THE PLEDGED PORTFOLIO ENTITY'S CONSENT.** The Pledged Portfolio Entity hereby consents to the assignment of and grant of a security interest in the Collateral to Administrative Agent and to the exercise by Administrative Agent of all rights and powers assigned or delegated to Administrative Agent by Pledgor hereunder, including, without limitation, the rights upon and during an Event of Default to exercise Pledgor's voting rights and other rights under the Constituent Agreement to manage or control the Pledged Portfolio Entity.

12. **ATTORNEY-IN-FACT.** Pledgor hereby irrevocably constitutes and appoints Administrative Agent its true and lawful attorney-in-fact with full power and authority in the place and stead of Pledgor and in the name of Pledgor, Administrative Agent or otherwise, from time to time in the Administrative Agent's discretion to take any action and to execute any instrument to enforce all rights of Pledgor with respect to the Collateral, including, without limitation, the right to ask, require, demand, receive and give acquittance for any and all moneys and claims for money due and to become due under or arising out of the Collateral; to elect

remedies thereunder, to endorse any checks or other instruments or orders in connection therewith; to vote, demand, receive and enforce Pledgor's rights with respect to the Collateral; to give appropriate receipts, releases and satisfactions for and on behalf of and in the name of Pledgor or, at the option of Administrative Agent, in the name of Administrative Agent, with the same force and effect as Pledgor could do if this Agreement had not been made; and to file any claims or take any action or institute any proceedings in connection therewith which Administrative Agent may reasonably deem to be necessary or advisable; provided, however, Administrative Agent shall not exercise such rights unless upon the occurrence and during the continuation of an Event of Default. This power of attorney is a power coupled with an interest and shall be irrevocable.

### 13. PERFECTION; FURTHER ASSURANCES.

13.1 Pledgor agrees that from time to time, at the expense of Pledgor, Pledgor shall promptly execute and deliver all instruments and documents, and take all action, that may be reasonably necessary, or that Administrative Agent may reasonably request, in order to perfect and protect the assignment and security interest granted or intended to be granted hereby or to enable Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral. Without limiting the generality of the foregoing, Pledgor shall (i) deliver the Collateral or any part thereof to Administrative Agent, as Administrative Agent may request, accompanied by such duly executed instruments of transfer or assignment as Administrative Agent may request, and (ii) execute and file such financing or continuation statements, or amendments thereto, and such other instruments, endorsements or notices, as may be reasonably necessary or desirable or as Administrative Agent may reasonably request, in order to perfect and preserve the assignments and security interests granted or purported to be granted hereby.

13.2 Pledgor hereby authorizes Administrative Agent to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Pledgor where permitted by law.

13.3 Pledgor shall, promptly upon request, provide to Administrative Agent all information and evidence it may reasonably request concerning the Collateral to enable Administrative Agent to enforce the provisions of this Agreement.

13.4 Pledgor and the Pledged Portfolio Entity shall pay all filing, registration and recording fees and all refiling, re-registration and re-recording fees, and all reasonable expenses incident to the execution and acknowledgment of this Agreement, any assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imports, assessments and charges arising out of or in connection with the execution and delivery of this Agreement, any agreement supplemental hereto, any financing statements, and any instruments of further assurance.

13.5 To the extent it may do so under applicable law, Pledgor, for itself, its successors and assigns, agrees that it shall not cast any vote as an owner in the Pledged Portfolio Entity (i) in favor of the commencement of a voluntary case or other proceeding seeking liquidation, reorganization, rehabilitation or other relief with respect to the Pledged Portfolio

Entity or its debts under any bankruptcy, insolvency or other similar law now or hereafter in effect in any jurisdiction or seeking the appointment of a trustee, receiver, liquidator, custodian or other similar official of the owners of the Pledged Portfolio Entity or any substantial part of the Pledged Portfolio Entity's property, (ii) to authorize the Pledged Portfolio Entity to consent to any such aforesaid relief or to the appointment of or taking possession by any such aforesaid official in an involuntary case or other proceeding commenced against the Pledged Portfolio Entity or (iii) to authorize the Pledged Portfolio Entity to make a general assignment for the benefit of creditors.

13.6 Pledgor will take all actions within its power to obtain like title to and the right to pledge any other property at any time hereafter pledged by it to Administrative Agent as Collateral hereunder.

13.7 Pledgor will pay, before any fine, penalty, interest or cost attaches thereto, all taxes, assessments and other governmental or non-governmental charges or levies (other than those taxes that it is contesting in good faith and by appropriate proceedings, and in respect of which it has established adequate, reserves for such taxes) now or hereafter assessed, levied against the Collateral pledged by it hereunder (or against the Collateral in which Pledgor has granted to Administrative Agent a security interest of first priority) or upon the Liens for taxes and assessments not then delinquent or subject to a contest and shall retain copies of, and, upon request, permit Administrative Agent or any Bank to examine receipts showing payment of any of the foregoing.

14. PLACE OF BUSINESS; LOCATION OF RECORDS. Unless Administrative Agent is otherwise notified under Section 6.10, Pledgor's state of organization is and will be the state of Delaware and the places of business and chief executive offices of Pledgor are, and all records of Pledgor concerning the Collateral are and will be, located at the address set forth on Schedule 4.24 of the Credit Agreement with respect to Pledgor.

15. CONTINUING ASSIGNMENT AND SECURITY INTEREST; TRANSFER OF NOTES. This Agreement shall create a continuing pledge and assignment of and security interest in the Collateral and shall (a) remain in full force and effect until payment in full of the Obligations; (b) be binding upon the Pledged Portfolio Entity, Pledgor, and their respective successors and assigns; and (c) inure, together with the rights and remedies of Administrative Agent, to the benefit of Administrative Agent, the Banks and their respective successors, transferees and assigns. Without limiting the generality of the foregoing, Administrative Agent or any of the Banks may assign or otherwise transfer all or any part of or interest in the Notes or other evidence of indebtedness held by them to any other Person to the extent permitted by and in accordance with the Credit Agreement, and such other Person shall thereupon become vested with all or an appropriate part of the benefits in respect thereof granted to the Banks herein or otherwise. The release of the security interest in any or all of the Collateral, the taking or acceptance of additional security, or the resort by Administrative Agent to any security it may have in any order it may deem appropriate, shall not affect the liability of any person on the indebtedness secured hereby.

16. TERMINATION OF SECURITY INTEREST. Upon the indefeasible payment and performance in full of the Obligations, this Agreement and the security interest and all other

rights granted hereby shall terminate and all rights to the Collateral shall revert to Pledgor. Upon any such termination, Administrative Agent will return all certificates evidencing ownership interests in the Pledged Portfolio Entity, and all Ownership Powers executed hereunder, to Pledgor and will, at Pledgor's expense, execute and, subject to Section 26 hereof, deliver to Pledgor such documents (including, without limitation, UCC-3 termination statements) as the Pledged Portfolio Entity or Pledgor shall reasonably request to evidence such termination.

17. SECURITY INTEREST ABSOLUTE. All rights of Administrative Agent and the Banks and the security interests hereunder, and all obligations of Pledgor hereunder, shall be absolute and unconditional irrespective of:

17.1 Any lack of validity or enforceability of the Credit Agreement, any Credit Documents or any other agreement or instrument relating thereto;

17.2 Any change in the time, manner or place of payment of, or in any other term of the Obligations (including any increase in the amount thereof), or any other amendment or waiver of or any consent to any departure from the Credit Agreement or any other Credit Document;

17.3 Any exchange, surrender, release or non-perfection of any Collateral, or any release, amendment or waiver of or consent to departure from any guaranty, for all or any of the Obligations;

17.4 Any bankruptcy or insolvency of Pledgor or any other Person; or

17.5 Any other circumstance which might otherwise constitute a defense available to, or a discharge of, Pledgor or a third party pledgor.

18. LIMITATION ON DUTY OF ADMINISTRATIVE AGENT WITH RESPECT TO THE COLLATERAL. The powers conferred on Administrative Agent hereunder are solely to protect its interest in the Collateral and shall not impose any duty on it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for monies actually received by it hereunder, Administrative Agent shall have no duty with respect to any Collateral. Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of the Collateral in its possession if the Collateral is accorded treatment that is substantially equivalent to that which Administrative Agent accords its own property, it being expressly agreed, to the maximum extent permitted by law, that Administrative Agent shall have no responsibility for (a) taking any necessary steps to preserve rights against any parties with respect to any Collateral, but Administrative Agent may do so and all expenses incurred in connection therewith shall be part of the Obligations or (b) taking any action to protect against any diminution in value of the Collateral.

19. LIABILITY. Recourse against Pledgor and any other Portfolio Entity and their respective Affiliates, members, partners, stockholders, officers, directors and employees under this Agreement shall be limited to the extent provided in Article 9 of the Credit Agreement.

20. **AMENDMENTS; WAIVERS; CONSENTS.** No amendment, modification, termination or waiver of any provision of this Agreement, or consent to any departure by Pledgor therefrom, shall in any event be effective without the written concurrence of Administrative Agent, the Pledged Portfolio Entity and Pledgor.

21. **NOTICES.** All notices required or permitted under the terms and provisions hereof shall be in writing and any such notice shall be effective if given in accordance with the provisions of Section 12.1 of the Credit Agreement. Notices to Administrative Agent may be given at the address set forth in such

Section 12.1. Notices to Pledgor or the Pledged Portfolio Entity may be given at the following addresses:

---

[ADDRESS]

or such other address as notified by a party pursuant to the terms hereof.

22. **FINANCIAL STATUS.** Pledgor hereby assumes responsibility for keeping itself informed of the financial condition of each other Portfolio Entity and any and all endorsers and/or other guarantors of any instrument or document evidencing all or any part of the Obligations and of all other circumstances bearing upon the risk of nonpayment of the Obligations or any part thereof that diligent inquiry would reveal. Pledgor hereby agrees that Administrative Agent shall have no duty to advise Pledgor of information known to Administrative Agent regarding such condition or any such circumstances or of any changes or potential changes affecting the Collateral. In the event Administrative Agent, in its discretion, undertakes at any time or from time to time to provide any such information to Pledgor, Administrative Agent shall be under no obligation (i) to undertake any investigation not a part of its regular business routine, or reasonable commercial lending practices or (iii) to make any other or future disclosure of such information to any other information to Pledgor.

23. **MODIFICATION OF OBLIGATIONS.** If Administrative Agent shall at any time or from time to time, with or without the consent of, or notice to, Pledgor:

23.1 Change or extend the manner, place or terms of payment of, or renew or alter all or any portion of, the Obligations;

23.2 Take any action under or in respect of the Credit Documents in the exercise of any remedy, power or privilege contained therein or available at law, equity or otherwise, or waive or refrain from exercising any such remedies, power or privileges;

23.3 Amend or modify, in any manner whatsoever, the Credit Documents;

23.4 Extend or waive the time for Pledgor's, any other Portfolio Entity's or any other Person's performance of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Credit Documents, or waive such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

23.5 Take and hold security or collateral for the payment of the Obligations, or sell, exchange, release, dispose of, or otherwise deal with, any property pledged, mortgaged or conveyed, or in which Administrative Agent has been granted a Lien, to secure any indebtedness associated with the Credit Documents of Pledgor, any other Portfolio Entity or any other Person to Administrative Agent;

23.6 Release or limit the liability of anyone who may be liable in any manner for the payment of any amounts under the Credit Documents owed by Pledgor, any other Portfolio Entity or any other Person to Administrative Agent;

23.7 Modify or terminate the terms of any intercreditor or subordination agreement pursuant to which claims of other creditors of Pledgor, any other Portfolio Entity or any other Person are subordinated to the claims of Administrative Agent under the Credit Documents; or

23.8 Apply any sums by whomever paid or however realized to any amounts owing pursuant to the Credit Documents by Pledgor, any other Portfolio Entity or any other Person to Administrative Agent in such manner as Administrative Agent shall determine in its discretion in accordance with the Credit Documents;

then, subject to Section 16 hereof, neither Administrative Agent nor any Bank shall incur any liability to Pledgor pursuant hereto as a result thereof and no such action shall impair or release the obligations of Pledgor under this Agreement.

24. DELIVERY OF COLLATERAL. All certificates or instruments representing or evidencing the Collateral shall be delivered to and held by or on behalf of Administrative Agent pursuant hereto. All such certificates or instruments shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance acceptable to Administrative Agent. Administrative Agent shall have the right, at any time in its discretion and without prior notice to Pledgor, following the occurrence and during the continuation of an Event of Default, to transfer to or to register in the name of Administrative Agent or any of its nominees any or all of the Collateral and to exchange certificates or instruments representing or evidencing Collateral for certificates or instruments of smaller or larger denominations; provided that Administrative Agent shall promptly notify Pledgor of any such transfer or registration; but the failure to provide such notice shall not invalidate the effectiveness of such transfer or registration provided, further, that once such Event of Default has been cured, Administrative Agent will promptly transfer to or register in the name or cause its nominees to transfer to or register in the name Pledgor all such Collateral. In furtherance of the foregoing, Pledgor shall further execute and deliver to Administrative Agent an ownership power in the form of Exhibit A attached hereto with respect to the ownership interest(s) of the Pledged Portfolio Entity owned by Pledgor that are represented by certificates or other instruments.

25. GOVERNING LAW. This Agreement, including all matters of construction, validity, performance and the creation, validity, enforcement or priority of the lien of, and security interests created by, this Agreement in or upon the Collateral shall be governed by the laws of the state of New York, without reference to conflicts of law (other than Section 5-1401 of the New

York General Obligations Law), except as required by mandatory provisions of law and except to the extent that the validity or perfection of the lien and security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the state of New York.

26. REINSTATEMENT. This Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Administrative Agent in respect of the Obligations is rescinded or must otherwise be restored or returned by Administrative Agent upon the insolvency, bankruptcy, reorganization, liquidation of Pledgor, the Member or any Portfolio Entity (including the Pledged Portfolio Entity) or upon the dissolution of, or appointment of any intervenor or conservator of, or trustee or similar official for, Pledgor, the Member or any Portfolio Entity (including the Pledged Portfolio Entity) or any substantial part of Pledgor's, the Member's or any Portfolio Entities' (including the Pledged Portfolio Entity's) assets, or otherwise, all as though such payments had not been made.

27. SEVERABILITY. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

28. SURVIVAL OF PROVISIONS. All agreements, representations and warranties made herein shall survive the execution and delivery of this Agreement and the Credit Agreement and the making of the Loans and extensions of credit thereunder. Notwithstanding anything in this Agreement or implied by law to the contrary, the agreements, representations and warranties of Pledgor set forth herein shall terminate only upon payment of the Obligations, and the termination of all Commitments and other obligations of the Banks under the Credit Documents.

29. HEADINGS DESCRIPTIVE. The headings in this Agreement are for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

30. ENTIRE AGREEMENT. This Agreement, together with any other agreement executed in connection herewith, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms and conditions thereof.

31. TIME. Time is of the essence of this Agreement.

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

33. ATTORNEYS' FEES. In the event any legal action or proceeding (including, without limitation, any of the remedies provided for herein or at law) is commenced to enforce or interpret this Agreement or any provision hereof, unless Pledgor is the prevailing party, Pledgor shall indemnify each of Administrative Agent and the Banks for their reasonable attorneys' fees and other costs and expenses incurred therein, and if a judgment or award is entered in any such

action or proceeding, such reasonable attorneys' fees and other costs and expenses may be made a part of such judgment or award.

34. CONSENT TO JURISDICTION. The Banks and Pledgor agree that any legal action or proceeding by or against Pledgor or with respect to or arising out of this Agreement, or any other Credit Document or Security Document may be brought in or removed to the courts of the State of New York, in and for the County of New York, or of the United States of America for the Southern District of New York, as Administrative Agent may elect. By execution and delivery of the Agreement, the Banks and Pledgor accept, for themselves and in respect of their property, generally and unconditionally, the jurisdiction of the aforesaid courts. The Banks and Pledgor irrevocably consent to the service of process out of any of the aforementioned courts in any manner permitted by law. Nothing herein shall affect the right of Administrative Agent to bring legal action or proceedings in any other competent jurisdiction, including judicial or non-judicial foreclosure. Notwithstanding the foregoing, service of process shall not be deemed served or mailed to Administrative Agent or the Banks until a copy of all matters to be served have been mailed to Latham & Watkins, 701 B Street, Suite 2100, San Diego, California 92101, Attn: Andrew Singer or such other Person as Administrative Agent or the Banks may hereafter designate by notice given pursuant to Section 12.1 of the Credit Agreement. The Banks and Pledgor further agree that the aforesaid courts of the State of New York and of the United States of America shall have exclusive jurisdiction with respect to any claim or counterclaim of Pledgor based upon the assertion that the rate of interest charged by the Banks on or under this Agreement, the Loans and/or the other Credit Documents is usurious. The Banks and Pledgor hereby waive any right to stay or dismiss any action or proceeding under or in connection with any or all of the Project, this Agreement or any other Credit Document or Security Document brought before the foregoing courts on the basis of forum non-conveniens.

35. WAIVER OF JURY TRIAL. PLEDGOR AND ADMINISTRATIVE AGENT HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS AGREEMENT AND THE RELATIONSHIP AMONG PLEDGOR AND ADMINISTRATIVE AGENT THAT IS BEING ESTABLISHED. PLEDGOR AND ADMINISTRATIVE AGENT ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. PLEDGOR AND ADMINISTRATIVE AGENT FURTHER WARRANT AND REPRESENT THAT EACH HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, each of the undersigned has caused this Pledge and Security Agreement (Pledged Equity Interests) to be duly executed and delivered as of the day and year first above written.

\_\_\_\_\_, a Delaware \_\_\_\_\_, as Pledgor

By: \_\_\_\_\_ Name: \_\_\_\_\_ Title: \_\_\_\_\_

\_\_\_\_\_, a Delaware \_\_\_\_\_, as Pledged Portfolio Entity

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

Title: \_\_\_\_\_

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch,  
as Administrative Agent

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

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

Title: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

**EXHIBIT A  
OWNERSHIP POWER**

FOR VALUE RECEIVED, \_\_\_\_\_, a Delaware \_\_\_\_\_, hereby sells, assigns and transfers unto \_\_\_\_\_ all of its ownership interest(s) of \_\_\_\_\_, a Delaware \_\_\_\_\_, standing in its name on the books of \_\_\_\_\_, a Delaware \_\_\_\_\_, represented by the following certificate(s): \_\_\_\_\_, and irrevocably appoints \_\_\_\_\_ as attorney to transfer the ownership interest(s) with full power of substitution in the premises.

DATED: \_\_\_\_\_

\_\_\_\_\_,  
a Delaware \_\_\_\_\_

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

Title:

In the presence of:

**PLEDGE AND SECURITY AGREEMENT (PLEGGED EQUITY INTERESTS)**

**Dated as of \_\_\_\_\_, 200\_\_**

among

\_\_\_\_\_,  
a Delaware \_\_\_\_\_

\_\_\_\_\_,  
a Delaware \_\_\_\_\_

and

**CREDIT SUISSE FIRST BOSTON,**  
acting through its New York Branch  
as Administrative Agent

# TABLE OF CONTENTS

## PAGE

1. Definitions.....	2
2. Assignment, Pledge and Grant of Security Interest.....	2
3. Obligations Secured.....	3
4. Events of Default.....	3
5. Representations and Warranties of Pledgor.....	4
6. Covenants of Pledgor.....	7
7. Remedies Upon Event of Default.....	8
8. Remedies Cumulative; Delay Not Waiver.....	10
9. Application of Proceeds.....	10
10. Certain Consents and Waivers.....	10
11. The Pledged Portfolio Entity's Consent.....	12
12. Attorney-in-Fact.....	12
13. Perfection; Further Assurances.....	13
14. Place of Business; Location of Records.....	14
15. Continuing Assignment and Security Interest; Transfer of Notes.....	14
16. Termination of Security Interest.....	14
17. Security Interest Absolute.....	15
18. Limitation on Duty of Administrative Agent with Respect to the Collateral.....	15
19. Liability.....	15
20. Amendments; Waivers; Consents.....	16
21. Notices.....	16
22. Financial Status.....	16
23. Modification of Obligations.....	16
24. Delivery of Collateral.....	17
25. Governing Law.....	17
26. Reinstatement.....	18
27. Severability.....	18
28. Survival of Provisions.....	18
29. Headings Descriptive.....	18
30. Entire Agreement.....	18
31. Time.....	18
32. Counterparts.....	18
33. Attorneys' Fees.....	18
34. Consent to Jurisdiction.....	19
35. Waiver of Jury Trial.....	19

## EXHIBITS

Exhibit A -Ownership Power

**EXHIBIT D-10  
to Credit Agreement**

**FORM OF PORTFOLIO ENTITY NOTE**

**PORTFOLIO ENTITY NOTE**

Note Number: \_\_\_\_ [Date]

FOR VALUE RECEIVED, the undersigned ("Payor") promises to pay to the order of , a Delaware ("Payee"), on demand, in lawful money of the United States of America, in immediately available funds and at the appropriate office of the Payee, the aggregate unpaid principal amount of all loans and advances heretofore and hereafter made by Payee to Payor as shown either on Schedule A attached hereto (and any continuation thereof) or in the books and records of Payee, including loans and advances made by Payee to Payor pursuant to Section 7.14 of the Credit Agreement (as defined below). Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed such terms in the Credit Agreement (the "Credit Agreement") dated as of October 16, 2000 among \_\_\_\_\_, as Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent.

The unpaid principal amount hereof from time to time outstanding shall bear interest at a rate equal to the rate as may be agreed upon from time to time by Payor and Payee. Interest shall be due and payable at such times as may be agreed upon from time to time by Payor and Payee. Upon demand for payment of any principal amount hereof, accrued but unpaid interest on such principal amount shall also be due and payable. Interest shall be paid in lawful money of the United States of America and in immediately available funds. Interest shall be computed for the actual number of days elapsed on the basis of a year consisting of 365 or 366 days, as the case may be.

Payor hereby waives presentment, demand, protest and notice of any kind. No failure to exercise, and no delay in exercising, any rights hereunder on the part of the holder hereof shall operate as a waiver of such rights.

This Portfolio Entity Note has been pledged by Payee to Administrative Agent for the benefit of the Banks, as security for Payee's Obligations under the Credit Documents to which Payee is a party. Payor acknowledges and agrees that Administrative Agent may exercise all the rights of Payee under this Portfolio Entity Note and will not be subject to any abatement, reduction, recoupment, defense, setoff or counterclaim available to Payor. Payor and Payee each

agrees that until Payee's Obligations under the Credit Documents to which Payee is a party have been performed and paid in full and the Credit Documents have been terminated neither Payor nor Payee shall amend, modify, supplement or waive any provision of this Portfolio Entity Note.

Payee agrees that any and all claims of Payee against Payor or any endorser of this Portfolio Entity Note, or against any of their respective properties, shall be subordinate and subject in right of payment to the prior performance and payment, in full and in cash, of all Obligations of Payor to Administrative Agent pursuant to the Credit Documents to which Payor is a party; provided, that Payor may make payments to Payee at any time or times when Payor does not have any outstanding Obligations under the Credit Documents to which Payor is a party which are then due and payable; provided, further, that all such payments shall be received by Payee subject to the provisions of the Credit Documents. Notwithstanding any right of Payee to ask, demand, sue for, take or receive any payment from Payor, all rights, liens and security interests of Payee, whether now or hereafter arising and howsoever existing, in any assets of Payor shall be and hereby are subordinated to the rights of Administrative Agent in those assets.

If all or any part of the assets of Payor, or the proceeds thereof, are subject to any distribution, division or application to the creditors of Payor, whether partial or complete, voluntary or involuntary, and whether by reason of liquidation, bankruptcy, arrangement, receivership, assignment for the benefit of creditors or any other action or proceeding, or if the business of Payor is dissolved or if (except as expressly permitted by the Credit Documents) substantially all of the assets of Payor are sold, then, and in any such event, any payment or distribution of any kind or character, either in cash, securities or other investment property or any other property whatsoever, which shall be payable or deliverable upon or with respect to any Debt of Payor to Payee ("Payor Indebtedness") shall be paid or delivered directly to Administrative Agent for application on any of the Obligations of Payor pursuant to the Credit Documents to which Payor is a party, due or to become due, until such Obligations shall have first been fully performed and paid. Payee irrevocably authorizes and empowers Administrative Agent to demand, sue for, collect and receive every such payment or distribution and give acquittance therefor and to make and present for and on behalf of Payee such proofs of claim and take such other action, in Administrative Agent's own name or in the name of Payee or otherwise, as Administrative Agent may deem necessary or advisable for the enforcement of this Portfolio Entity Note. Administrative Agent may vote such proofs of claim in any such proceeding, receive and collect any and all dividends or other payments or disbursements made on Payor Indebtedness in whatever form the same may be paid or issued and apply the same on account of any of Payor's Obligations pursuant to the Credit Documents to which Payor is a party.

Recourse under this Note shall be limited as provided in Article 9 of the Credit Agreement.

**THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS PORTFOLIO ENTITY NOTE AND ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS SUBORDINATED PROMISSORY NOTE, WHETHER SOUNDING IN CONTRACT, TORT, EQUITY OR OTHERWISE, SHALL BE GOVERNED**

[Signature Page Follows]

IN WITNESS WHEREOF, Payor has caused this Portfolio Entity Note to be executed and delivered by its proper and duly authorized officer as of the date set forth above.

**"PAYOR"**

[NAME]

By \_\_\_\_\_  
Name \_\_\_\_\_  
Title: \_\_\_\_\_



**ENDORSEMENT**

FOR VALUE RECEIVED, the undersigned does hereby sell, assign and transfer to \_\_\_\_\_ all of its right, title and interest in and to the Portfolio Entity Note dated \_\_\_\_\_, made by \_\_\_\_\_, and payable to the undersigned. This endorsement is intended to be attached to the Portfolio Entity Note and, when so attached, shall constitute an endorsement thereof.

Dated: \_\_\_\_\_

\_\_\_\_\_, \_\_\_\_\_, a Delaware \_\_\_\_\_

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

Title:

**EXHIBIT E-1  
to Credit Agreement**

---

**FORM OF  
CONSENT AND AGREEMENT  
[(CONTRACT)]**

**Dated as of \_\_\_\_\_, 200\_**

by

**[CONTRACTING PARTY]**

---

## FORM OF CONSENT AND AGREEMENT

This FORM OF CONSENT AND AGREEMENT (this "Consent"), dated as of \_\_\_\_\_, 200\_ is executed by [CONTRACTING PARTY], a \_\_\_\_\_ corporation (the "Undersigned"), and [NAME OF RELEVANT PROJECT OWNER OR TURBINE OWNER], a Delaware [TYPE OF ENTITY] ("Owner"), for the benefit of CREDIT SUISSE FIRST BOSTON, acting through its New York Branch, as Administrative Agent ("Administrative Agent") for the Banks under the Credit Agreement (as defined below).

### RECITALS

A. Calpine Construction Finance Company II, LLC, a Delaware limited liability company ("Borrower"), has entered into that certain Credit Agreement, dated as of October 16, 2000 (the "Credit Agreement"), by and among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Unless otherwise defined, all terms used herein which are defined in the Credit Agreement, shall have their respective meanings as used therein.

B. The Undersigned and Owner have entered into that certain [CONTRACT] dated as of \_\_\_\_\_, 200\_ (as amended, supplemented or modified from time to time in accordance with its terms and the terms hereof, the "Contract"), with respect to the [NAME OF PROJECT] Project (the "Project"). [IF CONTRACT ENTERED INTO BY A TURBINE OWNER, THIS RECITAL AND OTHER RELEVANT PROVISIONS TO BE AMENDED ACCORDINGLY]

C. [IF PROJECT OWNER CONSENT] [OWNER AND ADMINISTRATIVE AGENT ON BEHALF OF THE BANKS HAVE ENTERED INTO THE PROJECT OWNER GUARANTY DATED AS OF \_\_\_\_\_, 200\_ (THE "GUARANTY") PURSUANT TO WHICH OWNER HAS GUARANTEED THE OBLIGATIONS OF EACH OF THE OTHER PORTFOLIO ENTITIES UNDER THE CREDIT DOCUMENTS, INCLUDING BORROWER'S OBLIGATIONS UNDER THE CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS TO WHICH BORROWER IS A PARTY.

### D. PURSUANT TO THE PROJECT/TURBINE OWNER SECURITY AGREEMENT DATED AS OF

\_\_\_\_\_, 200\_ (THE "SECURITY AGREEMENT"), BETWEEN OWNER AND ADMINISTRATIVE AGENT, OWNER HAS ASSIGNED ITS INTEREST UNDER THE CONTRACT TO ADMINISTRATIVE AGENT ON BEHALF OF THE BANKS AS SECURITY FOR OWNER'S OBLIGATIONS UNDER THE GUARANTY AND THE OTHER CREDIT DOCUMENTS TO WHICH IT IS A PARTY.]

**[IF TURBINE OWNER CONSENT] [PURSUANT TO THE PROJECT/TURBINE OWNER SECURITY AGREEMENT DATED AS OF \_\_\_\_\_, 200\_\_ (THE "SECURITY AGREEMENT"), BETWEEN OWNER AND ADMINISTRATIVE AGENT, OWNER HAS ASSIGNED ITS INTEREST UNDER THE CONTRACT TO ADMINISTRATIVE AGENT ON BEHALF OF THE BANKS AS SECURITY FOR THE OBLIGATIONS OF EACH OF THE OTHER PORTFOLIO ENTITIES UNDER THE CREDIT DOCUMENTS, INCLUDING BORROWER'S OBLIGATIONS UNDER THE CREDIT AGREEMENT AND THE OTHER CREDIT DOCUMENTS TO WHICH BORROWER IS A PARTY.]**

**[IF CONTRACT ENTERED INTO BY AN EQUIPMENT FINANCE COMPANY, THIS RECITAL AND OTHER RELEVANT PROVISIONS TO BE AMENDED ACCORDINGLY]**

## **AGREEMENT**

NOW THEREFORE, the Undersigned hereby agrees as follows:

1. The Undersigned acknowledges receipt of the Security Agreement and consents to the Owner's transfer, assignment, grant of a security interest and all other provisions described therein, and agrees with Administrative Agent for the benefit of the Banks as follows:

(a) Administrative Agent shall be entitled (but not obligated) to exercise all rights and to cure any defaults of Owner under the Contract. Upon receipt of notice from Administrative Agent, the Undersigned agrees to accept such exercise and cure by Administrative Agent and to render all performance due by it under the Contract and this Consent to the Banks. The Undersigned agrees to make all payments to be made by it under the Contract directly to Administrative Agent for the benefit of the Banks upon receipt of Administrative Agent's written instructions.

(b) The Undersigned will not, without the prior written consent of Administrative Agent (such consent not to be unreasonably withheld), (i) cancel or terminate the Contract or suspend performance of its services thereunder except as provided in the Contract and in accordance with paragraph 1(c) hereof, or consent to or accept any cancellation, termination or suspension thereof by Owner, (ii) sell, assign or otherwise dispose (by operation of law or otherwise) of any part of its interest in the Contract, or (iii) amend or modify the Contract in any material respect. The Undersigned agrees to deliver duplicates or copies of all notices of default delivered under or pursuant to the Contract to Administrative Agent promptly upon receipt or delivery thereof.

(c) The Undersigned will not terminate the Contract on account of any default or breach of Owner thereunder without written notice to Administrative Agent and first providing to Administrative Agent (i) thirty (30) days from the date notice of default or breach is delivered to Administrative Agent to cure such default if such default is the failure to pay amounts to the Undersigned which are due and payable under the Contract or (ii) a reasonable opportunity, but not fewer than ninety (90) days, to cure such breach or default if the breach or default cannot be cured by the payment of money to the Undersigned so long as Administrative Agent or its designee shall have commenced to cure the breach or default within such ninety (90)-day period and thereafter diligently pursues such cure to completion and continues to perform any monetary obligations under the Contract

and all other obligations under the Contract are performed by Owner or Administrative Agent. If possession of the Project is necessary to cure such breach or default, and Administrative Agent or its designee(s) or assignee(s) declare Owner in default and commence foreclosure proceedings, Administrative Agent or its designee(s) or assignee(s) will be allowed a reasonable period to complete such proceedings. If Administrative Agent or its designee(s) or assignee(s) are prohibited by any court order or bankruptcy or insolvency proceedings from curing the default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition. The Undersigned consents to the transfer of Owner's interest under the Contract to the Banks or any of them or a purchaser or grantee at a foreclosure sale by judicial or nonjudicial foreclosure and sale or by a conveyance by Owner in lieu of foreclosure and agrees that upon such foreclosure, sale or conveyance, the Undersigned shall recognize the Banks or any of them or other purchaser or grantee as the applicable party under the Contract (provided that such Banks or purchaser or grantee assumes the obligations of Owner under the Contract).

(d) In the event that the Contract is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding, or if the Contract is terminated for any reason other than a default which could have been but was not cured by Administrative Agent as provided in paragraph 1 (c) above, and if, within forty-five (45) days after such rejection or termination, the Banks or their successors or assigns shall so request, the Undersigned will execute and deliver to the Banks a new Contract, which Contract shall be on the terms and conditions as the original Contract for the remaining term of the Contract before giving effect to such termination.

(e) In the event the Banks or their designee(s) or assignee(s) elect to perform Owner's obligations under the Contract or to enter into a new Contract as provided in subparagraph (c) or (d) respectively above, the Banks, their designee(s) and assignee(s), shall have no personal liability to the Undersigned for the performance of such obligations, and the sole recourse of the Undersigned in seeking the enforcement of such obligations shall be to such parties' interest in the Project.

(f) In the event the Banks or their designee(s) or assignee(s) succeed to Owner's interest under the Contract or enter into a new Contract, the Banks or their designee(s) or assignee(s) shall cure any defaults for failure to pay amounts owed under the Contract, but shall not otherwise be required to perform or be subject to any defenses or offsets by reason of any of Owner's other obligations under the Contract that were unperformed at such time. The Banks shall have the right to assign all or a pro rata interest in the Contract or a new Contract entered into pursuant to subparagraph (d) to [IF CONSENT RELATED TO A FUNDED PROJECT: a person or entity to whom the Project is transferred] [IF CONSENT RELATED TO A TURBINE FUNDING: any person or entity], provided such transferee assumes the obligations of Owner (or the Banks) under the Contract. Upon such assignment, Administrative Agent and, if applicable, the Banks (including their Administrative Agents and employees) shall be released from any further liability thereunder to the extent of the interest assigned.

(g) The warranties provided by the Undersigned under the Contract shall continue in full force and effect (until the expiration of the warranty periods set forth in the

Contract) in the event that the Banks or their designee(s) or assignee(s) succeed to Owner's interest in the Contract (whether by foreclosure, sale or other assignment) and upon the further assignment or sale of the Contract by the Banks or their designee(s) or assignee(s).

[(h) The Undersigned hereby assigns to Owner (and Owner's assigns) all its interest in any subcontracts and purchase orders in excess of \$\_\_\_\_\_ now existing or hereinafter entered into by the Undersigned for performance of any part of the Undersigned's obligations under the Contract (the "Subcontracts"). Such assignment shall be effective only upon the occurrence of a breach or default (after the expiration of any applicable cure period) by the Undersigned under the Contract or upon the termination of the Contract, and then only as to those Subcontracts which Owner (or its assigns) at such time accepts in writing. The Undersigned hereby further assigns to Owner (and Owner's assigns) all of its rights with respect to any warranties under all Subcontracts. Each Subcontract hereinafter entered into by the Undersigned shall contain a consent by the subcontractor thereunder to the foregoing assignments set forth in this Section 1(h).]

2. The Undersigned hereby represents and warrants that:

(a) The execution, delivery and performance by the Undersigned of the Contract and this Consent has been duly authorized by all necessary corporate action, and does not and will not require any further consents or approvals which have not been obtained, or violate any provision of any law, regulation, order, judgment, injunction or similar matters or breach any agreement presently in effect with respect to or binding on the Undersigned;

(b) This Consent and the Contract are legal, valid and binding obligations of the Undersigned, enforceable against the Undersigned in accordance with their respective terms;

(c) All government approvals necessary for the execution, delivery and performance by the Undersigned of its obligations under the Contract have been obtained and are in full force and effect;

(d) As of the date hereof, the Contract is in full force and effect and has not been amended, supplemented or modified;

(e) Owner has fulfilled all of its obligations under the Contract, and there are no breaches or unsatisfied conditions presently existing (or which would exist after the passage of time and/or giving of notice) that would allow the Undersigned to terminate the Contract; and

(f) The Contract constitutes the only agreement between the Undersigned and Owner with respect to the matters and interests described therein.

3. [THE UNDERSIGNED ACKNOWLEDGES THAT OWNER HAS SUCCEEDED BY ASSIGNMENT TO THE INTERESTS, RIGHTS, DUTIES, OBLIGATIONS AND LIABILITIES OF \_\_\_\_\_ IN THE CONTRACT, AND HEREBY CONSENTS TO SUCH ASSIGNMENT.]

4. All Notices required or permitted hereunder shall be in writing and shall be effective (a) upon receipt if hand delivered, (b) upon receipt if sent by facsimile and (c) if otherwise delivered, upon the earlier of receipt or two (2) Banking Days after being sent registered or certified mail, return receipt requested, with proper postage affixed thereto, or by private courier or delivery service with charges prepaid, and addressed as specified below:

**If to the Undersigned:**

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

Telecopy No: \_\_\_\_\_ Telephone No: \_\_\_\_\_

**If to Administrative Agent:**

Credit Suisse First Boston,  
New York Branch  
Eleven Madison Avenue  
New York, NY 10010-3629  
Attn: Portfolio Management  
Telecopy No.: (212) 325-9126  
Telephone No.: (212) 325-8321

**If to Owner:**

**[NAME OF OWNER]**  
**[REGIONAL OFFICE]**  
Attn: Asset Optionization  
Telecopy No: \_\_\_\_\_  
Telephone No: \_\_\_\_\_

**[NAME OF OWNER]**  
c/o Calpine Corporation  
50 W. San Fernando Street, 5th Floor  
San Jose, CA 95113  
Attn: Asset Management  
Telecopy No: (408) 995-0505  
Telephone No: (408) 995-5115

5. This Consent shall be binding upon and inure to the benefit of the Undersigned, the Owner, the Banks and their respective successors, transferees and assigns (including without limitation, any entity that refinances all or any portion of the Obligations under the Credit Agreement). The Undersigned agrees to confirm such continuing obligation in writing upon the reasonable request of Owner, the Banks or any of their respective successors,

transferees or assigns. No termination, amendment, variation or waiver of any provisions of this Consent shall be effective unless in writing and signed by the Undersigned, Administrative Agent and Owner. This Consent shall be governed by the internal laws of the State of [PROJECT LOCATION], without reference to principles of conflict of laws.

6. This Consent may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

7. All references in this Consent to any document, instrument or agreement (a) shall include all exhibits, schedules and other attachments thereto, (b) shall include all documents, instruments or agreements issued or executed in replacement thereof, and (c) shall mean such document, instrument or agreement, or replacement or predecessor thereto, as amended, modified and supplemented from time to time and in effect at any given time.

**[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the Undersigned by its officer thereunto duly authorized, has duly executed this Consent as of the date first set forth above.

**[THE UNDERSIGNED]** a \_\_\_\_\_  
corporation

By \_\_\_\_\_  
Name:  
Title:

Accepted and agreed to:

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,  
as Administrative Agent for Banks**

By: \_\_\_\_\_  
Name:  
Title:

By: \_\_\_\_\_  
Name:  
Title:

**[NAME OF PROJECT/TURBINE OWNER]  
[TYPE OF ENTITY]**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT F-1**  
**to Credit Agreement**

**BORROWER'S CLOSING CERTIFICATE**

Pursuant to the Credit Agreement (as defined below), the undersigned hereby certifies on this \_\_\_ day of \_\_\_\_\_ 2000 to Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent under that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement") among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, that:

1. No Portfolio Entity is and, to Borrower's knowledge, no other party to any Operative Document in existence as of the Closing Date is, or, but for the passage of time or the giving of notice or both will be, in breach of any obligation thereunder which could reasonably be expected to have a Material Adverse Effect on Borrower.
2. Each representation and warranty of the Member, Calpine and the Portfolio Entities under the Credit Documents is true and correct in all material respects as of the Closing Date.
3. There exists no Event of Default or Inchoate Default or, with respect to any Initial Project, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default as of the Closing Date.
4. The conditions precedent set forth in Section 3.1 of the Credit Agreement have been satisfied or have been waived in writing by Administrative Agent with the consent of the Banks.
5. The copies of the annual and quarterly financial statements of the Portfolio Entities delivered by Borrower pursuant to Section 3.1.12 of the Credit Agreement are true and correct in all material respects and are the most recent annual and quarterly financial statements of the Member, Calpine and the Portfolio Entities. As of the Closing Date, no material adverse change in the consolidated assets, liabilities, operations or financial condition of the Member, Calpine and the Portfolio Entities has occurred from those set forth on such financial statements, or the balance sheet, as the case may be.

All capitalized terms used herein which are defined in the Credit Agreement shall have the meaning given to them in the Credit Agreement unless otherwise defined herein.

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on behalf of the Borrower as of the date first written above.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT F-2**  
**to Credit Agreement**

**BORROWER'S PROJECT FUNDING CERTIFICATE**

Pursuant to the Credit Agreement (as defined below), the undersigned hereby certifies on this \_\_\_ day of \_\_\_\_\_ 2000 to Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent under that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement") among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, that:

1. Attached hereto are true, complete and correct copies of each Project Document in existence with respect to the \_\_\_\_\_ Project (the "Project") as of the Funding Date, and any supplements or amendments thereto, and such Project Documents are in full force and effect in accordance with their terms and all conditions precedent to the respective parties' performances thereunder required to have been performed by the Funding Date have been satisfied.
2. No Portfolio Entity is and, to Borrower's knowledge, no other party to any Operative Document in existence as of the Funding Date is, or, but for the passage of time or the giving of notice or both will be, in breach of any obligation thereunder which is reasonably expected to have Material Adverse Effect on Borrower or the Project.
3. Each representation and warranty of Borrower, the Portfolio Entities with respect to the Project, the Member, Calpine and the Non-Affiliated Parents with respect to the Project, if any, and under the Credit Documents and each representation and warranty of Borrower and the Project Owner with respect to such Project under the other Operative Documents, in each case with respect to itself or the Project, are true and correct in all material respects as if made on the Funding Date, unless such representation or warranty expressly relates solely to another time.
4. There exists no Event of Default or Inchoate Default or, with respect to any Initial Project or Funded Subsequent Project, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default as of the Closing Date.
5. The conditions precedent set forth in Section [3.2] [3.3] of the Credit Agreement have been satisfied or have been waived in writing by [ADMINISTRATIVE AGENT WITH THE CONSENT OF THE BANKS][THE TECHNICAL COMMITTEE].

6. The copies of the annual and quarterly financial statements of the Project Owner and the Affiliated Major Project Participants delivered by Borrower pursuant to Section [3.2.22] [3.3.23] of the Credit Agreement are true and correct in all material respects and are the most recent annual and quarterly financial statements of the relevant Project Owner and the Affiliated Major Project Participants. As of the Funding Date, no material adverse change in the consolidated assets, liabilities, operations or financial condition of such Persons has occurred from those set forth on such financial statements or balance sheet, as the case may be.

7. Each Applicable Permit listed in Part I(A) of the Permit Schedule with respect to the Project is in full force and effect, and except as disclosed therein, is not subject to appeals or further proceedings or to any unsatisfied condition that could reasonably be expected to have a Material Adverse Effect on Borrower or the Project. Borrower has no reason to believe that any Permit identified in Part II(A) of such Permit Schedule will be obtained at a cost inconsistent with the applicable Project Budget or with material difficulty or delay by the time they are needed except where there exists alternative solutions (the expected cost of which is reflected in the Project Budget) which will eliminate the need for such Permit.

All capitalized terms used herein which are defined in the Credit Agreement shall have the meaning given to them in the Credit Agreement unless otherwise defined herein.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on behalf of the Borrower as of the date first written above.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT F-3**  
**to Credit Agreement**

**BORROWER'S TURBINE FUNDING CERTIFICATE**

Pursuant to the Credit Agreement (as defined below), the undersigned hereby certifies on this \_\_\_ day of \_\_\_\_\_ 2000 to Credit Suisse First Boston, acting through its New York Branch, as Administrative Agent under that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement") among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, that:

1. Attached hereto is a true, complete and correct copy of the Turbine Purchase Contract with respect to the relevant Turbine (the "Turbine"), and any supplements or amendments thereto, and such Turbine Purchase Contract is in full force and effect in accordance with its terms and all conditions precedent to the parties' performances thereunder required to have been performed by the Turbine Funding Date have been satisfied.
2. No Portfolio Entity is and, to Borrower's knowledge, no other party to any Operative Document in existence as of the Turbine Funding Date is, or, but for the passage of time or the giving of notice or both will be, in breach of any obligation thereunder which is reasonably expected to have Material Adverse Effect on Borrower. Neither the Turbine Owner with respect to the Turbine nor, to Borrower's knowledge, the relevant Turbine Purchase Contractor is or, but for the passage of time or giving of notice or both will be, in the breach of any material obligation under the relevant Turbine Purchase Contract.
3. Each representation and warranty of the Member, Calpine and the Portfolio Entities with respect to such Turbine under the Credit Documents and each representation and warranty of the Borrower and Turbine Owner with respect to such Turbine under the relevant Turbine Purchase Contract, in each case with respect to itself or the Turbine, shall be true and correct in all material respects as if made on the Turbine Funding Date, unless such representation or warranty expressly relates solely to another time.
4. There exists no Event of Default or Inchoate Default.
5. The conditions precedent set forth in Section 3.5 of the Credit Agreement have been satisfied or have been waived in writing by Administrative Agent with the consent of the Banks.

6. The Turbine is owned by \_\_\_\_\_, the Turbine Owner with respect to the Turbine, and the Turbine Delivery Date with respect to the Turbine is \_\_\_\_\_.

All capitalized terms used herein which are defined in the Credit Agreement shall have the meaning given to them in the Credit Agreement unless otherwise defined herein.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

IN WITNESS WHEREOF, the undersigned has duly executed this certificate on behalf of the Borrower as of the date first written above.

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT F-4**  
**to Credit Agreement**  
**[MARSH USA INC. LETTERHEAD]**

\_\_\_\_\_, 200\_

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: The \_\_\_\_\_ Project (the "Project")

Ladies and Gentlemen:

The undersigned, a duly authorized officer of Marsh USA, Inc., a Delaware corporation ("Insurance Consultant"), hereby provides this letter to you in accordance with Section [3.2.10] [3.3.11] of that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

Insurance Consultant acknowledges that pursuant to the Credit Agreement, the Banks will be providing financing to Borrower for, among other things, the construction of the Project and in so doing will be relying on this certificate and the Insurance Consultant's report dated \_\_\_\_\_. Such report represents Insurance Consultant's professional opinion with respect to the Project as of such date and as of the date hereof. Attached hereto as Exhibit A is a true, correct and complete list of the coverages which have been obtained to date in connection with the Project as evidenced by certificates of insurance and cover notes supplied by Borrower.

Upon delivery of the original certificates of insurance, copies of which are attached as Appendix A, Borrower will have provided satisfactory evidence of compliance with the provisions of Exhibit K to the Credit Agreement.

Sincerely,

**[MARSH USA, INC.]**

**EXHIBIT F-5  
to Credit Agreement**

**[R.W. BECK INC. LETTERHEAD]**

\_\_\_\_\_, 2000

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: The Initial Projects

Ladies and Gentlemen:

The undersigned, a duly authorized representative of R.W. Beck, Inc., a Washington corporation ("Independent Engineer"), hereby provides this letter to you in accordance with Section 3.1.21 of that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

R.W. Beck, Inc. has been retained by the Lead Arrangers as the Independent Engineer and it has prepared an Independent Engineer's Report dated [\_\_\_\_\_, 2000] addressing the feasibility of the Initial Projects (the "Independent Engineer's Report").

The Independent Engineer's Report was prepared pursuant to the scope of services under our Professional Services Agreement with the Lead Arrangers and those services were provided in accordance with generally accepted engineering practices.

In connection with the preparation of the Independent Engineer's Report, personnel of the Independent Engineer have participated in meetings or telephone discussions with representatives of Calpine Corporation and its affiliates, Borrower, counsel to Borrower, the Lead Arrangers and counsel to the Lead Arrangers in regard to the Initial Projects.

This letter is solely for the information of, and assistance to, the Lead Arrangers in conducting and documenting their investigation of the matters covered by the Independent Engineer's Report in connection with the Initial Projects and is not to be used, circulated, quoted or otherwise referred to within or without the lending group for any purpose, nor is it to be referred to in whole or in part in any other document, except that reference may be made to it in the Credit Agreement or in any list of closing documents pertaining to the Initial Projects.

Sincerely,

[R.W. BECK INC.]

**EXHIBIT F-6  
to Credit Agreement**

**[R.W. BECK INC. LETTERHEAD]**

\_\_\_\_\_, 200\_

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: The \_\_\_\_ Project (the "Project")

Ladies and Gentlemen:

The undersigned, a duly authorized representative of R.W. Beck, Inc., a Washington corporation ("Independent Engineer"), hereby provides this letter to you in accordance with Section [3.2.12] [3.3.13] of that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

R.W. Beck, Inc. has been retained by the Lead Arrangers as the Independent Engineer and it has prepared an Independent Engineer's Report dated \_\_\_\_\_, 200\_ with respect to the Project (the "Independent Engineer's Report").

The Independent Engineer's Report was prepared pursuant to the scope of services under our Professional Services Agreement with the Lead Arrangers and those services were provided in accordance with generally accepted engineering practices.

In connection with the preparation of the Independent Engineer's Report, personnel of the Independent Engineer have participated in meetings or telephone discussions with representatives of Calpine Corporation and its affiliates, Borrower, counsel to Borrower, the Lead Arrangers and counsel to the Lead Arrangers in regard to the Project.

This letter is solely for the information of, and assistance to, the Technical Committee in conducting and documenting their investigation of the matters covered by the Independent Engineer's Report in connection with the Project and is not to be used, circulated, quoted or otherwise referred to within or without the lending group for any purpose, nor is it to be referred to in whole or in part in any other document, except that reference may be made to it in the Credit Agreement or in any list of closing documents pertaining to the Project.

Sincerely,

[R.W. BECK INC.]

**EXHIBIT F-7  
to Credit Agreement**

**[R.W. BECK INC. LETTERHEAD]**

\_\_\_\_\_, 200\_

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: The \_\_\_\_\_ Turbine (the "Turbine")

Ladies and Gentlemen:

The undersigned, a duly authorized representative of R.W. Beck, Inc., a Washington corporation ("Independent Engineer"), hereby provides this letter to you in accordance with Section 3.5.11 of that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

R. W. Beck, Inc. has been retained by the Lead Arrangers as the Independent Engineer and it has prepared an Independent Engineer's Report dated \_\_\_\_\_, 200\_ addressing the technology and size of the Turbine (the "Independent Engineer's Turbine Report"). The Independent Engineer's Turbine Report was prepared pursuant to the scope of services under our Professional Services Agreement with the Lead Arrangers and those services were provided in accordance with generally accepted engineering practices.

In connection with the issuance of this certificate, personnel of the Independent Engineer have participated, to the extent determined necessary by the Independent Engineer, in meetings or telephone discussions with representatives of Calpine Corporation and its affiliates, Borrower, counsel to Borrower, the Lead Arrangers and counsel to the Lead Arrangers in regard to the Turbine.

This letter is solely for the information of, and assistance to, the Technical Committee in conducting and documenting their investigation of the matters covered by this Certificate in connection with the Turbine and is not to be used, circulated, quoted or otherwise referred to within or without the lending group for any purpose, nor is it to be referred to in whole or in part in any other document, except that reference may be made to it in the Credit Agreement or in any list of closing documents pertaining to the Turbine.

Sincerely,

[R.W. BECK INC.]

**EXHIBIT F-8  
to Credit Agreement**

**[FUEL CONSULTANT LETTERHEAD]**

\_\_\_\_\_, 200\_

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: The [\_\_\_\_\_] Project (the "Project")

Ladies and Gentlemen:

The undersigned, a duly authorized officer of \_\_\_\_\_, ("Fuel Consultant"), hereby provides this letter to you in accordance with Section [3.2.14] [3.3.15] of that Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

Fuel Consultant acknowledges that pursuant to the Credit Agreement, the Banks will be providing financing to the Borrower for, among other things, the construction of the Project and in so doing will be relying on this Certificate and Fuel Consultant's report dated \_\_\_\_\_. Fuel Consultant certifies that attached hereto as Exhibit A is a true, correct and complete copy of Fuel Consultant's report with respect to the Project, and that said report represents Fuel Consultant's professional opinion as of the date hereof. Further, Fuel Consultant confirms, as of the date hereof, the evaluation, estimates, projections, conclusions and recommendations contained in such report.

Sincerely,

**[FUEL CONSULTANT]**

**EXHIBIT F-9  
to Credit Agreement**

**[INDEPENDENT POWER MARKETING CONSULTANT LETTERHEAD]**

\_\_\_\_\_, 200\_

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance  
Attn: Manager, Project Finance

Re: The \_\_\_\_\_ Project (the "Project")

Ladies and Gentlemen:

The undersigned, a duly authorized representative of \_\_\_\_\_, ("Independent Power Marketing Consultant"), hereby provides this letter to you in accordance with Section [3.2.15] [3.3.16] of that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

Independent Power Marketing Consultant acknowledges that pursuant to the Credit Agreement, the Banks will be providing financing to the Borrower for, among other things, the construction of the Project and in so doing will be relying on this certificate and Independent Power Marketing Consultant's report dated \_\_\_\_\_. Independent Power Marketing Consultant certifies that attached hereto as Exhibit A is a true, correct and complete copy of Independent Power Marketing Consultant's report with respect to the Project, and that said report represents Independent Power Marketing Consultant's professional opinion as of such date and as of the date hereof. Further, since the date of the aforementioned Independent Power Marketing Consultant's report, nothing has come to our attention which would cause us to change that report.

Sincerely,  
**[INDEPENDENT POWER MARKETING CONSULTANT]**

**EXHIBIT G-1  
to Credit Agreement**

**DESCRIPTION OF INITIAL PROJECTS**

[\*]

**CCFC II SUBSEQUENT PROJECT LIST  
EXHIBIT G2**

[\*]

**CCFC II  
DESCRIPTION OF TURBINES  
EXHIBIT G3**

**MANUFACTURER: WESTINGHOUSE**

PROJECT NAME	CTG#	CONTRACT/UNIT PRICE	ONSITE DATES	PMTS. THRU 9/00	PMT. FOR OCT-00	PMT. FOR NOV-00	BALANCE REMAINING
Baytown	1F9807	\$ 27,900,500	#####	\$ 26,228,981			\$ 1,671,519
Baytown	1F9821	31,512,300	#####	26,785,455		1,575,615	3,151,230
Baytown	1F9822	31,512,300	#####	26,785,455		1,575,615	3,151,230
Channel	1F9818	29,682,600	#####	5,936,520		1,484,130	22,261,950
Channel	1F9823	30,237,600	#####	25,701,960		3,023,760	1,511,880
Decatur (Solutia)	IF9906	32,760,670	#####	8,225,000	1,603,201	6,552,134	16,380,335
Decatur (Solutia)	IF9907	32,760,670	#####	8,225,000	1,603,201	6,552,134	16,380,335
Decatur (Solutia)	1F9949	32,760,670	#####	8,225,000	1,603,201	6,552,134	16,380,335
Morgan (Amoco)	1F9819	31,704,337	#####	4,750,000	1,590,867		25,363,469
Morgan (Amoco)	1F9820	31,704,337	#####	4,750,000	1,590,867		25,363,469
Morgan (Amoco)	1F9950	31,704,337	#####	4,750,000	1,590,867		25,363,469
		=====		=====	=====	=====	=====
	Total	\$344,240,320		\$150,363,371	\$9,582,205	\$27,315,522	\$156,979,222

**APPENDIX G-4A**

**LOS MEDANOS PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4B**

**BAYTOWN PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4C  
CARVILLE PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4D  
PANDA PROJECT BUDGET**

(000's)

[\*]

**Appendix G-4E**  
**SANTA ROSA PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4F  
DELTA PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4G  
FREESTONE PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4H  
BROAD RIVER PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4I  
CHANNEL PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4J**  
**CORPUS PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4K  
DECATUR PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4L  
MORGAN PROJECT BUDGET**

(000's)

[\*]

**APPENDIX G-4M  
BORROWER BUDGET**

**Non Allocated Costs**

(000's)

Land	\$	--
Development Costs		--
Construction		--
Power Island		--
Insurance		--
EPC		--
Project Enhancements		--
Sales Tax		--
Construction Management		--
Startup		--
Pending Change Orders		--
Title Insurance		--
		-----
SUBTOTAL	\$	--
Interest Expense		176,505
Commitment Fees		8,799
Legal/Bank/Engineering/Admin Fee		45,900
		-----
TOTAL		\$231,204

**EXHIBIT G-5  
to Credit Agreement**

**INITIAL PROJECT SCHEDULED COMPLETION DATES**

PROJECT NAME -----	LOCATION -----	CONSTRUCTION START -----	COD -----
Los Medanos Energy Center	Pittsburg, CA	Aug-99	Jul-01
Baytown Energy Center	Baytown, TX	Jan-00	Jan-02
Channel Energy Center	Channel, TX	Apr-00	Jun-01
Delta Energy Center	Pittsburg, CA	Apr-00	Jun-02
Broad River Energy Center II	Gaffney, SC	Aug-00	Jul-01
Carville Energy Center	St. Gabriel, LA	Sep-00	Jul-02
Santa Rosa Energy Center I	Milton, FL	Sep-00	Jun-02
Freestone Energy Center	Freestone, TX	Sep-00	Jun-02
Decatur Energy Center	Decatur, AL	Sep-00	Jun-02
Morgan Energy Center	Decatur, AL	Sep-00	Jun-02
Oneta Energy Center	Coweta, OK	Oct-00	Jun-02
Corpus Christi Energy Center I	Corpus, TX	Oct-00	May-02

**EXHIBIT G-6  
to Credit Agreement**

[\*]

**EXHIBIT G-7  
to Credit Agreement**

**PENDING LITIGATION**

Complaint filed on April 14, 2000 with the Environmental Protection Agency's Office of Civil Rights by Michael Boyd, Joe Hawkins and Jim MacDonald of Californians for Renewable Energy, relating to the Los Medanos Energy Center Project.

**EXHIBIT G-8  
to Credit Agreement**

**HAZARDOUS SUBSTANCES DISCLOSURE**

None, except as disclosed in,

**BAYTOWN ENERGY CENTER**

- Phase I and II Environmental Site Assessment conducted by Arcadis, Geraghty & Mille for Bayer Corporation, dated November 3, 1999

**BROAD RIVER ENERGY CENTER II**

- Phase I Environmental Site Assessment conducted by Roy F. Weston, Inc

- Limited Phase II Environmental Site Assessment conducted by Roy F. Weston, Inc

**CARVILLE ENERGY CENTER**

- Phase I Environmental Site Assessment conducted by C-K Associates, Inc. for Polsky Energy Commission, dated August 1998.

- Phase I Environmental Site Assessment Update by C-K Associates, Inc. for Skygen Energy, LLC, dated August 16, 2000.

**CHANNEL ENERGY CENTER**

- Phase I and Limited Phase II Environmental Site Assessment Report for Calpine Construction Finance Company, L.P. dated January 2000.

**CORPUS CHRISTI ENERGY CENTER I**

- Phase I Environmental Site Assessment conducted by JD Consulting for Skygen Energy LLC dated August 1999.

- Limited Phase II Environmental Site Assessment conducted by JD Consulting for Skygen Energy LLC dated September 20, 2000.

**DECATUR ENERGY CENTER**

- Phase I Environmental Site Assessment dated December 1999, regarding Solutia Decatur Plant Site.

- Phase II Environmental Site Assessment Report by RMT dated February 25, 2000, regarding Solutia, Inc. Site.

- Phase II Environmental Site Assessment Report by RMT dated June 2000, regarding Utility Corridors and Lay-Down Area.

### **DELTA ENERGY CENTER**

- Environmental Site Assessment prepared by Environmental Resources Management for Calpine Corporation dated May 29, 1998.

### **FREESTONE ENERGY CENTER**

- Phase I Environmental Site Assessment regarding Bonner Property Site, Freestone County, by the WCM Group, Inc. for Entergy Power Group, Inc.

- Phase I Environmental Site Assessment regarding Hill Property Site, Freestone County, by the WCM Group, Inc. for Entergy Power Group, Inc dated June 2000.

### **LOS MEDANOS ENERGY CENTER**

- Phase I Environmental Site Assessment regarding 12 Acre Parcel, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated April 30, 1998.

- Phase I Environmental Site Assessment regarding Enron Cogeneration Facility Alternate Linear Routes, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated July 8, 1999.

- Phase II Environmental Site Investigation regarding 8th Street Corridor, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated May 10, 1999.

- Phase I Site Assessment for 8th Street, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated July 9, 1999.

- Phase I Environmental Site assessment regarding Two Acre Parcel

- Corner Harbor Road and Santa Fe Avenue, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated June 23, 1999.

- Phase I Environmental Site Assessment regarding Pittsburg District Energy Facility Proposed Truck Bypass Roadway East 3rd Street, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated June 23, 1999.

- Phase I Environmental Site Assessment for Enron regarding Offsite Linear Routes, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated June 11, 1999.

- Phase I Environmental Site Assessment regarding Proposed Truck Bypass Roadway, Santa Fe and Columbia Avenue, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated June 14, 1999

- Phase I Environmental Site Assessment regarding Diablo Services, East 3rd Street, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated July 8, 1999.

- Phase II Environmental Site Assessment for Pittsburg District Energy Facility, Proposed Truck Bypass Roadway and Two Acre Parcel, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated August 10, 1999

- Phase II Environmental Site Assessment, regarding USS POSCO Industries Recreational Ballpark Site, by URS Greiner Woodward Clyde on behalf of Enron Capital and Trade Resources, dated September 15, 1999

#### **MORGAN ENERGY CENTER**

- Phase I Environmental Site Assessment by Environmental Consulting and Technology, Inc. dated April 2000.

- Phase II Environmental Site Assessment submitted by Malcolm Pinrie, Inc. dated July 2000.

#### **ONETA ENERGY CENTER**

- Phase I Environmental Site Assessment by Environmental Consulting & Technology, Inc. for Panda Energy International, Inc. dated June 2000.

#### **SANTA ROSA ENERGY CENTER**

- Phase I Environmental Site Assessment Report by Sterling Fibers, Inc for Polsky Energy Corporation dated July 1998.

- Phase I Environmental Site Assessment Update by Sterling Fibers, Inc. for Skygen Energy, LLC dated August 2000.

- Phase II Environmental Site Assessment by Roy F. Weston, Inc. for Polsky Energy Commission dated September 3, 1999.

**EXHIBIT G-9  
to Credit Agreement**

**FORM OF POWER MARKETING PLAN**

[\*]

**EDIT G-10  
to Credit Agreement**

**FORM OF FUEL PLAN**

[\*]

**EXHIBIT H**  
**to Credit Agreement**

**SCHEDULE OF BANK/LENDING OFFICES**

Bank -----	Percentage of Loans -----	Allocation -----
1. CREDIT SUISSE FIRST BOSTON, NEW YORK BRANCH Eleven Madison Avenue New York, New York 10010	12.5%	\$312,500,000
2. THE BANK OF NOVA SCOTIA One Liberty Plaza, 26th Floor New York, New York 10006	12.5%	\$312,500,000
3. BANK OF AMERICA, N.A. 600 Montgomery, 9th Floor San Francisco, California 94104	12.5%	\$312,500,000
4. ING (U.S.) CAPITAL LLC c/o ING Barings 55 East 52nd Street New York, New York 10055	12.5%	\$312,500,000
5. BAYERISCHE LANDESBANK GIROZENTRALE 560 Lexington Avenue, 17th Floor New York, New York 10022	12.5%	\$312,500,000
6. CIBC INC. 425 Lexington Avenue New York, New York 10017	12.5%	\$312,500,000
7. DRESDNER BANK AG, NEW YORK AND GRAND CAYMAN BRANCHES 75 Wall Street New York, New York 10005	12.5%	\$312,500,000
8. TORONTO DOMINION (TEXAS) INC. 909 Fannin Street, 17th Floor Houston, Texas 77010	12.5%	\$312,500,000
TOTAL	----- 100%	----- 2,500,000,000

**EXHIBIT I**  
**to Credit Agreement**

**Annual Insurance Certificate**

**[LETTERHEAD OF BORROWER'S INSURANCE BROKER]**

[DATE]

Credit Suisse First Boston,  
New York Branch,  
as Administrative Agent for the Banks Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Ladies and Gentlemen:

The undersigned, a duly authorized officer of \_\_\_\_\_ a \_\_\_\_\_ ("Insurance Broker"), hereby provides this letter to you in accordance with Section 5.8.8 of that certain Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent. Except as provided herein, all terms used herein which are defined in the Credit Agreement shall have the meanings given therein.

Insurance Broker acknowledges that pursuant to the Credit Agreement, the Banks are providing financing to Borrower for the construction and/or operation of the Initial Projects, the Funded Subsequent Projects and the purchase of the Funded Turbines and in so doing are relying on Borrower's and/or the other applicable Portfolio Entities, as the case may be, continued compliance with the provisions of Exhibit K to the Credit Agreement.

Insurance Broker hereby certifies that, as of the date hereof, Borrower and/or the other applicable Portfolio Entities, as the case may be, have obtained and are maintaining in full force and effect insurance policies conforming, in all material respects, to the requirements set forth in Exhibit K to the Credit Agreement.

Respectfully submitted,

**EXHIBIT J-1  
to Credit Agreement**

**BANK WITHHOLDING CERTIFICATE (TREATY)**

[DATE]

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC**

a Delaware limited liability company  
c/o Calpine Corporation  
50 W. San Fernando Street  
San Jose, CA 95113  
Attn: Manager, Project Finance

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,**

as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

In connection with the Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, the undersigned hereby certifies, represents and warrants that [NAME OF RELEVANT BANK OR AGENT] is a [NAME OF COUNTRY] corporation and is currently exempt from any U.S. federal withholding tax on amounts paid to it from U.S. sources under the Credit Agreement by virtue of compliance with the provisions of the Income Tax Convention between the United States and [NAME OF COUNTRY], signed [DATE], [AS AMENDED]. Our fiscal year is the twelve months ending [\_\_\_\_\_].

The undersigned (a) is a corporation organized under the laws of [NAME OF COUNTRY] whose registered business is managed or controlled in [NAME OF COUNTRY], (b) [DOES NOT HAVE A PERMANENT ESTABLISHMENT OR FIXED BASE IN THE UNITED STATES/DOES HAVE A PERMANENT ESTABLISHMENT OR FIXED BASE IN THE UNITED STATES BUT THE CREDIT AGREEMENT IS NOT EFFECTIVELY CONNECTED WITH SUCH PERMANENT ESTABLISHMENT OR FIXED BASE], (c) is not exempt from tax on the income in [NAME OF COUNTRY] and (d) is the beneficial owner of the income.

We enclose two signed copies of Form 1001 of the U.S. Internal Revenue Service.

Yours faithfully,

**[NAME OF RELEVANT BANK]**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT J-2  
to Credit Agreement**

**BANK WITHHOLDING CERTIFICATE (EFFECTIVELY CONNECTED)**

[DATE]

**CALPINE CONSTRUCTION FINANCE COMPANY II, LLC**

a Delaware limited liability company  
c/o Calpine Corporation  
50 W. San Fernando Street  
San Jose, CA 95113  
Attn: Manager, Project Finance

**CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH,**

as Administrative Agent for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

In connection with the Credit Agreement dated as of October 16, 2000 (the "Credit Agreement"), among Calpine Construction Finance Company II, LLC, a Delaware limited liability company, as Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent, the undersigned hereby certifies, represents and warrants that [NAME OF RELEVANT BANK OR AGENT] is entitled to exemption from withholding tax on payments to it under the provisions of Section 1441(c) of the Internal Revenue Code of 1986, as amended, of the United States of America.

We enclose two signed copies of Form 4224 of the U.S. Internal Revenue Service.

Yours faithfully,

**[NAME OF RELEVANT BANK]**

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

Name:

Title:

**EXHIBIT K**  
**to Credit Agreement**

**INSURANCE REQUIREMENTS**

Defined terms used in this Exhibit K not otherwise defined herein shall have the meanings set forth in that certain Credit Agreement dated as of October 16, 2000, by and among Calpine Construction Finance Company II, LLC., a Delaware limited liability company ("Borrower"), Credit Suisse First Boston, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities, LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent and the Banks parties thereto.

1. With respect to each Project having Initial Contributions, Funded Project and Funded Turbine, Borrower shall, without cost to the Banks, maintain or cause to be maintained on its behalf in effect at all times the types of insurance required by the following provisions together with any other types of insurance, in form acceptable to Administrative Agent, required hereunder, with insurance companies rated "A-" or better, with a minimum size rating of "IX," by Best's Insurance Guide and Key Ratings, (or an equivalent rating by another nationally recognized insurance rating agency of similar standing if Best's Insurance Guide and Key Ratings shall no longer be published) or other insurance companies of recognized responsibility satisfactory to Administrative Agent, the following insurance coverages until all obligations of Borrower and the other Portfolio Entities pursuant to the Credit Agreement and the other Credit Documents have been fully discharged:

a. Commercial general liability insurance for such Project on an "occurrence" policy form or AEGIS claims-first-made form, including coverage for premises/operations, explosion, collapse and underground hazards, products/completed operations, broad form property damage, blanket contractual liability for both oral and written contracts, independent contractor's and personal injury, for the appropriate Portfolio Entities and for contractors, with primary coverage limits of no less than \$1,000,000 for injuries or death to one or more persons or damage to property resulting from any one occurrence and a \$1,000,000 annual aggregate limit.

The commercial general liability policy shall also include a severability of interest clause and a cross liability clause in the event more than one entity is "named insured" under the liability policy. Policy exclusions which are not standard to the commercial general liability coverage form or are added by manual endorsements or are proposed to be added after the Funding Date for each Funded Project, that restrict coverage, are to be approved by Administrative Agent. Work performed by others for the

appropriate Portfolio Entities at any such Project shall not commence until a certificate of insurance has been delivered verifying coverages outlined above to be in place and naming Borrower and the other applicable Portfolio Entities as insured or additional insured and Administrative Agent as additional insured. Deductibles in excess of \$50,000 shall be subject to review and approval by Administrative Agent.

b. Automobile liability insurance, including coverage for owned, non-owned and hired automobiles for both bodily injury and property damage and containing appropriate no-fault insurance provisions or other endorsements in accordance with state legal requirements, with limits of no less than \$1,000,000 per accident with respect to bodily injury, property damage or death.

c. Worker's compensation insurance and employer's liability insurance, with a limit of not less than \$1,000,000, disability benefits insurance and such other forms of insurance which Borrower or the other applicable Portfolio Entities are required by law to provide for any such Project, providing statutory benefits and other states' endorsement and USL&H Act coverage and Jones Act (if any exposure exists), covering loss resulting from injury, sickness, disability or death of the employees of Borrower and the other applicable Portfolio Entities. Work performed by others for any Portfolio Entity at any such Project shall not commence until a certificate of insurance has been delivered verifying coverages outlined above to be in place.

d. From the point of groundbreaking for each Project and through the date of Completion for such Project, builder's risk insurance covering each such Project separately on an "all risk basis" on a completed value form with "extended coverage" (including earthquake (subject to the next paragraph), flood, collapse, sinkhole and subsidence) and "soft cost coverage" on a no coinsurance basis and providing (i) coverage for such Project site, including removal of debris, insuring the buildings, structures, machinery, equipment, facilities, fixtures and other properties constituting a part of each such Project in a minimum aggregate amount not less than the full replacement value of each such Project, and in any case subject to a construction term aggregate limit of \$100,000,000 for flood coverage and for earthquake coverage, but in no event an amount less than the limit necessary to satisfy the other related Project contracts; (ii) off-site coverage with a per occurrence limit of \$5,000,000 or such higher amount as is sufficient to cover off-site equipment associated with such Project; (iii) transit coverage with a per occurrence limit of not less than the greater of \$5,000,000 or an amount sufficient to cover the full insurable value of any item in transit; (iv) coverage for operational testing and startup with the same dollar coverage and modifications as set out in (i) above; (v) delay in opening coverage for interest during construction, debt service and continuing expenses in an amount not less than an 18 month indemnification period limit, on an "all risk" basis, as set forth in (i) through (iv) above. Builder's risk insurance shall not contain an exclusion for freezing, mechanical breakdown, or resultant damage caused by faulty workmanship, design or materials and shall remain in effect until replaced by property insurance coverage and boiler and machinery coverage as specified

in Section I(e) below. All such policies may have deductibles of not greater than \$250,000 per loss; earthquake and flood coverage shall have a deductible of not greater than \$250,000 with the exception of California earthquake (for which the deductible may be 5% of values at risk), coastal windstorm (2% deductible) and any such Project located in a 100 year flood zone (\$500,000 deductible); and delay in opening coverage shall have a deductible not greater than a 45 day period; operational testing shall have a deductible of not greater than \$750,000; and transit coverage shall have a deductible of not greater than \$100,000. Builders risk policy shall include first party cleanup, hazardous materials, subject to a sublimit of \$250,000.

At least 45 days prior to the shipment of equipment for any Project or Funded Turbine manufactured outside the United States, ocean cargo coverage shall be secured in an amount not less than the full replacement costs of the value of equipment shipped. Such coverage shall apply to all equipment which is valued in excess of \$500,000 and has a lead time to replace exceeding five (5) months. The ocean cargo policy shall attach coverage prior to equipment departing the premises of the manufacturer and shall continue in force until the shipment arrives at the applicable Project site including 60 days storage, or is insured under the builders risk policy. Marine delay in opening or advanced loss of profits shall be insured in an amount not less than the equivalent of interest during construction, debt service and continuing expenses subject to an indemnification period not less than twelve months or such additional time required to repair/replace the equipment being shipped. The waiting period shall not exceed 45 days. The ocean cargo policy shall not be subject to cancellation with the exception of wars and strikes preventing passage to the United States and nonpayment of premium.

Earthquake coverage shall include coverage for movement, earthquakes, shocks, tremors, landslides, subsidence, volcanic activity, sinkhole coverage, mud-flow or rock-fall, or any other earth movement, all whether direct or indirect, approximate or remote or in whole or in part caused by, contributed to or aggravated by any physical damage insured against by such policy regardless of any other cause or event that contributes, concurrently or in sequence, to the loss.

Flood coverage shall include, but not be limited to, coverage for waves, tide or tidal water, inundation, rainfall and/or resulting runoff or the rising (including the overflowing or breaking boundaries) of lakes, ponds, reservoirs, rivers, harbors, streams, or other bodies of water, whether or not driven by wind.

e. From and after the date of Completion for each such Project, "all risk" property insurance coverage in the amount not less than the full replacement value of such Project, including a full replacement cost endorsement (no co-insurance) with no deduction for depreciation, providing, without limitation, (i) coverages against loss or damage by fire, lightning, windstorm, hail, explosion, riot, civil commotion, aircraft, vehicles, smoke, other risks from time to time included under "all risk" or "extended coverage" policies, earthquake, flood (provided, however, that earthquake and

flood coverage may be subject to an annual aggregate limit of not less than \$100,000,000 with the exception of California (for which the limit shall be as agreed to by Administrative Agent and Borrower and which in Administrative Agent's reasonable discretion, after consultation with the Banks, is commercially feasible), collapse, sinkhole, subsidence and such other perils as Administrative Agent, after consultation with the Banks and Borrower, may from time to time require to be insured, with a sublimit of not less than \$250,000 for on-site clean-up required as a result of the occurrence of an insured risk;

(ii) off-site coverage with a per occurrence limit of \$2,000,000 or such higher amount as is sufficient to cover off-site equipment for which there have been progress payments; (iii) transit coverage (including ocean cargo where ocean transit will be required) with a per occurrence limit of not less than \$2,000,000; and (iv) boiler and machinery coverage on a "comprehensive" basis including breakdown and repair with limits not less than the full replacement cost of the insured objects. Property insurance coverage shall not contain an exclusion for freezing, mechanical breakdown or resultant damage caused by faulty workmanship, design or materials. Borrower shall also maintain or cause to be maintained with respect to each such Project, from and after the date of Completion of such Project, business interruption insurance on an "all risk" basis as set forth in (i) through (iv) above, in an amount equal to satisfy policy coinsurance conditions, but not less than the sum of 12 months scheduled Debt Service attributable to such Project, continuing expenses and profits. Borrower shall also maintain or cause to be maintained, expediting or extra expense coverage in an amount not less than \$3,000,000. Borrower shall also maintain or cause to be maintained with respect to each such Project contingent business interruption insurance on a blanket basis in an amount not less than six months scheduled Debt Service attributable to such Project and continuing expenses and profits of such Project. The policy/policies shall include increased cost of construction coverage, debris removable, and building ordinance coverage to pay for loss of "undamaged" property which may be required to be replaced due to enforcement of local, state, or federal ordinances subject to a sublimit of \$10,000,000. All such policies may have deductibles of not greater than \$250,000 per loss with the exception of the combustion turbine (\$1,000,000); windstorm if located in a coastal area (2%), earthquake if located in California (for which the deductible may be 5% of values at risk) and flood if located in a 100 year zone (\$500,000); business interruption coverage shall have a waiting period of not greater than 45 days. In the event the all risk property and the boiler and machinery coverage are not written in the same policy, each policy shall be endorsed to provide a joint loss agreement.

f. Umbrella/excess liability insurance of not less than \$50,000,000 per occurrence and in the aggregate during the construction and the operation of each such Project. Such coverages shall be on a per occurrence policy form or AEGIS claims-first-made form and over and above coverage provided by the policies described in paragraphs (a), (b) and (c) above whose limits shall apply toward the \$50,000,000 limits set forth in this section. The umbrella and/or excess policies shall not contain endorsements which restrict coverages as set forth in paragraphs (a), (b) and (c) above, and which are provided in the underlying policies. The limit applying for each such

Project can be satisfied by insuring multiple Projects under one policy subject to a per Project aggregate endorsement. If the policy or policies provided under this paragraph contain(s) aggregate limits applying to other operations of Borrower, the other applicable Portfolio Entities, the Contractor or the Operator other than with respect to each individual Project, and such limits are diminished below \$25,000,000 by any incident, occurrence, claim, settlement or judgment against such insurance which has caused the carrier to establish a reserve, Borrower shall take or cause immediate steps be taken to restore such aggregate limits or shall provide other equivalent insurance protection for such aggregate limits.

g. Watercraft liability and protection and indemnity, to the extent exposure exists, in an amount not less than \$10,000,000 for all owned, non-owned and hired watercraft used in connection with the construction and operation of each such Project. Such coverage can be accomplished under policies provided pursuant to general liability policies, protection and indemnity policies or separate watercraft liability policies.

h. Aircraft liability, to the extent exposure exists, in an amount not less than \$10,000,000 for all owned, non-owned and hired aircraft, fixed wing or rotary, used in connection with the operation of each such Project.

i. Such other or additional insurance (as to risks covered, policy amounts, policy provisions or otherwise) as, under Prudent Utility Practices, are from time to time insured against for property and facilities similar in nature, use and location to the Funded Projects which Administrative Agent may reasonably require.

j. All Major Contractors and Major Subcontractors and the Operator (unless covered under the applicable Portfolio Entities' insurances) at each such Project shall, prior to performing work at each such Project site, supply proper evidence of insurance as set forth in paragraphs 1.a., 1.b., and 1.c. above. In addition, excess liability or umbrella liability limits of not less than \$5,000,000 for Major Contractors and Major Subcontractors and Operators shall be certified. Such insurance, with the exception of workers compensation, supplied by these parties shall:

(i) add Borrower, applicable Portfolio Entities, Administrative Agent and the Banks, as additional insureds;

(ii) be primary as respects insurance provided by Borrower, applicable Portfolio Entities and Administrative Agent,

(iii) waive rights of subrogation against Borrower, applicable Portfolio Entities and Administrative Agent;

(iv) continue in force until obligations of Contractors and Subcontractors or the Operator are fulfilled at each such Project.

Contractors and Subcontractors shall be responsible for tools and equipment brought onto each Project site unless such tools and equipment are financed by one of the Portfolio Entities; all such financed tools and equipment shall be covered under the builders risk policy.

2. All insurance coverage shall be on a "no coinsurance or self insurance/replacement cost" basis and in such form (including the form of the loss payable clauses) as shall be acceptable to Administrative Agent (which acceptance shall not be unreasonably withheld). Borrower shall submit certified copies of all policies received pursuant to the requirements of this Exhibit to Administrative Agent for its review and approval.

3. All policies wherein the Banks party to this Agreement have an insurable interest shall insure the interests of the Banks as well as Borrower and/or the other applicable Portfolio Entities and all policies, with the exception of workers compensation insurance, and shall name Administrative Agent and the Banks as additional insured, unless Administrative Agent and/or the Banks are named as an insured under the policy. All policies covering real or personal property or business interruption shall name Administrative Agent or its assigns as First Loss Payee in accordance with Lender's Loss Payable Endorsement 438 BFU or equivalent and shall provide that any payment thereunder for any loss or damage with respect to the applicable Project shall be made to Administrative Agent and paid into the Loss Proceeds Account, except that such policies may provide that any payments of less than \$1,000,000 (not to exceed \$2,000,000 in any year) made in respect of any single casualty or other occurrence may be paid solely to Borrower, unless Administrative Agent shall have notified the insurer that an Event of Default or a related Non-Fundamental Project Default has occurred there under and shall be continuing. Upon payment and satisfaction of all of Borrower's and the other Portfolio Entities' obligations under, and termination of, the Credit Documents, Administrative Agent will instruct the insurers to name Borrower, or such successor credit provider or other Person as Borrower shall specify, as loss payee. Each policy shall expressly provide that all provisions thereof, except the limits of liability (which shall be applicable to all insureds as a group) and liability for premiums (which shall be solely a liability of the applicable Portfolio Entities) shall operate in the same manner as if there were a separate policy covering each such insured. Each policy shall waive subrogation against Administrative Agent, the Banks, Borrower and the other Portfolio Entities and shall waive any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of Borrower, the other Portfolio Entities or the Banks. Each such policy shall provide that if any premium or installment is not paid when due, or if such insurance is to be cancelled, terminated or materially changed for any reason whatsoever, the insurers (or their representatives) will promptly notify Borrower and Administrative Agent, and any such cancellation, termination or change shall not be effective until 30 days after receipt of such notice by Administrative Agent, and that appropriate certification shall be made to Borrower by

each insurer with respect thereto. Policies of insurance, provided in accordance with this Exhibit K shall be primary with respect to any other insurance carried by the Banks.

4. In the event that any of the Portfolio Entities (or Contractor as appropriate) fail to respond in a timely and appropriate manner (as reasonably determined by Administrative Agent) to take any steps necessary or reasonably requested by Administrative Agent to collect from any insurers for any loss covered by any insurance required to be maintained by this Exhibit K, Administrative Agent shall have the right to make all proofs of loss, adjust all claims and/or receive all or any part of the proceeds of the foregoing insurance policies, either in its own name or the name of the applicable Portfolio Entities; provided, however, that the Portfolio Entities shall, upon Administrative Agent's request and at the Portfolio Entities' own cost and expense, make all proofs of loss and take all other steps necessary or reasonably requested by Administrative Agent to collect from insurers for any loss covered by any insurance required to be obtained by this Exhibit K.

5. On or before December 30th of each year, Borrower shall furnish to Administrative Agent, with a copy for each Bank, a certificate signed by a Responsible Officer of Borrower or authorized insurance representative, showing the insurance then maintained by or on behalf of the Portfolio Entities pursuant to this Exhibit K and stating that such insurance complies in all material aspects with the terms hereof, together with evidence of payment of the premiums thereon. In the event that at any time the insurance as herein provided shall be reduced or cease to be maintained, then (without limiting the rights of Administrative Agent hereunder in respect of the Event of Default or a related Non-Fundamental Project Default which arises as a result of such failure) Administrative Agent may at its option maintain the insurance required hereby and, in such event, Borrower shall reimburse Administrative Agent upon demand for the cost thereof together with interest thereon at a rate per annum equal to the Default Rate, but in no event shall the rate of interest exceed the maximum rate permitted by law.

6. In the event any insurance (including the limits or deductibles thereof) hereby required to be maintained, other than insurance required by law to be maintained and the builder's risk insurance described in paragraph 1 (d) above, shall not be available and commercially feasible in the commercial insurance market, Administrative Agent, with the approval of the Insurance Consultant, shall not unreasonably withhold its agreement to waive such requirement to the extent the maintenance thereof is not so available; provided, however, that (i) Borrower shall first request any such waiver in writing, which request shall be accompanied by written reports prepared by an independent insurance advisor of recognized national standing certifying that such insurance is not reasonably available and commercially feasible in the commercial insurance market for electric generating plants of similar type and capacity (and, in any case where the required amount is not so available, certifying as to the maximum amount which is so available) and explaining in detail the basis for such conclusions, such insurance advisers and the form and substance of such reports to be reasonably acceptable

to Administrative Agent; (ii) at any time after the granting of any such waiver, Administrative Agent may request, and Borrower shall furnish to Administrative Agent within 15 days after such request, supplemental reports reasonably acceptable to Administrative Agent from such insurance advisers updating their prior reports and reaffirming such conclusion; and (iii) any such waiver shall be effective only so long as such insurance shall not be available and commercially feasible in the commercial insurance market, it being understood that the failure of Borrower to timely furnish any such supplemental report shall be conclusive evidence that such waiver is no longer effective because such condition no longer exists, but that such failure is not the only way to establish such non-existence.

7. The Portfolio Entities shall at all times maintain or cause to be maintained the insurance coverage required under the terms of each of the Project Documents to which they are a party. As a specific, limited exception to the requirement that insurance be placed with companies of recognized responsibility as described in 1. above, it is agreed that insurance may be placed with other insurance companies or self-insured to the extent that the Person first named insured on such policies of insurance or self-insuring shall

(i) maintain a S&P credit rating of BBB or better, (ii) comply with all other requirements prescribed by this Schedule, (iii) maintain other insurance or self-insurance that, in the aggregate, shall at no time exceed 1% of such Person's net worth and (iv) the applicable Portfolio Entities shall provide written notice thereof to the Administrative Agent along with evidence reasonably satisfactory to the Administrative Agent of appropriate indemnification of the Portfolio Entities and the Banks by such Person.

8. In the event that any policy is written on a "claims-made" basis and such policy is not renewed or the retroactive date of such policy is to be changed, Borrower shall obtain or cause to be obtained for each such policy or policies the broadest basic and supplemental extended reporting period coverage or "tail" reasonably available in the commercial insurance market for each such policy or policies and shall provide Administrative Agent with proof that such basic and supplemental extended reporting period coverage or "tail" has been obtained.

**EXHIBIT L**  
**to the Credit Agreement**

**ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 200\_\_ (the "Effective Date"), between \_\_\_\_\_ (the "Transferor") and \_\_\_\_\_ (the "Transferee").

**RECITALS**

A. The parties refer to the Credit Agreement dated as of October 16, 2000 among Calpine Construction Finance Company II, LLC ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, acting through its New York Branch, as Lead Arranger and Administrative Agent ("Administrative Agent"), The Bank of Nova Scotia, as Lead Arranger, Co-Syndication Agent and Bookrunner, Banc of America Securities LLC, as Arranger and Co-Syndication Agent, ING (U.S.) Capital LLC, as Arranger and Co-Syndication Agent, Bayerische Landesbank Girozentrale, as Arranger, Co-Documentation Agent and LC Bank, CIBC World Markets Corp., as Arranger and Co-Documentation Agent, Dresdner Kleinwort Benson North America Services LLC, as Arranger and Co-Documentation Agent and TD Securities (USA) Inc., as Arranger and Co-Documentation Agent (as amended, modified or supplemented prior to, and as in effect on, the date hereof, the "Credit Agreement").

B. The Transferor wishes to assign and sell certain rights and delegate certain obligations with respect to the credit provided to Borrower pursuant to the Credit Agreement (the "Credit Exposure"), and the Transferee wishes to purchase and accept such rights and assume such duties, all as set forth below.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Definition and References. Capitalized terms not defined in this Agreement shall have the meanings given in the Credit Agreement, and the Rules of Interpretation attached as such to the Credit Agreement shall apply equally to this Agreement. The term "assign" as used herein means, without limitation, assign, delegate, transfer and sell; and the terms "assignment" and "assigned" have corresponding meanings.

2. Assignment.

2.1 The Transferor hereby irrevocably sells and assigns to the Transferee, effective as of the Effective Date, a percentage of the outstanding Loans, the Total Loan Commitment, the Total Turbine Purchase Loan Commitment and the Total Letter of Credit Commitment as set forth in Schedule 1, including such percentage interest in and to all rights and obligations under the Credit Agreement and the other Credit Documents (other than the Interest

Rate Agreements) (such transferred rights and obligations being referred to herein as the "Interest"). The amount of outstanding Loans (including Construction Loans and Turbine Purchase Loans) and aggregate Stated Amount of all issued and outstanding Letters of Credit will, as of the Effective Date, be as set forth on Schedule 2 attached hereto. On and after the Effective Date, the Transferee shall have the same rights, benefits and obligations as the Transferor had, as a Bank, under the Credit Agreement with respect to the Interest, all determined as if the Transferee was a "Bank" originally named in the Credit Agreement and the other Credit Documents (other than the Interest Rate Agreements) with respect to the Interest, and the Transferor shall be irrevocably released from its obligations, liabilities and responsibilities with respect to the Interest. The assignment to the Transferee hereunder shall include the Transferee's Proportionate Share of all interest, fees and other amounts owed by Borrower with respect to the Interest which accrue on and after (but not before) the Effective Date.

2.2 The Transferee acknowledges and agrees that the assignment hereunder is made entirely without recourse to the Transferor, and that, except to the extent set forth in Section 6 below, the Transferor does not make any representation or warranty of any kind to the Transferee and, in particular, the Transferor shall not be responsible for (i) the due execution, legality, validity, enforceability, genuineness, value or sufficiency of the Credit Agreement or any other Credit Document, (ii) the collectibility of the Interest, (iii) any representation, warranty or statement made in or in connection with any of the Credit Documents, (iv) the financial condition or creditworthiness of Borrower or any guarantor or any affiliate, partner or shareholder of Borrower or any guarantor, (v) the performance of or compliance with any of the terms or provisions of any of the Credit Documents by Borrower or any other Person (other than the Transferor), (vi) the validity, enforceability, perfection, priority, condition, value or sufficiency of any documents granting the Transferor and the other Banks a security interest in assets of Borrower (or any guarantor) or any collateral securing or purporting to secure the Credit Exposure or any part thereof, (vii) inspecting any of the property, books or records of Borrower or any other Person, or (viii) providing any credit or other information concerning the affairs of Borrower or any Person which may come into the possession of the Transferor or any of its affiliates.

2.3 Except as expressly set forth in the Credit Agreement, neither the Transferor nor any of its affiliates, officers, directors, employees, agents or attorneys (collectively, the "Transferor Parties") shall be liable for any mistake, error of judgment, or action taken or omitted to be taken in connection with the Interest or the Credit Documents. Except as expressly set forth in the Credit Agreement, the Transferor Parties shall incur no liability hereunder to the Transferee by reason of the fact that the Transferor is, or as a consequence of the Transferor's duties as, a Bank[, or in the case of the Administrative Agent, Lead Arrangers, Syndication Agent, Bookrunner or LC Bank, as Administrative Agent, Lead Arrangers, Syndication Agent, Bookrunner or LC Bank,] under the Credit Agreement.

3. Assumption and Agreement to be Bound. The Transferee hereby accepts, effective as of the Effective Date, the assignment of rights and delegation of obligations referred to in Section 2, and assumes and agrees to perform fully all of the obligations of the Transferor under the Credit Agreement and the other Credit Documents (other than the Interest Rate Agreements) with respect to the Interest, including, without limitation, the obligation to fund the

presently unfunded portion of the Interest subject to satisfaction of the applicable conditions in the Credit Agreement and the other Credit Documents. The Transferee agrees to be bound by the terms and conditions of the Credit Agreement and the other Credit Documents (other than the Interest Rate Agreements) as if it were a "Bank" originally named therein with respect to the Interest.

4. Notices. Notices shall be given under this Agreement in the manner set forth in the Credit Agreement.

5. Conditions Precedent. The Transferor's obligation to transfer the Interest to the Transferee hereunder is expressly conditioned upon payment by the Transferee to the Transferor of the amount set forth in Schedule 1.

6. Representations and Warranties.

6.1 The Transferor hereby represents and warrants to the Transferee that as of the Effective Date:

6.1.1 The Transferor is the owner of the Interest, free and clear of any rights of others;

6.1.2 The Transferor is duly authorized to assign the Interest and has obtained all consents and given all notices required under the Credit Documents; and

6.1.3 This Agreement is valid and binding on the Transferor and enforceable against the Transferor in accordance with its terms.

6.2 The Transferee hereby represents and warrants to the Transferor that as of the Effective Date:

6.2.1 The Transferee is duly authorized and qualified to purchase and accept the Interest;

6.2.2 This Agreement is valid and binding on the Transferee and enforceable against the Transferee in accordance with its terms;

6.2.3 The Transferee has made its own credit analysis of Borrower, its own credit and legal analysis of the Credit Documents and the transactions described therein, and its own decision to purchase and accept the Interest and to assume the duties and obligations of the Transferor with respect to the Interest as set forth hereunder, and has done so independently and without reliance on the Transferor, except that the Transferee has relied on the Transferor's representations contained in Section 6.1 hereof; and

6.2.4 The Transferor has made no representations or warranties to the Transferee with respect to the Interest except as set forth in this Agreement.

7. Miscellaneous.

7.1 Headings. Headings are for reference only and are to be ignored in interpreting this Agreement.

7.2 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York, United States of America, without giving effect to principles of conflicts of laws (other than Section 5-1401 of the New York General Obligations Law).

7.3 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto and supersedes all prior agreements and understandings between the parties relating to the subject matter hereof.

7.4 Further Assurances. Each of the Transferor and the Transferee hereby agrees to execute and deliver such other instruments, and take such other action, as any party may reasonably request in furtherance of the transactions contemplated by this Agreement.

7.5 Counterparts. This Agreement may be executed in counterparts.

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]**

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement by their duly authorized officers as of the date first above written.

**TRANSFEROR:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**TRANSFeree:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Acknowledged and approved:

ADMINISTRATIVE AGENT:

CREDIT SUISSE FIRST BOSTON,  
NEW YORK BRANCH

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

BORROWER:

CALPINE CONSTRUCTION FINANCE  
COMPANY II, LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Schedule 1 to Assignment and Assumption Agreement

Percentage Interest in the outstanding Loans, the Total Loan Commitment,  
the Total Turbine Purchase Loan Commitment and the Total Letter of  
Credit Commitment being Transferred:

\_\_\_\_\_ %

Payment to the Transferor Hereunder:

\$ \_\_\_\_\_

**DESCRIPTION OF THE CREDIT EXPOSURE**

Principal Amount of all Loans Outstanding:	\$ _____
Unfunded Amount of the Total Loan Commitment:	\$ _____
Total Loan Commitment:	\$ _____
Principal Amount of all Construction Loans Outstanding:	\$ _____
Principal Amount of all Turbine Purchase Loans Outstanding:	\$ _____
Available Amount of the Total Turbine Purchase Loan Commitment:	\$ _____
Total Turbine Purchase Loan Commitment:	\$ _____
Aggregate Stated Amount of all Letters of Credit Issued and Outstanding:	\$ _____
Available Amount of the Total Letter of Credit Commitment:	\$ _____
Total Letter of Credit Commitment:	\$ _____

**SCHEDULE 1**

**REQUIRED CONTRIBUTION PERCENTAGE\***

[\*]

**Schedule 3.2**

**Special Conditions Precedent**

[\*]

1

## SCHEDULE 3.3.41

### MODIFIED CONDITIONS PRECEDENT TO INITIAL FUNDING

1. Joint Venture Projects. In the case of a Subsequent Project that is only partially owned by the relevant Project Owner, (a) Administrative Agent on behalf of the Banks shall have received the Joint Venture Agreement which shall include provisions (i) requiring the Joint Venturers to fund their respective obligations in connection with the development, construction and operation of such Subsequent Project, providing reasonable remedies for a Joint Venturer's failure to fund, and permitting the relevant Project Owner to fund such obligations if any of the Joint Venturers fail to do so, (ii) permitting the relevant Project Owner to grant a Lien on its interest in such Subsequent Project in favor of the Banks pursuant to this Agreement, and (iii) prohibiting any of the other Joint Venturers from granting a Lien on or otherwise encumbering the relevant Project Owner's interest in such Subsequent Project and

(b) if required by applicable law, such Joint Venture Agreement or the relative rights of the Joint Venturers in such Subsequent Project (or a memorandum thereof) shall have been recorded or filed, as applicable, in the appropriate public records in order to give third parties notice of such Joint Venture Agreement.

2. Operative Documents.

(a) Delivery to Administrative Agent on behalf of the Banks of executed originals of:

(i) Amendments, supplements or modifications to each of the Collateral Documents with respect to such Subsequent Project (or additional Collateral Documents if reasonably requested by the Technical Committee, including a Project Owner Guaranty and a Project/Turbine Owner Security Agreement executed by the Project Owner with respect to such Subsequent Project, an Equipment Finance Company Security Agreement executed by the Equipment Finance Company with respect to such Subsequent Project, if applicable, and Pledge Agreements (Pledged Equity Interests) executed by each Portfolio Entity with respect to such Subsequent Project (other than the relevant Project Owner and Equipment Finance Company, if any) and the Non-Affiliated Parents with respect to such Subsequent Project, if any) considered necessary by the Technical Committee to ensure that all rights and assets related to such Subsequent Project, including all real property and personal property comprising such Subsequent Project and all rights of the relevant Project Owner under any Joint Venture Agreement relating to such Subsequent Project, have been pledged to Administrative Agent and the Banks; provided, however, as set forth in the relevant Project/Turbine Owner Security Agreement, Equipment Finance Company Security Agreement, Pledge Agreements (Pledged Equity Interests) and Deed of Trust, the Lien on the Collateral comprising such Subsequent Project and the ownership interests in the relevant Portfolio Entities shall not secure those Obligations relating to or arising from Projects that have achieved Operation prior to the Funding Date.

(ii) Consents to assignment in substantially the form of Exhibit E-1 or otherwise in form and substance reasonably satisfactory to the Technical Committee from the counterparties to each Major Project Document (Major Gas Supply Contracts, Major Power Purchase Agreements and Major Gas Transportation Agreements only to the extent then in

existence), electric transmission and interconnection agreements and material water supply agreements in respect of such Subsequent Project.

(iii) Affiliated Subordination Agreements substantially in the form of Exhibit D-8 or otherwise in form and substance reasonably satisfactory to the Technical Committee (or, if applicable, amendments to existing Affiliated Subordination Agreements) executed by each Affiliate of Calpine (other than the relevant Project Owner and Equipment Finance Company, if any) entering into Project Documents with respect to such Subsequent Project considered necessary by the Technical Committee to subordinate certain O&M Costs that the relevant Project Owner may incur pursuant to such Project Documents to the Obligations. Such O&M Costs shall only include amounts payable to such Affiliate which do not represent reimbursement of costs payable to third parties not Affiliates of Calpine and shall be subordinated to the Obligations to the same extent as O&M Costs are subordinated to the Obligations in the corresponding documents furnished by Borrower pursuant to Section 3.2.8 or otherwise to the extent satisfactory to the Technical Committee.

(b) Borrower shall have delivered to Administrative Agent the federal employer number and all other information requested by Administrative Agent with respect to the Portfolio Entities and the Non-Affiliated Parents, if any, with respect to such Subsequent Project and all actions shall have been taken to provide the Banks with a valid and perfected first priority Lien on the Collateral in respect of such Subsequent Project (except as otherwise approved by the Technical Committee, including all personal property comprising such Subsequent Project) including, without limitation, to the extent necessary, the execution, delivery and recordation of the Deed of Trust and fixture filings with respect to such Subsequent Project in the appropriate locations, the filing of UCC-1, UCC-2 or UCC-3 financing statements, as applicable, with respect to such Collateral with the Secretary of State and/or other appropriate filing office in the states in which such Subsequent Project is located, the states of formation of the relevant Portfolio Entities or Non-Affiliated Parents or the states in which such Portfolio Entities' or Non-Affiliated Parents' principal places of business are located, the delivery of the Pledged Equity Interests of the Portfolio Entities with respect to such Subsequent Project in accordance with the relevant Pledge Agreements (Pledged Equity Interests) and the delivery of a Portfolio Entity Note executed by the relevant Project Owner and Equipment Finance Company, if any.

(c) Delivery to Administrative Agent on behalf of the Banks of a certified list of, and true and correct copies of, each Project Document with respect to such Subsequent Project then in effect (including all the Major Project Documents (other than Major Gas Supply Contracts (other than Gas Supply Contracts with Affiliates of Borrower) and Major Power Purchase Agreements), electric transmission and interconnection agreements and material water supply agreements), and, in each case, any supplements or amendments thereto, and all of which Project Documents shall be certified by a Responsible Officer of Borrower as being true, complete and correct and in full force and effect on the Funding Date and a Responsible Officer of Borrower shall deliver to Administrative a certificate stating that neither the relevant Project Owner nor, to Borrower's knowledge, any other party to any such Project Document is or, but for the passage of time or giving of notice or both will be, in breach of any material obligation thereunder, and that all conditions precedent to the performance of the parties under such Project Documents then required to have been performed have been satisfied.

(d) Delivery to Administrative Agent of (i) all shared use agreements and/or joint ownership agreements reasonably requested by the Technical Committee evidencing the relevant Project Owner's interests, rights and obligations with respect to any shared facilities incorporated into or used with respect to such Subsequent Project, (ii) all intercreditor agreements and/or non-disturbance agreements reasonably requested by the Technical Committee establishing the relative rights and remedies between Administrative Agent on behalf of the Banks and any other Persons with interests in any such shared facilities or other properties incorporated into or used with respect to such Subsequent Project and (iii) in the case of a Subsequent Project where the relevant Project Owner is directly or indirectly partially owned by Borrower, all joint venture, joint operating or other documents relating to the joint ownership or joint governance of such Project Owner between the Portfolio Entities and the Non-Affiliated Parents with respect to such Subsequent Project.

3. Insurance. Insurance with respect to such Subsequent Project complying with Exhibit K to the Credit Agreement (as the same may be modified to include such Subsequent Project) shall be in full force and effect and Administrative Agent on behalf of the Banks shall have received (a) a certificate from Borrower's insurance broker(s), dated as of the Funding Date and identifying underwriters, type of insurance, insurance limits and policy terms, listing the special provisions required as set forth in Exhibit K, describing the insurance obtained and stating that such insurance is in full force and effect and that all premiums due thereon have been paid and that, in the opinion of such broker(s), such insurance complies with Exhibit K, and (b) certified copies of all policies evidencing such insurance (or a binder, commitment or certificates signed by the insurer or a broker authorized to bind the insurer).

4. Certificate of the Independent Engineer. Delivery to Administrative Agent on behalf of the Banks of the Independent Engineer's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-6, with the Independent Engineer's report with respect to such Subsequent Project attached thereto, confirming that the revenue assumptions approved by the Power Marketing Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to this Schedule 3.3.41 and fuel price assumptions approved by the Fuel Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to this Schedule 3.3.41 have been properly incorporated into the Base Case Project Projections and that the Project Schedule with respect to such Subsequent Project is consistent with the applicable Project Budget, and the Technical Committee shall be satisfied that the projected O&M Costs and the projected performance (including output, heat rate, environmental and Permit compliance, and availability, individually or taken as a whole) of such Subsequent Project as reflected in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in this Schedule 3.3.41 and the design and other technical aspects of, such Subsequent Project, are reasonable and achievable in a manner consistent with the applicable Project Budget and Project Schedule.

5. Reports of the Environmental Consultant. Delivery to Administrative Agent on behalf of the Banks of Borrower's Environmental Consultant's Phase I reports with respect to such Subsequent Project and, if a Phase II environmental review is warranted by any of such Phase I reports, as reasonably determined by the Technical Committee, delivery to Administrative Agent on behalf of the Banks of a Phase II report, in each case, along with the corresponding reliance letters from such Environmental Consultant either (i) confirming that no Hazardous Substances were found in, on or under the Site or Easements of such Subsequent Project or (ii) disclosing matters that are otherwise satisfactory to the Technical Committee.

6. Certificate of the Fuel Consultant. Delivery to Administrative Agent on behalf of the Banks of the Fuel Consultant's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-8, with the Fuel Consultant's report with respect to such Subsequent Project attached thereto, confirming that there is sufficient fuel available to such Subsequent Project to operate such Subsequent Project in the manner contemplated by, and in accordance with the fuel price assumptions incorporated in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in this Schedule 3.3.41 and that the Fuel Plan delivered to Administrative Agent on behalf of the Banks as contemplated in this Schedule 3.3.41 for such Subsequent Project constitutes a reasonable plan for the supply and transportation of fuel for such Project under existing and expected market conditions affecting such Subsequent Project and consistent with the intended operation thereof.

7. Certificate of Power Marketing Consultant. Delivery to Administrative Agent on behalf of the Banks of a Power Marketing Consultant's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-9, with a Power Marketing Consultant's report with respect to such Subsequent Project attached thereto, confirming that the revenue assumptions incorporated in the Base Case Project Projections delivered to Administrative Agent on behalf of the Banks as contemplated in this Schedule 3.3.41 are reasonable in light of existing and expected market conditions affecting such Subsequent Project.

8. Power Marketing Plan. Delivery to Administrative Agent on behalf of the Banks of a plan with respect to power marketing setting forth Borrower's good faith assessment of the projected sales of power with respect to such Subsequent Project, which plan shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of the Power Marketing Plans furnished by Borrower pursuant to Section 3.2.16 and with such additional changes as may be appropriate under the circumstances.

9. Fuel Plan. Delivery to Administrative Agent on behalf of the Banks of a plan with respect to fuel setting forth Borrower's good faith assessment of such Subsequent Project's projected fuel consumption needs and fuel supply and transportation strategy, which plan shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of the Fuel Plans delivered furnished by Borrower pursuant to Section 3.2.17 and with such additional changes satisfactory in form and substance to the Fuel Consultant as may be appropriate under the circumstances.

10. No Change in Tax Laws. No change shall have occurred, since the date upon which this Agreement was executed and delivered, in any law or regulation or interpretation thereof that would subject any Bank to any material unreimbursed Tax or Other Tax.

11. Absence of Litigation. (a) No action, suit, proceeding or investigation shall have been instituted or threatened against any Portfolio Entity in respect of such Subsequent Project which could reasonably be expected to have a Material Adverse Effect on Borrower or such Subsequent Project, and (b) except for the applicability of the FPA solely by reason of the relevant Project Owner being an Exempt Wholesale Generator, no order, judgment or decree shall have been issued or proposed to be issued by any Governmental Authority that, as a result of the construction, ownership, leasing or operation of such Subsequent Project, the sale of electricity or steam therefrom or the entering into of any Operative Document with respect to such Subsequent Project or any transaction contemplated hereby or thereby, would cause or deem the Banks, any Portfolio Entity or any Affiliate of any of them to be subject to, or not exempted from, regulation under the FPA or PUHCA or under state laws and regulations respecting the rates or the financial or organizational regulation of electric utilities.

12. Payment of Filing Fees. All amounts required to be paid to or deposited with the Banks (including the Activation Fee) in respect of such Subsequent Project, and all taxes, fees and other costs payable in connection with the execution, delivery, recordation and filing of the documents and instruments referred to in this Schedule 3.3.41, shall have been paid in full or, as approved by the Technical Committee, provided for.

13. UCC Reports. Administrative Agent on behalf of the Banks shall have received a UCC report of a date reasonably close to the Funding Date for each of the jurisdictions in which any UCC-1 financing statements or amendments thereto are intended to be filed in respect of the Collateral with respect to such Subsequent Project, showing that upon due filing (assuming such filing or recordation occurred on the date of such respective reports), the security interests created under the Collateral Documents with respect to such Subsequent Project will be prior to all other financing statements or other security documents wherein the security interest is perfected by filing in respect of such Collateral.

14. Project Budgets. Borrower shall have furnished Administrative Agent on behalf of the Banks budgets in substantially the form of the Project Budgets delivered pursuant to Section 3.1.14 but with such changes as are required to address the specifics of such Subsequent Project for all anticipated costs to be incurred in connection with the construction and start-up of such Subsequent Project, including in such budgets all construction and non-construction costs, and including all interest, taxes and other carrying costs, together with a balanced statement of sources (including an allocation between Construction Loan proceeds and Contributions) and uses of proceeds (and any other funds necessary to complete such Subsequent Project), broken down as to separate construction phases and components.

15. Project Schedule. Borrower shall have furnished Administrative Agent a project schedule with respect to such Subsequent Project in substantially the form of the Project Schedules delivered pursuant to Section 3.2.25 but with such changes as are required to address the specifics of such Subsequent Project and showing a guaranteed completion date for such Subsequent Project that is on or before the Loan Maturity Date and which is consistent with the Base Case Project Projections delivered pursuant to Section 16 of this Schedule 3.3.41 and the Independent Engineer's report delivered pursuant to Section 4 of this Schedule 3.3.41.

16. Base Case Project Projections. Borrower shall have furnished to Administrative Agent on behalf of the Banks the combined Base Case Project Projections of operating expenses and cash flow for all Funded Initial Projects and Funded Subsequent Projects (including such Subsequent Project) showing, for each year in such projections, a projected annual Four-Quarter Portfolio Interest Coverage Ratio equal to or exceeding 2.25 to 1.00 (which ratio shall be supported by the projections set forth in the Independent Consultant's reports delivered pursuant to Sections 3.2 and 3.3 with respect to such Projects) in substantially the form (including the duration thereof) of those projections delivered pursuant to Section 3.1.16.

17. No Material Adverse Change. No event or circumstance having a Material Adverse Effect with respect to Borrower has occurred since the Closing Date, and, with respect to such Subsequent Project, no event or circumstance having a Material Adverse Effect with respect to such Subsequent Project shall have occurred.

18. Title Policies. Borrower shall have delivered to Administrative Agent on behalf of the Banks a lender's A.L.T.A. policy of title insurance, together with such endorsements as are required by the Technical Committee (without a mechanics' and materialmen's exception included in such title policy, except where applicable Governmental Rules prevent the deletion of such exception), or commitment to issue such policy, dated as of the Funding Date (x) in an amount equal to 50% of the aggregate amount of Project Costs set forth in the Project Budget for such Subsequent Project (or such other amount as is reasonably acceptable to the Technical Committee) and (y) with such reinsurance as is satisfactory to the Technical Committee, issued by the Title Insurer in form and substance satisfactory to the Technical Committee, insuring (or agreeing to insure) that:

(a) the relevant Project Owner has a good, marketable and insurable fee or leasehold title to or right to control, occupy and use the Site and the Easements with respect to such Subsequent Project, free and clear of liens, encumbrances or other exceptions to title except Permitted Liens described in clause (a), (b) or (e) of the definition thereof, those otherwise permitted pursuant to this Section 18 of Schedule 3.3.41 and those satisfactory to the Technical Committee and specified on such policy; and

(b) the Deed of Trust with respect to such Subsequent Project is (or will be when recorded) a valid first lien on the Mortgaged Property with respect to such Subsequent Project, free and clear of all liens, encumbrances and exceptions to title whatsoever, other than those encumbrances permitted pursuant to clause (a) above.

19. Regulatory Status. Such Subsequent Project shall (a) have complied with the requirements of 18 C.F.R. Section 292.207 required to be complied with as of the Funding Date and delivered to Administrative Agent on behalf of the Banks either

(i) a certificate of FERC certifying such Subsequent Project as a Qualifying Facility, or (ii) documentation evidencing the self-certification of such Subsequent Project as a Qualifying Facility and a legal opinion of counsel to the Portfolio Entities with respect to the effectiveness of such documentation to qualify such Subsequent Project as a Qualifying Facility or (b) be or be capable of becoming an Eligible Facility, and (x) if the relevant Project Owner has previously filed an application with FERC for a determination that such Project Owner is an Exempt Wholesale Generator, Borrower shall have delivered to the Technical Committee a copy of an additional or supplemental application

regarding Exempt Wholesale Generator with respect to such Subsequent Project filed by such Project Owner with FERC and (y) the Technical Committee shall have received a legal opinion of counsel to the Portfolio Entities to the effect that

(i) if FERC has previously determined that such Project Owner is an Exempt Wholesale Generator, such Subsequent Project will not adversely impact such Project Owner's status as an Exempt Wholesale Generator or (ii) if FERC has not yet determined that such Project Owner is an Exempt Wholesale Generator, there exists no reasonable basis for FERC to deny an application filed by such Project Owner pursuant to Section 5.12.1 for Exempt Wholesale Generator status.

20. Calpine Compliance. No "event of default" (as defined therein) that are greater than \$10,000,000 under any agreement or instrument documenting or evidencing any of Calpine's Debt obligations shall have occurred and be continuing.

21. Calpine Guaranties. Calpine shall have executed (a) an acknowledgement, in form and substance satisfactory to the Technical Committee, that such Subsequent Project shall be included with the obligations undertaken pursuant to the Project Completion Guaranty and (b) (i) in the case of each Person party to a Project Document that is directly or indirectly more than 50% owned by Calpine (other than the relevant Project Owner and Equipment Finance Company, if any), an Affiliated Party Agreement Guaranty in respect of each Project Document (guarantying 100% of such Person's obligations under each such Project Document) entered into between the relevant Project Owner and such Person for such Subsequent Project or (ii) in the case of each Person party to a Project Document that is directly or indirectly 50% owned by Calpine (other than the relevant Project Owner and Equipment Finance Company, if any), an Affiliated Party Agreement Guaranty in respect of each Project Document (guarantying at least Calpine's percentage ownership interest of such Person's obligations under each such Project Document) entered into between the relevant Project Owner and such Person for such Subsequent Project; provided, in the case of clause (b)(ii) of this Section 21 of this Schedule 3.3.41, Borrower shall also deliver to Administrative Agent a guaranty agreement in favor of the relevant Project Owner in respect of each such Project Document, executed by a guarantor satisfactory to the Technical Committee and in form and substance satisfactory to the Technical Committee, guarantying those obligations of such Person under each such Project Document not otherwise addressed in the Affiliated Party Agreement Guaranty delivered pursuant to such clause.

22. Updated Exhibits. Borrower shall have delivered to Administrative Agent supplements to (a) Exhibit G-8 (Hazardous Substances) referencing the environmental reports in respect of such Subsequent Project that were delivered to Administrative Agent on behalf of the Banks pursuant to this Schedule 3.3.41,

(b) Exhibit D-6 reflecting the filings and recordings required to be made to perfect security interests in the Collateral in respect of such Subsequent Project, and (c) Exhibit K reflecting any additional or revised insurance policies or coverages required by the Insurance Consultant to account for such Subsequent Project.

23. Diversification Requirements. Such Subsequent Project satisfies the Diversification Requirements.

24. Calpine Corporation Credit Rating. Calpine shall be rated at least Ba2 by Moody's and BB by S&P.

## Schedule 4.24

### Chief Executive Offices of Portfolio Entities

As used in this Schedule 4.24, the following terms shall apply

"Chief Executive Office" shall mean the chief executive office or chief place of business as that term is used in Article 9 of the Uniform Commercial Code as in effect in each state where the Projects are located and the States of California and New York from time to time

"Corporate" shall mean the Corporate Headquarters of Calpine Corporation, located at 50 West San Fernando Street, San Jose, California 95113.

"CRO" shall mean the Central Regional Office of Calpine Corporation, located at 700 Louisiana, Suite 2700, Houston, Texas 77002.

"ERO" shall mean the Eastern Regional Office of Calpine Corporation, located at The Pilot House, 2nd Floor, Lewis Wharf, Boston, Massachusetts 02110.

"FEIN" shall mean federal employer identification number

"WRO" shall mean the Western Regional Office of Calpine Corporation, located at 6700 Koll Center Parkway, Suite 200, Pleasanton, California 94566.

### Portfolio Entities Chief Executive Office and FEIN

Calpine Construction Finance Company, II LLC Chief Executive Office: Corporate FEIN: 77-0555128

CCFC II Development Company, LLC  
Chief Executive Office: Corporate FEIN: 77-0555127

CCFC II Equipment Finance Holdings, LLC  
Chief Executive Office: Corporate FEIN: 77-0555519

CCFC II Equipment Finance Company, LLC  
Chief Executive Office: Corporate FEIN: 77-0555523

CCFC II Project Equipment Finance Company One, LLC Chief Executive Office: Corporate FEIN: 77-0556245

Los Medanos Energy Center, LLC  
Chief Executive Office Corporate, WRO FEIN: 77-0553164

Delta Energy Center, LLC  
Chief Executive Office: Corporate, WRO FEIN: 77-0555126

CPN Delta Holdings LLC  
Chief Executive Office: Corporate, WRO FEIN: 77-0549685

Corpus Christi Cogeneration LP  
Chief Executive Office: Corporate, CRO FEIN: 36-4337040

SkyGen SouthCoast Investors LLC  
Chief Executive Office: Corporate, CRO FEIN: 36-4337045

Nueces Bay Energy LLC  
Chief Executive Office: Corporate, CRO FEIN: 36-4216016

Decatur Energy Center, LLC  
Chief Executive Office: Corporate, CRO FEIN: 77-0555708

Morgan Energy Center, LLC  
Chief Executive Office: Corporate, CRO FEIN: 77-0555141

Baytown Energy Center, LP  
Chief Executive Office: Corporate, CRO FEIN: 77-0555134

Calpine Baytown Energy Center GP, LLC  
Chief Executive Office: Corporate, CRO FEIN: 77-0555133

Calpine Baytown Energy Center LP, LLC I  
Chief Executive Office: Corporate, CRO FEIN: 77-0555138

Carville Energy LLC  
Chief Executive Office: Corporate, CRO

Calpine Oneta Power, L.P.

Chief Executive Office: Corporate, CRO

FEIN: 75-2815392

Calpine Oneta Power I, LLC

Chief Executive Office: Corporate, CRO FEIN: 75-2815390

Calpine Oneta Power II, LLC

Chief Executive Office: Corporate, CRO FEIN: 75-2815394

Freestone Power Generation, LP

Chief Executive Office: Corporate, CRO FEIN: 76-0608559

Calpine Power Equipment LP

Chief Executive Office: Corporate, CRO FEIN: 76-0645514

CPN Freestone, Inc.

Chief Executive Office: Corporate, CRO FEIN: 77-0545937

Calpine Freestone, Inc.

Chief Executive Office: Corporate, CRO FEIN: 77-0546242

Channel Energy Center, LP

Chief Executive Office: Corporate, CRO FEIN: 77-0555137

Calpine Channel Energy Center GP, LLC

Chief Executive Office: Corporate, CRO FEIN: 77-0555139

Calpine Channel Energy Center LP, LLC

Chief Executive Office: Corporate, CRO FEIN: 77-0555140

Nueces Bay Energy LLC

Chief Executive Office: Corporate, CRO FEIN: 36-4216016

Broad River Investors LLC  
Chief Executive Office: Corporate, ERO  
**FEIN 36-4311004**

Santa Rosa Energy LLC  
Chief Executive Office: Corporate, ERO FEIN: 36-4216066

**EXHIBIT 12.1**

**STATEMENT ON COMPUTATION OF  
RATIO OF EARNINGS TO FIXED CHARGES**

	Year Ended December 31,				
	1996	1997	1998	1999	2000
(in thousands)					
COMPUTATION OF EARNINGS:					
Pretax income before adjustment for minority interests in consolidated subsidiaries and income or loss from equity investees .....	\$21,219	\$ 37,340	\$ 48,133	\$121,623	\$ 521,683
Fixed charges .....	48,672	72,718	100,015	153,268	331,023
Amortization of capitalized interest .....	--	--	136	331	447
Distributed income of equity investees .....	1,274	21,042	27,717	43,318	29,979
Interest capitalized .....	--	(6,200)	(7,000)	(47,300)	(206,973)
Minority interest in pretax income of subsidiaries that have not incurred fixed charges .....	--	--	--	265	(895)
Total earnings .....	\$71,165	\$124,900	\$169,001	\$271,505	\$ 675,264
	=====	=====	=====	=====	=====
COMPUTATION OF FIXED CHARGES:					
Interest expensed and capitalized ...	\$45,294	\$ 67,666	\$ 93,726	\$138,462	\$ 263,673
Estimate of interest within rental expense .....	3,378	5,052	6,289	12,241	23,140
Distributions on HIGH TIDES .....	--	--	--	2,565	44,210
Total fixed charges .....	\$48,672	\$ 72,718	\$100,015	\$153,268	\$ 331,023
	=====	=====	=====	=====	=====
Ratio of earnings to fixed charges ..	1.46x	1.72x	1.69x	1.77x	2.04x

**EXHIBIT 21**

**Subsidiaries of Calpine Corporation as of December 31, 2000**

Set forth below are the names of certain subsidiaries, at least 50% owned, directly or indirectly, of Calpine Corporation as of December 31, 2000, unless otherwise indicated. Certain subsidiaries which when considered in the aggregate would not constitute a significant subsidiary, are omitted from the list below.

Entity	Jurisdiction	Ownership Interest
3044017 Nova Scotia Company	Nova Scotia	100%
899510 Alberta Ltd.	Alberta	100%
Acadia Power Partners, LLC	Delaware	50%
Airport Cogen Corp.	Delaware	100%
Anacapa Land Company, LLC	Delaware	100%
Anderson Springs Energy Company	California	100%
Androscoggin Energy, Inc.	Illinois	100%
Auburndale Power Partners, L.P.	Delaware	100%
Augusta Energy	Delaware	100%
Aviation Funding Corporation	Delaware	100%
Bayou Verret Energy LLC	Delaware	100%
Baytown Energy Center, LP	Delaware	100%
Bellingham Cogen, Inc.	California	100%
Bethpage Cogeneration Limited Partnership	Delaware	100%
Bethpage Fuel Management Inc.	Delaware	100%
Broad River Energy LLC	Delaware	100%
Broad River Investors LLC	Delaware	100%
Calistoga Geothermal Partners, LP	Delaware	100%
Calpine Acadia Holdings, LLC	Delaware	100%
Calpine Agnews, Inc.	California	100%
Calpine Auburndale, Inc.	Delaware	100%
Calpine Baytown Energy Center GP, LLC	Delaware	100%
Calpine Baytown Energy Center LP, LLC	Delaware	100%
Calpine C*Power Inc.	Delaware	100%
Calpine Calgary Energy Centre Ltd.	Alberta	100%
Calpine Calgary, Inc.	Delaware	100%
Calpine Calistoga Holdings, LLC	Delaware	100%
Calpine Canada Power Holdings Ltd.	Alberta	100%
Calpine Canada Power, Inc.	Delaware	100%
Calpine Canada TriGas, Ltd.	Alberta	100%
Calpine Capital Trust	Delaware	100%
Calpine Capital Trust II	Delaware	100%
Calpine Capital Trust III	Delaware	100%
Calpine CCFC GP, Inc.	Delaware	100%
Calpine CCFC Holdings, Inc.	Delaware	100%
Calpine CCFC II Holdings, Inc.	Delaware	100%
Calpine CCFC LP, Inc.	Delaware	100%
Calpine Central, Inc.	Delaware	100%
Calpine Central, L.P.	Delaware	100%

Entity	Jurisdiction	Ownership Interest
Calpine Central-Texas, Inc.	Delaware	100%
Calpine Channel Energy Center GP, Inc.	Delaware	100%
Calpine Channel Energy Center GP, LLC	Delaware	100%
Calpine Channel Energy Center LP, Inc.	Delaware	100%
Calpine Channel Energy Center LP, LLC	Delaware	100%
Calpine Cogeneration Corporation	Delaware	100%
Calpine Construction Finance Company I, Inc.	Delaware	100%
Calpine Construction Finance Company II, Inc.	Delaware	100%
Calpine Construction Finance Company, L.P.	Delaware	100%
Calpine Construction Management Company, Inc.	Delaware	100%
Calpine Coos Development Company, Inc.	California	100%
Calpine Decatur Pipeline, Inc.	Delaware	100%
Calpine Decatur Pipeline, L.P.	Delaware	100%
Calpine Deer Park GP, LLC	Delaware	100%
Calpine Deer Park LP, LLC	Delaware	100%
Calpine Dighton Inc.	Delaware	100%
Calpine East Acquisition Corporation	Delaware	100%
Calpine East Fuels, Inc.	Delaware	100%
Calpine Eastern Corporation	Delaware	100%
Calpine Edinburg, Inc.	Delaware	100%
Calpine Energy Kennedy Airport Inc.	Delaware	100%
Calpine Energy Kennedy Operators Inc.	New York	100%
Calpine Energy KIA Inc.	New York	100%
Calpine Energy Long Island Inc.	Delaware	100%
Calpine Energy Power Inc.	Delaware	100%
Calpine Energy Services Canada Ltd.	Delaware	100%
Calpine Energy Services, L.P.	Delaware	100%
Calpine Energy Stony Brook Inc.	Delaware	100%
Calpine Energy Stony Brook Operators Inc.	New York	100%
Calpine Finance Company	Delaware	100%
Calpine Freestone Pipeline GP, Inc.	Delaware	100%
Calpine Freestone, Inc.	Delaware	100%
Calpine Fuels Corporation	California	100%
Calpine Fuels Texas Corporation	Delaware	100%
Calpine Gas Company	Delaware	100%
Calpine/Gentex Lost Pines, L.P.	Delaware	50%
Calpine Geysers Company, L.P.	Delaware	100%
Calpine Gilroy 1, Inc.	Delaware	100%
Calpine Gilroy 2, Inc.	Delaware	100%
Calpine Gilroy Cogen, L.P.	Delaware	100%
Calpine Gordonsville, Inc.	Delaware	100%
Calpine Greenleaf Holdings, Inc.	Delaware	100%
Calpine Greenleaf, Inc.	Delaware	100%
Calpine Hermiston, Inc.	Delaware	100%
Calpine Hidalgo Design, L.P.	Delaware	100%

Entity	Jurisdiction	Ownership Interest
Calpine Hidalgo Energy Center, L.P.	Delaware	100%
Calpine Hidalgo Holdings, Inc.	Delaware	100%
Calpine Hidalgo, Inc.	Delaware	100%
Calpine Jersey Cogen, Inc.	Delaware	100%
Calpine Kennedy Airport, Inc.	New York	100%
Calpine KIA, Inc.	New York	100%
Calpine King City 1, Inc.	Delaware	100%
Calpine King City 2, Inc.	Delaware	100%
Calpine King City Cogen Inc.	California	100%
Calpine King City Cogen, LLC	California	100%
Calpine Leasing Inc.	Delaware	100%
Calpine Long Island, Inc.	Delaware	100%
Calpine Lost Pines Operations, Inc.	Delaware	100%
Calpine Magic Valley Pipeline, Inc.	Delaware	100%
Calpine Magic Valley Pipeline, L.P.	Delaware	100%
Calpine Marketing, LLC	Delaware	100%
Calpine Monterey Cogeneration, Inc.	California	100%
Calpine Morris, LLC	Delaware	100%
Calpine MVG, Inc.	Delaware	100%
Calpine MVP, Inc.	Delaware	100%
Calpine Natural Gas Company	Delaware	100%
Calpine Newark, Inc.	Delaware	100%
Calpine Northeast Marketing, Inc.	Delaware	100%
Calpine Oneta Power I, LLC	Delaware	100%
Calpine Oneta Power II, LLC	Delaware	100%
Calpine Oneta Power, L.P.	Delaware	100%
Calpine Operating Plant Services, Inc.	California	100%
Calpine Parlin, Inc.	Delaware	100%
Calpine Pasadena Cogeneration, Inc.	Delaware	100%
Calpine Philadelphia, Inc.	Delaware	100%
Calpine Pittsburgh, LLC	Delaware	100%
Calpine Pittsburg, Inc.	Delaware	100%
Calpine Power Company	California	100%
Calpine Power Equipment, LP	Texas	100%
Calpine Power Management, Inc.	Delaware	100%
Calpine Power Services Company	California	100%
Calpine PowerAmerica, Inc.	Delaware	100%
Calpine PowerAmerica, LP	Delaware	100%
Calpine Project Investments, Inc.	California	100%
Calpine Pryor, Inc.	Delaware	100%
Calpine Rumford Cogeneration Inc.	Delaware	100%
Calpine Rumford, Inc.	Delaware	100%
Calpine Schuylkill, Inc.	Delaware	100%
Calpine Securities Company, L.P.	Delaware	100%
Calpine Siskiyou Geothermal Partners, L.P.	California	100%

Entity	Jurisdiction	Ownership Interest
Calpine Sonoma, Inc.	California	100%
Calpine South Point, Inc.	Delaware	100%
Calpine Stony Brook Operators, Inc.	New York	100%
Calpine Stony Brook, Inc.	New York	100%
Calpine Sumas, Inc.	California	100%
Calpine Sutter, Inc.	Delaware	100%
Calpine Texas Cogeneration, Inc.	Delaware	100%
Calpine Texas Pipeline GP, Inc.	Delaware	100%
Calpine Texas Pipeline LP, Inc.	Delaware	100%
Calpine Texas Pipeline, L.P.	Delaware	100%
Calpine Thermal Power, Inc.	California	100%
Calpine Tiverton I, Inc.	Delaware	100%
Calpine Tiverton, Inc.	Delaware	100%
Calpine Tiverton, L.P.	Delaware	100%
Calpine University Power, Inc.	Delaware	100%
Calpine Vapor, Inc.	California	100%
Calpine Westbrook, Inc.	Delaware	100%
Calpine-EMI Marketing LLC	Delaware	100%
Calpine/Gentex Lost Pines Operations, L.P.	Delaware	100%
Carville Energy LLC	Delaware	100%
CCFC Development Company, LLC	Delaware	100%
CCFC Equipment Finance Company, LLC	Delaware	100%
CCFC II Development Company, LLC	Delaware	100%
CCFC II Equipment Finance Company, LLC	Delaware	100%
CCFC II Equipment Finance Holdings, LLC	Delaware	100%
CCFC II Project Equipment Finance Company One, LLC		100%
CGC Dighton, LLC	Delaware	100%
Channel Energy Center, LP	Delaware	100%
Clear Lake Cogeneration Limited Partnership	Delaware	100%
Cloverdale Geothermal Partners, L.P.	Delaware	100%
Columbia Energy LLC	Delaware	100%
Corpus Christi Cogeneration L.P.	Delaware	100%
CPN Acadia, Inc.	Delaware	100%
CPN Aidlin, Inc.	Delaware	100%
CPN Auburndale, Inc.	Delaware	100%
CPN Bayonne, Inc.	Delaware	100%
CPN Berks Generation, Inc.	Delaware	100%
CPN Berks, LLC	Delaware	100%
CPN Calistoga, LLC	Delaware	100%
CPN Clear Lake, Inc..	Delaware	100%
CPN Decatur Pipeline, Inc.	Delaware	100%
CPN Delta Holdings LLC	Delaware	100%
CPN Delta, Inc.	Delaware	100%
CPN East Fuels Inc.	Delaware	100%

Entity	Jurisdiction	Ownership Interest
CPN East Fuels, LLC	Delaware	100%
CPN Energy Services GP, Inc.	Delaware	100%
CPN Energy Services LP, Inc.	Delaware	100%
CPN Freestone, Inc.	Delaware	100%
CPN Funding, Inc.	Delaware	100%
CPN Gas Marketing Company	Delaware	100%
CPN Haywood Holdings, LLC	Delaware	100%
CPN Hermiston, Inc.	Delaware	100%
CPN Insurance Corporation	Hawaii	100%
CPN Morris, Inc.	Delaware	100%
CPN Osprey, Inc.	Delaware	100%
CPN Oxford, Inc.	Delaware	100%
CPN Pipeline Company	Delaware	100%
CPN Pleasant Hill Operating, LLC	Delaware	100%
CPN Pleasant Hill, LLC	Delaware	100%
CPN Production Company	Delaware	100%
CPN Pryor Funding Corporation	Delaware	100%
CPN Quincy Holdings, LLC	Colorado	100%
CPN Sheridan, Inc.	Delaware	100%
CPN Texas Central Fuels, L.P.	Texas	100%
CPN Westbrook I, Inc.	Delaware	100%
De Pere Energy L.L.C.	Wisconsin	100%
DEC-LMEC Pipeline, LLC	Delaware	100%
Decatur Energy Center LLC	Delaware	100%
Deer Park Energy Center, L.P.	Delaware	100%
DEI Texas, Inc.	Virginia	100%
Delta Energy Center LLC	Delaware	50%
Dighton Power Associates Limited Partnership	Massachusetts	100%
East Altamont Energy Center, LLC	Delaware	100%
EMI/Tiverton, Inc.	Delaware	100%
Energypro Construction Partners	Delaware	100%
Enron Cogeneration One Company	Delaware	100%
Fond Du Lac Energy Center, LLC	Delaware	100%
Freestone Power Generation LP	Texas	100%
Fremont Energy Center LLC	Delaware	100%
Gas Energy Cogeneration Inc.	Delaware	100%
Gas Energy Inc.	Delaware	100%
GATX/Calpine-Agnews, Inc.	Delaware	100%
GEC Bethpage Inc.	Delaware	100%
Geothermal Energy Partners	California	100%
Geysers Finance Company	Delaware	100%
Geysers Power Co.	Delaware	100%
Geysers Power Company II, LLC	Delaware	100%
Geysers Power Company, LLC	Delaware	100%
Geysers Power I Company	Delaware	100%

Entity	Jurisdiction	Ownership Interest
Gordonsville Energy, L.P.	Delaware	50%
Greenleaf Unit One Associates, Inc.	California	100%
Greenleaf Unit Two Associates, Inc.	California	100%
Groveton Energy LLC	Delaware	100%
Hammond Energy LLC	Delaware	100%
Haywood Energy Center, LLC	Delaware	100%
Healdsburg Energy Company, L.P.	Delaware	100%
Hermiston Power Partnership	Delaware	100%
Idlewild Fuel Management Corp.	Delaware	100%
JMC Bethpage, Inc.	Delaware	100%
JOQ Canada, Inc.	Delaware	100%
Lawrence Energy Center, LLC	Delaware	100%
Livermore Falls Energy LLC	Delaware	100%
Lone Oak Energy Center, LLC	Delaware	100%
Los Medanos Energy Center LLC	Delaware	100%
Magic Valley Pipeline, L.P.	Delaware	100%
MEP Investments, LLC	Delaware	100%
MEP Pleasant Hill, LLC	Delaware	50%
Moapa Paiute Energy Center, LLC	Delaware	100%
Mobile Energy LLC	Delaware	100%
Modoc Power, Inc.	California	100%
Morgan Energy Center LLC	Delaware	100%

Entity	Jurisdiction	Ownership Interest
Mount Hoffman Geothermal Company, L.P.	Delaware	100%
Mt. Vernon Energy LLC	Delaware	100%
Nissequogue Cogen Partners	Delaware	100%
Northern Cogeneration One Company	Delaware	100%
Northern Cogeneration Three Company	Delaware	100%
Northwest Cogeneration, Inc.	California	100%
Nueces Bay Energy LLC	Delaware	100%
O'Brien (Philadelphia) Cogeneration, Inc.	Delaware	100%
O'Brien Biogas Producing (Suffolk), Inc.	Delaware	100%
O'Brien Cogeneration Inc.	Delaware	100%
O'Brien Energy Services Company	Delaware	100%
O'Brien Environmental Energy, Inc.	Delaware	100%
O.L.S. Energy-Agnews, Inc.	Delaware	100%
Odyssey Land Acquisition Company	Delaware	100%
OES, Inc.	Delaware	100%
Oklahoma Loan Acquisition Corp.	Delaware	100%
Pastoria Energy Center, LLC	Delaware	100%
PEC Energy Marketing, Inc.	Delaware	100%
Pine Bluff Energy, LLC	Delaware	66.67%
Polsky Energy Corporation	Delaware	100%
Polsky Energy Corporation of Maine, Inc.	Delaware	100%
Polsky SCQ Services, Inc.	Delaware	100%
Portsmouth Leasing Corp.	Delaware	100%
Power Investors, L.L.C.	Delaware	100%
QMC Resources Canada Corp.	Nova Scotia	100%
Quincy Energy Center, LLC	Delaware	100%
Quintana Canada Holdings, LLC	Delaware	100%
Quintana Mineral (USA) Inc.	Delaware	100%
Reliability 2000 LLC	Delaware	100%
RockGen Energy LLC	Delaware	100%
Rumford Power Associates, L.P.	Delaware	100%
Russell City Energy Center, LLC	Delaware	100%
Santa Rosa Energy Company	California	100%
Santa Rosa Energy LLC	Delaware	100%
Silverado Geothermal Resources, Inc.	California	100%
SkyGen Energy Holdings LLC	Delaware	100%
SkyGen Energy LLC	Delaware	100%
SkyGen Energy Marketing LLC	Delaware	100%
SkyGen Gas Marketing LLC	Delaware	100%
SkyGen GulfCoast Energy LLC	Delaware	100%
SkyGen Investors LLC	Delaware	100%
SkyGen Project Holdings LLC	Delaware	100%
SkyGen Services, Inc.	Delaware	100%
SkyGen SouthCoast Investors LLC	Delaware	100%
SMO Bethpage, Inc.	Delaware	100%

Entity	Jurisdiction	Ownership Interest
Sonoma Geothermal Partners, L.P.	Delaware	100%
St. Francisville Energy LLC	Delaware	100%
Stony Brook Cogeneration, Inc.	Delaware	100%
Stony Brook Fuel Management Corp.	Delaware	100%
Suffolk Biogas Inc.	Delaware	100%
Sumas Cogen Company, L.P.	Delaware	70%
Summer Power Source, LLC	Delaware	100%
Sutter Dryers, Inc.	California	100%
TBG Cogen Partners	Delaware	100%
Texas City Cogeneration, L.P.	Delaware	100%
Texas Cogeneration Company	Delaware	100%
Texas Cogeneration One Company	Delaware	100%
Texas Cogeneration Three, Inc.	Delaware	100%
Thermal Power Company	Delaware	100%
Tiverton Power Associates Limited Partnership	Delaware	100%
Towantic Energy, L.L.C.	Delaware	100%
TriGas Exploration Ltd.	Alberta	100%
Tuscarora Energy Corp.	Delaware	100%
Venture Acquisition Company	Delaware	100%
Versailles Energy LLC	Delaware	100%
Warnerville Energy Center, LLC	Delaware	100%
Washington Parish Energy Center, LLC	Delaware	100%
Wawayanda Energy Center, LLC	Delaware	100%
Westbrook L.L.C.	Delaware	100%
Whatcom Cogeneration Partners, L.P.	Delaware	100%
Wisconsin River Energy, LLC	Delaware	100%
Zion Energy LLC	Delaware	100%

**EXHIBIT 23.1**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

As independent public accountants, we hereby consent to the incorporation of our report dated March 14, 2001 included in this Form 10-K, into the Company's previously filed Registration Statement on Form S-8 (File No. 333-16529). It should be noted that we have not audited any financial statements of the Company subsequent to December 31, 2000 or performed any audit procedures subsequent to the date of our report.

San Jose, California

March 14, 2001

**EXHIBIT 23.2**

**CONSENT OF NETHERLAND, SEWELL & ASSOCIATES, INC.**

We hereby consent to the incorporation by reference in the Annual Report on Form 10-K of Calpine Corporation (the "Company") and to the references to this firm for the Company's estimated domestic proved reserves contained in the Annual Report on Form 10-K for the year ended December 31, 2000.

*/s/ NETHERLAND, SEWELL & ASSOCIATES, INC.*

*Houston, Texas  
March 13, 2001*

**EXHIBIT 23.3**

**CONSENT OF McDANIEL & ASSOCIATES CONSULTANTS LTD.**

We hereby consent to the incorporation by reference in the Annual Report on Form 10-K of Calpine Corporation (the "Company") and to the references to this firm for the Company's estimated Canadian proved reserves contained in the Annual Report on Form 10-K for the year ended December 31, 2000.

*/s/ McDANIEL & ASSOCIATES CONSULTANTS LTD.*

*Calgary, Alberta*

*March, 13, 2001*

**EXHIBIT 23.4**

**CONSENT OF GILBERT LAUSTSEN JUNG ASSOCIATES LTD.**

We hereby consent to the incorporation by reference in the Annual Report on Form 10-K of Calpine Corporation (the "Company") and to the references to this firm for the Company's estimated Canadian proved reserves contained in the Annual Report on Form 10-K for the year ended December 31, 2000.

*/s/ GILBERT LAUSTSEN JUNG ASSOCIATES LTD.*

*Calgary, Alberta*

*March 13, 2001*

---

**End of Filing**

Powered By  EDGAR<sup>®</sup>  
Online

**© 2005 | EDGAR Online, Inc.**