

# CALPINE CORP

## FORM 10-K (Annual Report)

Filed 02/29/00 for the Period Ending 12/31/99

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

# CALPINE CORP

## FORM 10-K (Annual Report)

Filed 2/29/2000 For Period Ending 12/31/1999

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

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

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## **FORM 10-K**

(MARK ONE)

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

FOR THE FISCAL YEAR ENDED DECEMBER 31, 1999

OR

[ ] TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE  
SECURITIES EXCHANGE ACT OF 1934 [NO FEE REQUIRED]

*COMMISSION FILE NUMBER 033-73160*

## **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, \$0.001 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 [X] 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 February 23, 2000: \$5.7 billion. Common stock outstanding as of February 23, 2000: 63,215,367

### **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.

(1) Designated portions of the Proxy Statement relating to  
the 2000 Annual Meeting of Shareholders.....

Part III (Items 10, 11 and 12)

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**FORM 10-K**  
**ANNUAL REPORT**  
**FOR THE YEAR ENDED DECEMBER 31, 1999**

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## 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 and subject to the safe harbor created by the Securities Litigation Reform Act of 1995. Such statements include declarations regarding the intent, belief or current expectations of 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; actual results could differ materially from those indicated by such forward-looking statements. Among the important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are: (i) that the information is of a preliminary nature and may be subject to further adjustment, (ii) those risks and uncertainties identified under "Risk Factors" included in Item 1. Business in this Annual Report on Form 10-K, (iii) the possible unavailability of financing, (iv) risks related to the development, acquisition and operation of power plants, (v) the impact of avoided cost pricing, energy price fluctuations and gas price increases, (vi) the impact of curtailment, (vii) the seasonal nature of the Company's business, (viii) start-up risks, (ix) general operating risks, (x) the dependence on third parties, (xi) risks associated with international investments, (xii) risks associated with the power marketing business, (xiii) changes in government regulation, (xiv) the availability of natural gas, (xv) the effects of competition, (xvi) the dependence on senior management, (xvii) volatility in the Company's stock price, (xviii) fluctuations in quarterly results and seasonality, and (xix) 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 44 power plants having an aggregate capacity of 4,273 megawatts. We also have ten gas-fired projects and two project expansions under construction having an aggregate capacity of 5,935 megawatts and have announced plans to develop twelve gas-fired power plants with a total capacity of 7,990 megawatts. Upon completion of our projects under construction, we will have interests in 54 power plants located in 17 states having an aggregate capacity of 10,208 megawatts, of which we will have a net interest in 8,531 megawatts. Of this total generating capacity, 90% will be attributable to gas-fired facilities and 10% 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.

	1994	1999	COMPOUND ANNUAL GROWTH RATE
----- (DOLLARS IN MILLIONS)			
Total Revenue.....	\$ 94.8	\$ 847.7	55%
EBITDA.....	53.7	392.2	49%
Net Income.....	6.0	95.1	74%
Total Assets.....	421.4	3,991.6	57%

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 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 \$225 billion of electricity sales in 1999 produced by an aggregate base of power generation facilities with a capacity of approximately 785,000 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 and 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 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. In May 1999, we completed a 35 megawatt expansion of our Clear Lake Power Plant to 412 megawatts, and the 169 megawatt Dighton Power Plant commenced commercial operations in August 1999.

We currently have twelve projects under construction representing 5,935 additional megawatts. Of these new projects, we are currently expanding our Pasadena facility by 545 megawatts to 785 megawatts and the Morris facility by 50 megawatts to 167 megawatts. We have ten new power plants under construction, including the Baytown Power Plant in Texas; Tiverton Power Plant in Rhode Island; the Rumford Power Plant in Maine; the Westbrook Energy Center in Maine; the Sutter Power Plant in California; the South Point Power Plant in Arizona; the Lost Pines 1 Power Plant in Texas; the Los Medanos Energy Center in California; the Magic Valley Generation Station in Texas; and the Aries Power Plant in Missouri. We have also announced plans to develop twelve additional power generation facilities, totaling 7,990 megawatts, in California, Mississippi, Texas, Arizona, Pennsylvania, Oregon, Alabama, Connecticut and Florida.

In August 1999, we announced the purchase of 18 F-class combustion turbines from Siemens Westinghouse Power Corporation that will be capable of producing 4,900 megawatts of electricity in a combined-cycle configuration. Beginning in 2002, Siemens will deliver six turbines per year through 2004. Combined with our existing turbine orders we have 69 turbines under contract, option, letter of intent or other commitment capable of producing approximately 18,800 megawatts in a combined cycle configuration.

In November 1999, we executed an agreement with Credit Suisse First Boston, New York branch and The Bank of Nova Scotia, as lead arrangers, for a \$1.0 billion non-recourse revolving construction loan facility. We will use the credit facility to finance the construction of our diversified portfolio of gas-fired power plants currently under development in a combined cycle configuration.

Acquisitions. In March 1999, we completed the acquisition of Unocal Corporation's Geysers geothermal steam fields in northern California for approximately \$102.2 million. The steam fields fuel our 12 Sonoma County power plants, totaling 544 megawatts, purchased from Pacific Gas and Electric Company ("PG&E") in May 1999.

In May 1999, we completed the acquisitions from PG&E of 14 geothermal power plants at The Geysers in northern California, with a combined capacity of approximately 700 megawatts, for \$212.8 million. With these acquisitions plus the acquisition of the Calistoga Power Plant in October 1999 and our increased stake in the Aidlin Power Plant in August 1999, we now own interests in and operate 19 geothermal power plants that generate more than 888 megawatts of electricity, and we are the nation's largest geothermal and green power producer. The combination of our existing geothermal steam and power plant assets, the acquisition of the Sonoma steam fields from Unocal, and the 14 power plants from PG&E together with the Calistoga Power Plant and our increased stake in the Aidlin Power Plant allows us to fully integrate the steam and power plant operations at The Geysers into one efficient, unified system to maximize the renewable natural resource, lower overall production costs and extend the life of The Geysers.

In August 1999, we completed the acquisition of an additional 50% of the Aidlin Power Plant from Edison Mission Energy (5%) and General Electric Capital Corporation (45%) for a total purchase price of \$7.2 million. We now own 55% of the 20 megawatt Aidlin Power Plant.

In October 1999, we completed the acquisition of Sheridan Energy, Inc., a natural gas exploration and production company, through a \$38.8 million cash tender offer. We purchased all of the outstanding shares of Sheridan Energy's common stock for \$5.50 per share. In addition, we redeemed \$11.9 million of outstanding preferred stock of Sheridan Energy. Sheridan Energy's oil and gas properties, including approximately 148 billion cubic feet equivalent of proven reserves as of July 1, 1999 and certain leasehold acreage, are located in northern California and the Gulf Coast region, where we are developing low-cost natural gas supplies and proprietary pipeline systems to support our strategically-located natural gas-fired power plants. We subsequently renamed Sheridan Energy as Calpine Natural Gas Company.

In October 1999, we completed the acquisition of the Calistoga Power Plant from FPL Energy and Caithness Corporation for approximately \$77.9 million. Located in The Geysers region of northern California, Calistoga is a 67 megawatt facility which provides electricity to PG&E under a long-term contract.

In December 1999, we acquired 80% of the common stock of Cogeneration Corporation of America, Inc. ("CGCA") for \$25.00 per share or approximately \$137.3 million. NRG Energy, Inc., a wholly owned subsidiary of Northern States Power, owns the remaining 20%. CGCA owns interests in six natural gas-fired

power plants, totaling 579 megawatts. The plants are located in Pennsylvania, New Jersey, Illinois and Oklahoma.

In December 1999, but effective as of November 1, 1999, we completed the acquisition of Vintage Petroleum, Inc.'s interest in the Rio Vista Gas Unit and related areas for approximately \$71.5 million. As of the effective date of the acquisition, Vintage owned approximately 90 billion cubic feet of proven natural gas reserves and certain leasehold acreage located in the Sacramento Basin in northern California. As a result of this acquisition and the Sheridan Energy acquisition, we own a 99.5% working interest in the Rio Vista Gas Unit and certain development acreage in northern California.

In January 2000, we acquired a 50% interest in the Aries Power Plant, a 600 megawatt natural gas-fired plant currently under construction near Pleasant Hill, Missouri from a subsidiary of Aquila Energy Corporation. Construction started in October 1999. Commercial operation of the first 330 megawatts is scheduled to begin June 2001 with the balance of the plant starting in January 2002. 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.

In February 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 ("SRGS") natural gas pipeline, now 100% owned by us.

**Enhancement of Existing Power Plants.** In July 1999, we announced a renegotiation of our Gilroy power sales agreement with PG&E. The amendment provides for the termination of the remaining 18 years of the long-term contract in exchange for a fixed long-term payment schedule. The amended agreement was approved by the California Public Utilities Commission in December 1999. We will continue to sell the output from the Gilroy Power Plant through October 2002 to PG&E and thereafter we will market the output in the California wholesale power market.

**Issuance of Securities.** In October 1999, we completed a public offering of 8,280,000 shares of our common stock at \$46.31 per share and 5,520,000 5 3/4% HIGH TIDES issued by a subsidiary trust at \$50.00 each, raising \$636.7 million of aggregate net proceeds.

In January 2000, we completed an offering under Rule 144A of the Securities Act of 6,000,000 5 1/2% HIGH TIDES issued by a subsidiary trust at \$50.00 each, raising \$292.4 million of aggregate net proceeds. In February 2000, we sold an additional 1,200,000 5 1/2% HIGH TIDES pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$58.6 million.

## **DESCRIPTION OF FACILITIES**

We currently have interests in 44 power generation facilities with a current aggregate capacity of approximately 4,273 megawatts, consisting of 25 gas-fired cogeneration plants with a total capacity of 3,385 megawatts and 19 geothermal power generation facilities with a total capacity of 888 megawatts. We also have ten gas-fired projects and two project expansions currently under construction with an aggregate capacity of 5,935 megawatts, and have announced the development of twelve additional power plants with an aggregate capacity of 7,990 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 44 of the 54 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 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 non-recourse 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. 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 non-recourse 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 are leased on a long-term basis. See "Properties."

	# OF PLANTS	MEGAWATTS	
		PLANT CAPACITY	CALPINE NET INTEREST
<hr/>			
In operation			
Geothermal power plants.....	19	888	879
Gas-fired power plants.....	25	3,385	2,476
Under construction			
-- New facilities.....	10	5,340	4,581
-- Expansion projects (two).....	--	595	595
Announced development.....	12	7,990	6,978
	--	-----	-----
	66	18,198	15,509
	==	=====	=====

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

POWER PLANT	POWER GENERATION TECHNOLOGY	LOCATION	NAMEPLATE CAPACITY (MEGAWATTS) (1)	CALPINE INTEREST PERCENTAGE	CALPINE NET INTEREST (MEGAWATTS)
<b>OPERATING POWER PLANTS</b>					
<b>GEOTHERMAL POWER PLANTS</b>					
Sonoma County (12 power plants)(2).....	Geothermal	California	544.0	100.0%	544.0
Lake County (2 power plants)(2).....	Geothermal	California	150.0	100.0%	150.0
Calistoga.....	Geothermal	California	67.0	100.0%	67.0
Sonoma(2).....	Geothermal	California	60.0	100.0%	60.0
West Ford Flat.....	Geothermal	California	27.0	100.0%	27.0
Bear Canyon.....	Geothermal	California	20.0	100.0%	20.0
Aidlin.....	Geothermal	California	20.0	55.0%	11.0
Subtotal.....			888.0		879.0
			=====		=====
<b>GAS-FIRED POWER PLANTS</b>					
Texas City.....	Gas-Fired	Texas	450.0	100.0%	450.0
Clear Lake.....	Gas-Fired	Texas	412.0	100.0%	412.0
Pasadena.....	Gas-Fired	Texas	240.0	100.0%	240.0
Gordonsville.....	Gas-Fired	Virginia	240.0	50.0%	120.0
Lockport.....	Gas-Fired	New York	184.0	11.4%	20.9
Dighton(3).....	Gas-Fired	Massachusetts	169.0	50.0%	84.5
Bayonne.....	Gas-Fired	New Jersey	165.0	7.5%	12.4
Auburndale.....	Gas-Fired	Florida	150.0	50.0%	75.0
Grays Ferry.....	Gas-Fired	Pennsylvania	150.0	40.0%	60.0
Sumas(4).....	Gas-Fired	Washington	125.0	70.0%	87.5
Parlin.....	Gas-Fired	New Jersey	122.0	80.0%	97.6
King City.....	Gas-Fired	California	120.0	100.0%	120.0
Gilroy.....	Gas-Fired	California	120.0	100.0%	120.0
Morris.....	Gas-Fired	Illinois	117.0	80.0%	93.6
Pryor.....	Gas-Fired	Oklahoma	110.0	80.0%	88.0
Kennedy International Airport....	Gas-Fired	New York	107.0	50.0%	53.5
Pittsburg.....	Gas-Fired	California	70.0	100.0%	70.0
Newark.....	Gas-Fired	New Jersey	58.0	80.0%	46.4
Bethpage.....	Gas-Fired	New York	57.0	100.0%	57.0
Greenleaf 1.....	Gas-Fired	California	49.5	100.0%	49.5
Greenleaf 2.....	Gas-Fired	California	49.5	100.0%	49.5
Stony Brook.....	Gas-Fired	New York	40.0	50.0%	20.0
Agnews.....	Gas-Fired	California	29.0	20.0%	5.8
Watsonville.....	Gas-Fired	California	28.5	100.0%	28.5
Philadelphia.....	Gas-Fired	Pennsylvania	22.0	66.4%	14.6
Subtotal.....			3,384.5		2,476.3
			=====		=====
<b>PROJECTS UNDER CONSTRUCTION</b>					
Baytown.....	Gas-Fired	Texas	800.0	100.0%	800.0
Magic Valley.....	Gas-Fired	Texas	730.0	100.0%	730.0
Aries.....	Gas-Fired	Missouri	600.0	50.0%	300.0
Westbrook.....	Gas-Fired	Maine	545.0	100.0%	545.0
Pasadena Expansion.....	Gas-Fired	Texas	545.0	100.0%	545.0

POWER PLANT	POWER GENERATION TECHNOLOGY	LOCATION	NAMEPLATE CAPACITY (MEGAWATTS) (1)	CALPINE INTEREST PERCENTAGE	CALPINE NET INTEREST (MEGAWATTS)
South Point.....	Gas-Fired	Arizona	545.0	100.0%	545.0
Sutter.....	Gas-Fired	California	545.0	100.0%	545.0
Lost Pines 1.....	Gas-Fired	Texas	545.0	50.0%	272.5
Los Medanos.....	Gas-Fired	California	500.0	100.0%	500.0
Tiverton(5).....	Gas-Fired	Rhode Island	265.0	62.8%	166.4
Rumford(6).....	Gas-Fired	Maine	265.0	66.7%	176.8
Morris Expansion.....	Gas-Fired	Illinois	50.0	100.0%	50.0
Subtotal.....			5,935.0		5,175.7
<b>ANNOUNCED DEVELOPMENT</b>					
Blue Heron.....	Gas-Fired	Florida	1,080.0	100.0%	1,080.0
Delta.....	Gas-Fired	California	880.0	50.0%	440.0
Lone Oak.....	Gas-Fired	Mississippi	800.0	100.0%	800.0
Decatur.....	Gas-Fired	Alabama	700.0	100.0%	700.0
Hillabee.....	Gas-Fired	Alabama	700.0	100.0%	700.0
Metcalf.....	Gas-Fired	California	600.0	50.0%	300.0
Channel.....	Gas-Fired	Texas	560.0	100.0%	560.0
Ontelaunee.....	Gas-Fired	Pennsylvania	545.0	100.0%	545.0
West Phoenix.....	Gas-Fired	Arizona	545.0	50.0%	272.5
Osprey.....	Gas-Fired	Florida	540.0	100.0%	540.0
Hermiston.....	Gas-Fired	Oregon	540.0	100.0%	540.0
Towantic.....	Gas-Fired	Connecticut	500.0	100.0%	500.0
Subtotal.....			7,990.0		6,977.5

(1) Nameplate capacity may not represent the actual output for a facility at any particular time.

(2) For these geothermal power plants, nameplate capacity refers to the approximate capacity of the power plants. The capacity of these plants is expected to gradually diminish as the production of the related steam fields declines.

(3) See "Project Development and Acquisitions -- Project Development -- Projects Under Construction -- Dighton Power Plant" for a description of our interest in the Dighton Power Plant. Based on our current estimates, our interest represents our right to receive approximately 50% of project cash flow beginning at the commencement of commercial operation.

(4) See "Operating Power Plants -- Sumas Power Plant" for a description of our interest in the Sumas Power Plant. Based on our current estimates, the payments to be received by us represent approximately 70% of distributable cash.

(5) See "Project Development and Acquisitions -- Project Development -- Projects Under Construction -- Tiverton Power Plant" for a description of our interest in the Tiverton Power Plant.

(6) See "Project Development and Acquisitions -- Project Development -- Projects Under Construction -- Rumford Power Plant" for a description of our interest in the Rumford Power Plant.

## OPERATING POWER PLANTS

### Geothermal Power Plants

Sonoma County Power Plants. The Sonoma County power plants consist of 12 geothermal power plants and associated steam fields having combined capacity of 544 megawatts located at The Geysers in northern California. The power plants were acquired from PG&E on May 7, 1999 and we market the output from these plants into the California power market. Subsequent to their acquisition, the Sonoma County power plants

generated approximately 2,466,480 megawatt hours of electrical energy and approximately \$134.7 million of total revenues.

Lake County Power Plants. The Lake County power plants consist of two geothermal power plants and associated steam fields having a combined capacity of 150 megawatts located at The Geysers in northern California. We acquired these power plants from PG&E on May 7, 1999, and we market the output from these plants into the California power market. Subsequent to their acquisition, the Lake County Power Plants generated approximately 703,327 megawatt hours of electrical energy and approximately \$30.1 million of total revenues.

Calistoga Power Plant. The Calistoga Power Plant consists of a 67 megawatt geothermal power plant and associated steam fields located in northern California. Electricity generated by the Calistoga Power Plant is sold to PG&E under a power sales agreement terminating in 2014 which contains payment provisions for capacity and energy. Subsequent to its acquisition in October 1999, the Calistoga Power Plant generated approximately 106,433 megawatt hours of electrical energy and approximately \$5.6 million of total revenue.

Sonoma Power Plant. The Sonoma Power Plant consists of a 60 megawatt geothermal power plant and associated steam fields located in Sonoma County, California. Electricity generated by the Sonoma Power Plant is sold to the Sacramento Municipal Utility District ("SMUD") under a power sales agreement for up to 50 megawatts of peak power production, terminating in 2001. In addition, beginning on December 31, 1999, SMUD has the option to purchase up to an additional 10 megawatts of peak power production through 2005. We market the excess electricity into the California power market. During 1999, the Sonoma Power Plant generated approximately 345,078 megawatt hours of electrical energy and approximately \$10.6 million in revenue.

West Ford Flat Power Plant. The West Ford Flat Power Plant consists of a 27 megawatt geothermal power plant and associated steam fields located in northern California. Electricity generated by the West Ford Flat Power Plant is sold to PG&E under a power sales agreement terminating in 2008 which contains payment provisions for capacity and energy. During 1999, the West Ford Flat Power Plant generated approximately 195,773 megawatt hours of electrical energy for sale to PG&E and approximately \$10.8 million of revenue.

Bear Canyon Power Plant. The Bear Canyon Power Plant consists of a 20 megawatt geothermal power plant and associated steam fields located in northern California, two miles south of the West Ford Flat Power Plant. Electricity generated by the Bear Canyon Power Plant is sold to PG&E under two 10 megawatt power sales agreements terminating in 2008 which contain payment provisions for capacity and energy. During 1999, the Bear Canyon Power Plant generated approximately 143,080 megawatt hours of electrical energy and approximately \$7.9 million of revenue.

Aidlin Power Plant. The Aidlin Power Plant consists of a 20 megawatt geothermal power plant and associated steam fields located in northern California. We hold an indirect 55% ownership interest in the Aidlin Power Plant. Electricity generated by the Aidlin Power Plant is sold to PG&E under two 10 megawatt power sales agreements terminating in 2009 which contain payment provisions for capacity and energy. During 1999, the Aidlin Power Plant generated approximately 156,251 megawatt hours of electrical energy and revenue of \$13.3 million.

### **Gas-Fired Power Plants**

Texas City Power Plant. The Texas City Power Plant is a 450 megawatt gas-fired cogeneration facility located in Texas City, Texas. Electricity generated by the Texas City Power Plant is sold under a long-term agreements to Texas Utilities Electric Company ("TUEC") under a power sales agreement terminating on September 30, 2002, and Union Carbide Corporation ("UCC") under a steam and electricity services agreement which terminates on October 19, 2003. Each agreement contains payment provisions for capacity and electric energy payments. During 1999, the Texas City Power Plant generated approximately 2,843,494 megawatt hours of electric energy for sale to TUEC and UCC and approximately \$157.7 million of revenue.

**Clear Lake Power Plant.** The Clear Lake Power Plant is a 412 megawatt gas/hydrogen-fired cogeneration facility located in Pasadena, Texas. Electricity generated by the Clear Lake Power Plant is sold under three separate long-term agreements to (1) Texas-New Mexico Power Company ("TNP") under a power sales agreement terminating in 2004, (2) Houston Lighting and Power Company ("HL&P") under a power sales agreement terminating in 2005, and (3) Hoechst Celanese Chemical Group, Inc. ("HCCG") under a power sales agreement terminating in 2004. Each power sales agreement contains payment provisions for capacity and energy payments. Under a steam purchase and sale agreement expiring August 31, 2004, the Clear Lake Power Plant will supply up to 900,000 lbs/hr of steam to HCCG. During 1999, the Clear Lake Power Plant generated approximately 2,780,074 megawatt hours of electric energy for sale to TNP, HL&P and HCCG and approximately \$87.5 million of revenue.

**Pasadena Power Plant.** The Pasadena Power Plant is a 240 megawatt gas-fired cogeneration facility located in Pasadena, Texas. Electricity generated by the Pasadena Power Plant is sold under contract and into the open market. We entered into an energy sales agreement with Phillips Petroleum Company ("Phillips") terminating in 2018. Under this agreement, we provide 90 megawatts of electricity and 200,000 lbs/hr of steam to Phillips' Houston Chemical Complex. West Texas Utilities purchased 50 megawatts of capacity through the end of 1998. In 1999, LG&E Energy Marketing purchased up to 150 megawatts of electricity under a one-year agreement. TUEC is also under contract to purchase up to 150 megawatts of electricity under a two-year agreement beginning December 1, 1999. The remaining available electricity output is sold into the competitive market through our power marketing organization. During 1999, the Pasadena Power Plant generated approximately 1,734,241 megawatt hours of electric energy with approximately \$65.9 million of revenue.

**Gordonsville Power Plant.** The Gordonsville Power Plant, of which we own 50%, is a 240 megawatt gas-fired cogeneration facility located near Gordonsville, Virginia. Electricity generated by the Gordonsville Power Plant is sold to the Virginia Electric and Power Company under two power sales agreements terminating on June 1, 2024, each of which include payment provisions for capacity and energy. The Gordonsville Power Plant sells steam to Radian Service Authority under the terms of a steam purchase and sales agreement, which expires June 1, 2004. During 1999, the Gordonsville Power Plant generated approximately 182,970 megawatt hours of electrical energy and approximately \$39.3 million of revenue.

**Lockport Power Plant.** The Lockport Power Plant is a 184 megawatt gas-fired, combined-cycle cogeneration facility located in Lockport, New York. The facility is owned and operated by Lockport Energy Associates, L.P. ("LEA"). We own an indirect 11.36% limited partnership interest in LEA. Electricity and steam is sold to General Motors Corporation ("GM") under an energy sales agreement expiring in December 2007 for use at the GM Harrison plant, which is located on a site adjacent to the Lockport Power Plant. Electricity is also sold to New York State Electricity and Gas Company ("NYSEG") under a power purchase agreement expiring October 2007. NYSEG is required to purchase all of the electric power produced by the Lockport Power Plant not required by GM. For 1999, the Lockport Power Plant generated approximately 1,614,513 megawatt hours of electricity and had \$92.0 million in revenue.

**Dighton Power Plant.** In October 1997, we invested \$16.0 million in the development of a 169 megawatt gas-fired combined-cycle power plant to be located in Dighton, Massachusetts. This investment, which is structured as subordinated debt, will provide us with a preferred payment stream at a rate of 12.07% per year for a period of twenty years from the commercial operation date. Commercial operation commenced in August 1999. The Dighton Power Plant is operated by Energy Management Inc. ("EMI") and sells its output into the New England power market and to wholesale and retail customers in the northeastern United States. Since its start-up in 1999, the Dighton Power Plant generated approximately 367,671 megawatt hours of electrical energy and approximately \$20.6 million of total revenues.

**Bayonne Power Plant.** The Bayonne Power Plant is a 165 megawatt gas-fired cogeneration facility located in Bayonne, New Jersey. The facility is primarily owned by an affiliate of Cogen Technologies, Inc. We own an indirect 7.5% partnership interest in the facility. Electricity generated by the Bayonne Power Plant is sold under various power sales agreements to Jersey Central Power & Light Company ("JCP&L") and Public Service Electric and Gas Company of New Jersey. The Bayonne Power Plant also sells steam to two

industrial entities. During 1999, the Bayonne Power Plant generated approximately 1,430,000 megawatt hours of electrical energy and approximately \$109.8 million in revenue.

Auburndale Power Plant. The Auburndale Power Plant, of which we own 50%, is a 150 megawatt gas-fired cogeneration facility located near the city of Auburndale, Florida. Electricity generated by the Auburndale Power Plant is sold under various power sales agreements to Florida Power Corporation ("FPC"), Enron Power Marketing and Sonat Power Marketing. Auburndale sells 131 megawatts of capacity and energy to FPC under three power sales agreements, each terminating at the end of 2013. The Auburndale Power Plant sells steam under two steam purchase and sale agreements. One agreement is with Cutrale Citrus Juices, USA, an affiliate of Sucocitro Cutrale LTDA, expiring on July 1, 2014. The second agreement is with Todhunter International, Inc., doing business as Florida Distillers Company, expiring on July 1, 2009. During 1999, the Auburndale Power Plant generated approximately 1,027,466 megawatt hours of electrical energy and approximately \$52.3 million in revenue.

Grays Ferry Power Plant. The Grays Ferry Power Plant is a 150 megawatt, natural gas-fired cogeneration project located in Philadelphia, Pennsylvania. We indirectly own 40% of this project. Electricity generated by the Grays Ferry Power Plant is sold under two long-term power sales agreements to PECO Energy Company, expiring in 2017. An affiliate of Trigen Energy Corporation purchases the steam produced by the project pursuant to a 25-year contract expiring in 2022. Subsequent to our acquisition of CGCA in December 1999, the Grays Ferry Power Plant generated approximately 46,125 megawatt hours of electrical energy and approximately \$3.7 million in revenue in 1999.

Sumas Power Plant. The Sumas Power Plant is a 125 megawatt gas-fired, combined cycle cogeneration facility located in Sumas, Washington. We currently hold an ownership interest in the Sumas Power Plant, which entitles us to receive certain scheduled distributions during the next two years. Upon receipt of the scheduled distributions, we will no longer have any ownership interest in the Sumas Power Plant. Electrical energy generated by the Sumas Power Plant is sold to Puget Sound Power & Light Company ("Puget") under the terms of a power sales agreement terminating in 2013. Under the power sales agreement, Puget has agreed to purchase an annual average of 123 megawatts of electrical energy. In addition to the sale of electricity to Puget, pursuant to a long-term steam supply and dry kiln lease agreement, the Sumas Power Plant produces and sells approximately 23,000 lbs/hr of low pressure steam to an adjacent lumber-drying facility owned by Sumas, which has been leased to and is operated by Socco, Inc. During 1999, the Sumas Power Plant generated approximately 666,598 megawatt hours of electrical energy and approximately \$52.8 million of total revenue.

Parlin Power Plant. The Parlin Power Plant consists of a 122 megawatt natural gas-fired cogeneration power plant located in Parlin, New Jersey. Electricity generated by the Parlin Power Plant is sold pursuant to a long-term contract expiring in 2011 to JCP&L, and steam produced is sold to E.I. Dupont de Nemours and Company under a long-term agreement expiring in 2021. Subsequent to our acquisition of this project in December 1999, the Parlin Power Plant generated approximately 13,938 megawatt hours of electrical energy and approximately \$908,000 of total revenue in 1999.

King City Power Plant. The King City Power Plant is a 120 megawatt gas-fired, combined-cycle cogeneration facility located in King City, California. We operate the King City Power Plant under a long-term operating lease for this facility with BAF Energy ("BAF"), terminating in 2018. Electricity generated by the King City Power Plant is sold to PG&E under a power sales agreement terminating in 2019. The power sales agreement contains payment provisions for capacity and energy. In addition to the sale of electricity to PG&E, the King City Power Plant produces and sells thermal energy to a thermal host, Basic Vegetable Products, Inc., an affiliate of BAF, under a long-term contract coterminous with the power sales agreement. During 1999, the King City Power Plant generated approximately 645,836 megawatt hours of electrical energy and approximately \$44.2 million of total revenue.

Gilroy Power Plant. The Gilroy Power Plant is a 120 megawatt gas-fired cogeneration facility located in Gilroy, California. Electricity generated by the Gilroy Power Plant is sold to PG&E under a power sales agreement terminating in 2018. In July 1999 we announced a renegotiation of our Gilroy power sales agreement with PG&E. The amendment provides for the termination of the remaining 18 years of the long-

term contract in exchange for a fixed long-term payment schedule. The amended agreement was approved by the California Public Utilities Commission ("CPUC") in December 1999. We will continue to sell the output from the Gilroy Power Plant through October 2002 to PG&E and thereafter we will market the output in the California wholesale power market. In addition, the Gilroy Power Plant produces and sells thermal energy to a thermal host, Gilroy Foods, Inc., under a long-term contract. During 1999, the Gilroy Power Plant generated approximately 950,848 megawatt hours of electrical energy for sale to PG&E and approximately \$67.2 million in revenue.

Morris Power Plant. The Morris Power Plant consists of a 117 megawatt natural gas-fired cogeneration facility located in Morris, Illinois. We indirectly own 80% of this project. Electricity and steam produced by the facility is sold to Equistar Chemicals, L.P. pursuant to a long-term contract expiring in 2023. Any surplus electricity is marketed to the Illinois power market. Subsequent to our acquisition of this project in December 1999, the Morris Power Plant generated approximately 13,809 megawatt hours of electrical energy and approximately \$1.3 million of total revenue in 1999. We are currently expanding this facility by 50 megawatts.

Pryor Power Plant. The Pryor Power Plant is a 110 megawatt natural gas-fired cogeneration power plant located in Pryor, Oklahoma. We indirectly own 80% of this project. The Pryor Power Plant sells 100-megawatts of capacity and varying amounts of electrical energy to Oklahoma Gas and Electric Company under a contract expiring at the end of 2007. Steam produced from the Pryor facility is sold to a number of industrial users under contracts with various termination dates ranging from 2000 to 2007. Surplus electricity is also sold to the Public Service Company of Oklahoma at its avoided cost. Subsequent to our acquisition of this project in December 1999, the Pryor Power Plant generated approximately 15,541 megawatt hours of electrical energy and approximately \$791,000 of total revenue in 1999.

Kennedy International Airport Power Plant. The Kennedy International Airport Power Plant is a 107 megawatt gas-fired cogeneration facility located at John F. Kennedy International Airport in Queens, New York. The facility is owned and operated by KIAC Partners and leased from The Port Authority of New York and New Jersey. We own an indirect 50% ownership interest in KIAC. Electricity and thermal energy generated by the Kennedy International Airport Power Plant is sold to the Port Authority, and incremental electric power is sold to Consolidated Edison Company of New York, the New York Power Authority and other utility customers. Electric power and thermal energy in the form of chilled and hot water generated by the Kennedy International Airport Power Plant is sold to the Port Authority under an energy purchase agreement that expires November 2015. For 1999, the Kennedy International Airport Power Plant generated approximately 570,024 megawatt hours of electrical energy, 253,591 mmbtu of chilled water and 204,009 mmbtu of hot water for sale to the Port Authority, and generated approximately \$59.3 million in revenue.

Pittsburg Power Plant. The Pittsburg Power Plant is a 70 megawatt gas-fired cogeneration facility, located at The Dow Chemical Company's ("Dow") Pittsburg, California chemical facility. We sell up to 18 megawatts of electricity to Dow under a power sales agreement expiring in 2008. Surplus energy is sold to PG&E under an existing power sales agreement. In addition, we sell approximately 200,000 lbs/hr of steam to Dow under an energy sales agreement expiring in 2003 and to USS-POSCO Industries' nearby steel mill under a process steam contract expiring in 2001. During 1999, the Pittsburg Power Plant generated approximately 412,148 megawatt hours of electrical energy to Dow and PG&E and approximately \$22.1 million in revenue.

Newark Power Plant. The Newark Power Plant consists of a 58 megawatt natural gas-fired cogeneration power plant located in Newark, New Jersey. We indirectly own 80% of this project. Electricity produced by the facility is sold pursuant to a long-term contract expiring in 2015 to JCP&L. Steam produced is sold to Newark Boxboard, Inc. under a long-term contract expiring in 2015. Subsequent to our acquisition of this project in December 1999, the Newark Power Plant generated approximately 17,156 megawatt hours of electrical energy and approximately \$778,000 in revenue in 1999.

Bethpage Power Plant. The Bethpage Power Plant is a 57 megawatt gas-fired, combined cycle cogeneration facility located adjacent to a Northrup Grumman Corporation ("Grumman") facility in Bethpage, New York. Electricity and steam generated by the Bethpage Power Plant are sold to Grumman

under an energy purchase agreement expiring August 2004. Electric power not sold to Grumman is sold to Long Island Power Authority ("LIPA") under a generation agreement also expiring August 2004. Grumman is also obligated to purchase a minimum of 158,000 klbs of steam per year from the Bethpage Power Plant. For 1999, the Bethpage Power Plant generated approximately 468,268 megawatt hours of electrical energy for sale to Grumman and LIPA and approximately \$32.6 million in revenue.

**Greenleaf 1 Power Plant.** The Greenleaf 1 Power Plant is a 49.5 megawatt gas-fired cogeneration facility located near Yuba City, California. We operate this facility under an operating lease with Union Bank of California, terminating in 2014 (the "Greenleaf Lease"). Electricity generated by the Greenleaf 1 Power Plant is sold to PG&E under a power sales agreement terminating in 2019 which contains payment provisions for capacity and energy. In addition, the Greenleaf 1 Power Plant sells thermal energy, in the form of hot exhaust to dry wood waste, to a thermal host which is owned and operated by us. For 1999, the Greenleaf 1 Power Plant generated approximately 389,628 megawatt hours of electrical energy for sale to PG&E and approximately \$20.7 million in revenue.

**Greenleaf 2 Power Plant.** The Greenleaf 2 Power Plant is a 49.5 megawatt gas-fired cogeneration facility located near Yuba City, California. This facility is also operated by us under the Greenleaf Lease. Electricity generated by the Greenleaf 2 Power Plant is sold to PG&E under a power sales agreement terminating in 2019 which includes payment provisions for capacity and energy. In addition to the sale of electricity to PG&E, the Greenleaf 2 Power Plant sells thermal energy to Sunsweet Growers, Inc. pursuant to a 30-year contract. For 1999, the Greenleaf 2 Power Plant generated approximately 345,902 megawatt hours of electrical energy for sale to PG&E and approximately \$20.0 million in revenue.

**Stony Brook Power Plant.** The Stony Brook Power Plant is a 40 megawatt gas-fired cogeneration facility located on the campus of the State University of New York at Stony Brook, New York ("SUNY"). The facility is owned by Nissequogue Cogen Partners ("NCP"). We own an indirect 50% ownership interest in NCP. Steam and electric power is sold to SUNY under an energy supply agreement expiring in 2023. Under the energy supply agreement, SUNY is required to purchase, and the Stony Brook Power Plant is required to provide, all of SUNY's electric power and steam requirements up to 36.125 megawatts of electricity and 280,000 lbs/hr of process steam. The remaining electricity is sold to LIPA under a long-term agreement. LIPA is obligated to purchase electric power generated by the facility not required by SUNY. SUNY is required to purchase a minimum of 402,000 klbs per year of steam. For 1999, the Stony Brook Power Plant generated approximately 323,366 megawatt hours of electrical energy and 1,226,000 klbs of steam for sale to SUNY and LIPA and approximately \$30.8 million in revenue.

**Agnews Power Plant.** The Agnews Power Plant is a 29 megawatt gas-fired, combined-cycle cogeneration facility located on the East Campus of the state-owned Agnews Developmental Center in San Jose, California. We hold a 20% ownership interest in GATX Calpine-Agnews, Inc., which is the sole stockholder of O.L.S. Energy-Agnews, Inc. ("O.L.S. Energy-Agnews"). O.L.S. Energy-Agnews leases the Agnews Power Plant under a sale leaseback arrangement. Electricity generated by the Agnews Power Plant is sold to PG&E under a power sales agreement terminating in 2021 which contains payment provisions for capacity and energy. In addition, the Agnews Power Plant produces and sells electricity and approximately 7,000 lbs/hr of steam to the Agnews Developmental Center pursuant to a 30-year energy service agreement. During 1999, the Agnews Power Plant generated approximately 228,781 megawatt hours of electrical energy and total revenue of \$23.0 million.

**Watsonville Power Plant.** The Watsonville Power Plant is a 28.5 megawatt gas-fired, combined cycle cogeneration facility located in Watsonville, California. We operate the Watsonville Power Plant under an operating lease with the Ford Motor Credit Company, terminating in 2009. Electricity generated by the Watsonville Power Plant is sold to PG&E under a power sales agreement terminating in 2009 which contains payment provisions for capacity and energy. During 1999, the Watsonville Power Plant produced and sold steam to Farmers Processing, a food processor. In addition, the Watsonville Power Plant sold process water produced from its water distillation facility to Farmer's Cold Storage, Farmer's Processing and Cascade Properties. For 1999, the Watsonville Power Plant generated approximately 193,584 megawatt hours of electrical energy for sale to PG&E and approximately \$11.5 million in revenue.

Philadelphia Water Project. The Philadelphia Water Project is a 22 megawatt gas-fired facility consisting of two standby peak shaving facilities located at the Philadelphia Water Department's Northeast and Southwest wastewater treatment plants. We indirectly own 66.4% of this project. The project sells capacity and energy on demand to the Philadelphia Municipal Authority pursuant to two long-term contracts expiring in 2013. Subsequent to our acquisition of this project in December 1999, the Philadelphia Water Project generated approximately \$134,000 in revenue in 1999.

## **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, 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 that seek to take advantage of inefficiencies in the electricity market. 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. We expect that these projects will represent a prototype for our future plant developments.

#### **Projects Under Construction**

Baytown Power Plant. In October 1999, we announced plans to build, own and operate a 800 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 begin in late 2001.

Magic Valley Generating Station. In May 1998, we announced that we had 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 730 megawatt natural gas-fired power plant under development 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 April 1999 with commercial operation scheduled to begin in early 2001.

Aries Power Plant. In January 2000, we acquired a 50% interest in the Aries Power Plant, a 600 megawatt natural gas-fired plant currently under construction near Pleasant Hill, Missouri, from a subsidiary of Aquila Energy Corporation. Construction started in October 1999. Commercial operation of the first 330 megawatts is scheduled to begin June 2001 with the balance of the plant starting in January 2002. 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.

Westbrook Energy Center. In February 1999, we acquired from Genesis Power Corporation, a New England based power developer, the development rights to a 545 megawatt gas-fired combined-cycle power plant to be located in Westbrook, Maine. Construction commenced in February 1999 and commercial operation is scheduled for early 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.

Pasadena Expansion. We are currently expanding the Pasadena Power Plant by an additional 545 megawatts. Construction began in November 1998 and commercial operation is expected to begin in June 2000. The electricity output from this expansion will be sold into the competitive market through our power sales activities.

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 545 megawatt gas-fired power plant on the tribe's reservation in Mojave County, Arizona. The electricity generated will be sold to the Arizona, Nevada and California power markets. Construction commenced in August 1999 and we anticipate that the South Point Power Plant will begin operation in mid 2001.

Sutter Power Plant. In February 1997, we announced plans to develop a 545 megawatt gas-fired combined cycle project in Sutter County, in northern California. The Sutter Power Plant would be northern California's first newly constructed power plant since deregulation of the California power market in 1998. Construction commenced in August 1999 and the Sutter Power Plant is expected to provide electricity to the deregulated California power market commencing mid 2001

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 facility in Bastrop County, Texas. Construction of this facility 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.

Los Medanos Energy Center. In September 1999, we finalized an agreement with Enron North America for the development rights of a 500 megawatt gas-fired plant in Pittsburg, California. Construction commenced in September 1999 and commercial operation is expected to begin in mid 2001. The facility will provide electricity and industrial steam totaling approximately 65 megawatts to USS-POSCO Industries under a long-term agreement. The balance of the plant's output will be sold into the California power market.

Tiverton Power Plant. In September 1998, we invested \$40.0 million of equity in the development of a 265 megawatt gas-fired power plant to be located in Tiverton, Rhode Island. The Tiverton Power Plant is being developed by EMI. For our investment in the Tiverton Power Plant, we will earn 62.8% of the Tiverton Power Plant project cash flow until a specified pre-tax return is reached, whereupon our company and EMI will equally share projected cash flows through the remaining life of the project. Construction commenced in late 1998 and commercial operation is currently scheduled for May 2000. Upon completion, the Tiverton

Power Plant will be operated by EMI and will sell its output in the New England power market and to wholesale and retail customers in the northeastern United States.

Rumford Power Plant. In November 1998, we invested \$40.0 million of equity in the development of a 265 megawatt gas-fired power plant to be located in Rumford, Maine. The Rumford Power Plant is being developed by EMI. For our investment in the Rumford Power Plant, we will earn 66 2/3% of the Rumford Power Plant project cash flow until a 10.5% pre-tax return is reached, whereupon we will receive 50% of projected cash flows through the remaining life of the project. Construction commenced in late 1998 and commercial operation is currently scheduled for July 2000. Upon completion, the Rumford Power Plant will be operated by EMI and will sell its output in the New England power market and to wholesale and retail customers in the northeastern United States.

Morris Expansion. We are currently expanding the Morris Power Plant by approximately 50 megawatts with the addition of a steam turbine. Construction began in January 2000 with commercial operation scheduled for mid 2000.

### **Announced Development Projects**

**Blue Heron Energy Center.** In January 2000 we announced plans to build, own and operate a 1,080 megawatt gas-fired cogeneration power plant in Indian River County, Florida. We anticipate that construction will commence in 2001 and that commercial operation of the facility will commence in mid 2003.

**Delta Energy Center.** In February 1999, we, together with Bechtel Enterprises, announced plans to develop a 880 megawatt gas-fired cogeneration project in Pittsburg, California. 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. We anticipate that construction will commence in early 2000 and that operation of the facility will commence in 2002. We are currently pursuing regulatory agency permits for this project. In February 2000, we announced that the California Energy Commission ("CEC") has approved Delta Energy Center's Application for Certification.

**Lone Oak Energy Center.** In February 2000, we announced plans to build, own and operate the Lone Oak Energy Center, a 800 megawatt gas-fired cogeneration power plant in Lowndes County, Mississippi. We anticipate that construction will commence in early 2001 and that commercial operation of the facility will commence in early 2003.

**Decatur Energy Center.** In February 2000, we announced plans to build, own and operate a 700 megawatt gas-fired cogeneration power plant 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, mid and long term contracts. We will also build a new intrastate natural gas pipeline to fuel the new plant. Construction is estimated to commence in mid 2000 and commercial operation in mid 2002.

**Hillabee Energy Center.** In February 2000, we announced plans to build, own and operate the Hillabee Energy Center, a 700 megawatt gas-fired cogeneration power plant in Tallapoosa County, Alabama. We anticipate that construction will commence in early 2001 and that commercial operation of the facility will commence in early 2003.

**Metcalf Energy Center.** In February 1999, we, together with Bechtel Enterprises, announced plans to develop, own and operate a 600 megawatt gas-fired cogeneration project in San Jose, California. We expect the CEC review, licensing and public hearing process will be completed in late 2000 or early 2001. We anticipate that construction will commence following this approval and that commercial operation of the facility will commence in late 2002 or early 2003. Electricity generated by the Metcalf Energy Center will be sold into the California power market.

**Channel Energy Center.** In October 1999, we announced that we had executed a letter of intent which gives us the exclusive right to negotiate with LYONDELL-CITGO Refining LP to build, own and operate a

560 megawatt gas-fired cogeneration power plant 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. Permitting for the facility is currently underway, with construction projected to commence in early 2000 and commercial operation in 2001.

Ontelaunee Energy Center. In June 1999, we announced that we had acquired the rights to develop a 545 megawatt gas-fired power plant in Ontelaunee Township in eastern Pennsylvania. Permitting for the proposed facility is underway and construction is scheduled to begin in early 2000. Commercial operation is estimated for late 2002. Output from the plant will be sold into the Pennsylvania/New Jersey/Maryland (PJM) power pool and pursuant to bilateral contracts.

West Phoenix Power Plant. In April 1999, we announced an agreement with Pinnacle West Capital Corporation to develop, own and operate a 545 megawatt gas-fired facility at Arizona Public Services' West Phoenix Power Station in Phoenix, Arizona. Timing of development activities is still under discussion with our partner. Electricity from the facility will be sold into the Arizona power market.

Osprey Energy Center. In January 2000, we announced plans to build, own and operate the Osprey Energy Center, a 540 megawatt gas-fired cogeneration power plant near the city of Auburndale, Florida. The facility will be built adjacent to our existing power facility, the Auburndale Power Plant. We anticipate that construction will commence in 2001 and that commercial operation of the facility will commence in early 2003.

Hermiston Power Plant. In January 2000, we acquired the development rights for the Hermiston Power Project, a 540 megawatt gas-fired cogeneration power facility located near Hermiston, Oregon. We anticipate that construction will commence in the summer of 2000 and that commercial operation of the facility will commence in 2002.

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 500 megawatt gas-fired cogeneration plant located in Oxford, Connecticut. This power plant will market its electricity via bilateral contracts into the New England region. Construction is estimated to commence in late 2000 and commercial operation in 2002. In February 2000, a townwide referendum in the Town of Oxford, Connecticut approved the sale of the town-owned land for the Towantic Energy Center.

## **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, 1999, Calpine Gas Company owned proven natural gas reserves, leasehold acreage and operated an 80-mile pipeline delivering gas to the Greenleaf 1 and 2 Power Plants. We currently supply approximately 79% 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 its natural gas-fired power plants.

Vintage. In December 1999, we completed the acquisition of Vintage Petroleum, Inc.'s 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 acquisition, we own a 99.5% working interest in the Rio Vista Gas Unit and certain development acreage in northern California.

Western. In February 2000, we acquired 100% of the stock of Western from Western Gas Resources, Inc. Western's assets include the 130-mile Steelhead natural gas pipeline and the remaining interest in the SRGS natural gas pipeline, now 100% owned by us.

## **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 its 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 purchase electric power from independent producers and sell retail electric power. 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 Public Utility Regulatory Policies Act of 1978, as amended ("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 qualifying facility ("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 an electric utility or by most electric utility holding companies, or a subsidiary 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"), 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. As a result, although such legislation may adversely affect our ability to develop new projects, 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 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 to develop such facilities which are not subject to the constraints of PUHCA.

## **Federal Natural Gas Transportation Regulation**

We have an ownership interest in 25 gas-fired cogeneration projects. 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 operating 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, 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 FERC's 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 Calpine owns an interest are operated as QFs and are therefore exempt from FERC regulation under the FPA. However, several of Calpine's generating projects are or will be EWGs subject to FERC jurisdiction under the FPA. Several Calpine 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 power purchase agreement with an independent power producer to the utility's retail customer. 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.

In the State of California, restructuring legislation was enacted in September 1996 and was implemented in 1998. This legislation established an Independent Systems Operator ("ISO") responsible for centralized control and efficient and reliable operation of the state-wide electric transmission grid, and a power exchange responsible for an efficient competitive electric energy auction open on a non-discriminatory basis to all electric services providers. Other provisions include the quantification and qualification of utility stranded costs to be eligible for recovery through competitive transition charges ("CTC"), market power mitigation through utility divestiture of fossil generation plants, the unbundling and establishment of rate structure for historical utility functions, the continuation of public purpose programs and issues related to issuance of rate reduction bonds.

The CEC and the California Legislature have responsibility for development of a competitive market mechanism for allocation and distribution of funds made available by the legislation for enhancement of in-state renewable resource technologies and public interest research and development programs. Funds are to be available through the four-year transition period to a fully competitive electric services industry.

In addition to the significant opportunity provided for power producers such as us through implementation of customer choice (direct access), the California restructuring legislation both recognizes the sanctity of existing contracts (including QF power sales contracts), provides for mitigation of utility horizontal market power through divestiture of fossil generation by California public utilities and provides funds for continuation of public services programs including fuel diversity through enhancement for in-state renewable technologies (includes geothermal) for the four-year transition period to a fully competitive electric services industry.

Other states in which we conduct operations either have implemented or are actively considering similar restructuring legislation.

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. With respect to our Aidlin geothermal plant and one of our steam field pipelines, our operations have, in certain instances, necessitated variances under applicable California air pollution control laws. However, we believe that we are in material compliance with such laws with respect to such facilities.

### **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 FACTOR SECTION STARTING ON PAGE F-16 UNDER "MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS" INCLUDED IN APPENDIX F TO THIS REPORT.

### **COMPETITION**

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 which provide for direct access for all customers as of April 1, 1998. In Texas, recently enacted legislation will phase-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.

### **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, during 1999, sales of electricity to two utility customers, PG&E and TUEC, comprised approximately 47% 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.

### **SEASONALITY**

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, and variations in levels of production.

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. Our industry generally experiences summer peaks and winter peaks, and depending on the service territory, there may be seasonal variations experienced by electric power generators in the industry.

### **EMPLOYEES**

As of December 31, 1999, we employed 865 people. None of our employees are covered by collective bargaining agreements, and we have never experienced a work stoppage, strike or labor dispute. We consider relations with our employees to be good.

### **ITEM 2. PROPERTIES**

Our principal executive office is located in San Jose, California, under a lease that expires in June 2006. We have regional offices in Pleasanton, California; Houston, Texas; Boston, Massachusetts and Folsom, California.

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 the 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.

We own Calpine Gas Company and CNGC, which have interests in property as listed below. Based on an independent petroleum engineering report, as of December 31, 1999, 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 (dollars in thousands):

	AS OF DECEMBER 31, 1999			
	OIL (MBBLBS)	GAS (BCF)	UNDISCOUNTED	PV 10
Proved developed.....	1,304	190	\$315,235	\$165,318
Proved undeveloped.....	556	19	28,532	15,069
Total.....	1,860	209	\$343,767	\$180,387
	=====	==	=====	=====

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 developed non-producing and proved undeveloped reserves for 1999 total \$16.2 million.

The following table sets forth the undeveloped acreage, developed acreage and productive wells in which we own a working interest as of December 31, 1999. 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
	-----	-----	-----	-----	-----	-----
Arkansas.....	--	--	5,623	1,669	46	21
California.....	48,619	36,731	40,588	38,101	141	124
Colorado.....	--	--	2,794	511	--	--
Louisiana.....	42,558	41,542	8,323	5,860	20	9
Mississippi.....	350	277	9,625	2,874	17	5
Oklahoma.....	4,765	953	16,678	7,629	63	18
Texas.....	17,481	7,123	17,347	9,957	102	59
Total.....	113,773	86,626	100,978	66,601	389	236
	=====	=====	=====	=====	==	==

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.

See "Description of Facilities" for a description of the other material 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**

On September 30, 1997, a lawsuit was filed by Indeck North American Power Fund ("Indeck") in the Circuit Court of Cook County, Illinois against Norweb plc. and certain other parties, including us. Some of Indeck's claims relate to Calpine Gordonsville, Inc.'s acquisition of a 50% interest in Gordonsville Energy from Northern Hydro Limited and Calpine Auburndale, Inc.'s acquisition of a 50% interest in Auburndale Power Plant Partners Limited Partnership from Norweb Power Services (No. 1) Limited. Indeck is claiming that Calpine Gordonsville, Inc., Calpine Auburndale, Inc. and Calpine Corporation tortiously interfered with Indeck's contractual rights to purchase such interests and conspired with other parties to do so. Indeck is seeking \$25.0 million in compensatory damages, \$25.0 million in punitive damages, and the recovery of attorneys' fees and costs. In July 1998, the court granted motions to dismiss, without prejudice, the claims against Calpine Gordonsville, Inc. and Calpine Auburndale, Inc. In August 1998, Indeck filed an amended complaint and the defendants filed motions to dismiss. In April 1999, the court dismissed the claims against Calpine Auburndale and Calpine Gordonsville with prejudice. Indeck appealed the court's decision. The outcome of the appeal is not expected until late 2000. We are unable to predict the outcome of these proceedings but we do not expect that the outcome of these proceedings will have a material adverse effect on our financial position or results of operation.

An action was filed against Lockport Energy Associates ("LERA") and the New York Public Service Commission ("NYPSC") in August 1997 by NYSEG in the Federal District Court for the Northern District of New York. NYSEG has requested the Court to direct NYPSC and 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 PURPA and the Federal Power Act by failing to reform the NYSEG contract that was previously approved by the NYPSC. We are unable to predict the outcome of these proceedings but we do not expect that the outcome of these proceedings will have a material adverse effect on our financial position or results of operation. In any event, we retain the right to require The Brooklyn Union Gas Company to purchase our interest in the Lockport Power Plant for \$18.9 million, less equity distributions received by us, at any time before December 19, 2001.

We and our affiliates are involved in various other claims and legal actions arising out of the normal course of business. We are unable to predict the outcome of these proceedings but we do not expect that the outcome of these proceedings will have a material adverse effect on our financial position or results of operation.

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

None.

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

The information required hereunder is set forth under "Quarterly Consolidated Financial Data" included in Appendix F, Note 17 of the Notes to Consolidated Financial Statements to this report. The Company made no sales of unregistered securities in the last three years except as follows:

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.

Since the Plan amendment, through February 2000, Calpine estimates that (i) the Plan has sold to participants \$14.0 million in plan participation interests and (ii) Calpine has sold to participants 155,566 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.

While Calpine believes that many of the sales would qualify as an exempt transaction 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. Accordingly, Calpine in March 2000, intends to file 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. Calpine is prepared to rescind any sale of plan participation interests or common stock if requested by a participant who did not qualify for a private placement.

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

The information required hereunder is set forth under "Selected Consolidated Financial Data" included in Appendix F to 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 Appendix F to 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 Appendix F to 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 Shareholder's Equity," "Consolidated Statements of Cash Flows," and "Notes to Consolidated Financial Statements" included in Appendix F of this report. Other financial information and schedules are included in Appendix F 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 from Proxy Statement relating to the 2000 Annual Meeting of Shareholders to be filed.

## **ITEM 11. EXECUTIVE COMPENSATION**

Incorporated by reference from Proxy Statement relating to the 2000 Annual Meeting of Shareholders to be filed.

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

Incorporated by reference from Proxy Statement relating to the 2000 Annual Meeting of Shareholders to be filed.

## **ITEM 13. CERTAIN RELATIONSHIPS AND RELATED TRANSACTIONS**

None.

## **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, 1999 and 1998 Consolidated Statements of Operations for the Years Ended December 31, 1999, 1998 and 1997  
Consolidated Statements of Stockholders' Equity for the Years Ended December 31, 1999, 1998 and 1997 Consolidated Statements of Cash Flows for the Years Ended December 31, 1999, 1998 and 1997  
Notes to Consolidated Financial Statements for the Years Ended December 31, 1999, 1998 and 1997

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

None

### **(a)-3. REPORTS ON FORM 8-K**

1. Current report dated October 11, 1999 and filed on October 12, 1999

**ITEM 5. OTHER EVENTS -- Press Release announcing Calpine Corporation's**  
expectation of higher Financial Results for the Three and Nine Months Ended September 30, 1999.

2. Current report dated October 22, 1999 and filed on October 25, 1999

**ITEM 5. OTHER EVENTS -- Press Release announcing Calpine Corporation's**  
Financial Results for the Three and Nine Months Ended September 30, 1999

3. Current report dated January 26, 2000 and filed on February 8, 2000

**ITEM 5. OTHER EVENTS -- Announcement of Pricing of Up to \$360 Million of Convertible Preferred Securities**

4. Current report dated February 3, 2000 and filed on February 8, 2000

**ITEM 5. OTHER EVENTS -- Press Release announcing Calpine Corporation's**  
Financial Results for the Three and Twelve Months Ended December 31, 1999

(a)-4. EXHIBITS

The following exhibits are filed herewith unless otherwise indicated:

EXHIBIT NUMBER	DESCRIPTION
3.1	-- Amended and Restated Certificate of Incorporation of Calpine Corporation, a Delaware corporation.(b)
3.2	-- Amended and Restated Bylaws of Calpine Corporation, a Delaware corporation.(b)
4.1	-- Indenture dated as of February 17, 1994 between the Company and Shawmut Bank of Connecticut, National Association, as Trustee, including form of Notes.(a)
4.2	-- Indenture dated as of May 16, 1996 between the Company and Fleet National Bank, as Trustee, including form of Notes.(c)
4.3	-- Indenture dated as of July 8, 1997 between the Company and The Bank of New York, as Trustee, including form of Notes.(e)
4.4	-- Indenture dated as of March 31, 1998 between the Company and The Bank of New York, as Trustee, including form of Notes.(g)
4.5	-- Indenture dated as of March 26, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.6	-- Indenture dated as of April 21, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.7	-- 1999 HIGH TIDES.
4.7.1	-- Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, filed October 4, 1999.(i)
4.7.2	-- Corrected Certificate of Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, dated September 29, 1999.(i)
4.7.3	-- 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)
4.7.4	-- Indenture, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(i)
4.7.5	-- 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)
4.7.6	-- 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)
4.7.7	-- Preferred Securities Guarantee Agreement, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Guarantee Trustee.(i)
4.8	-- 2000 HIGH TIDES.
4.8.1	Certificate of Trust of Calpine Capital Trust II, a Delaware statutory trust, filed January 25, 2000.(*)
4.8.2	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.(*)

EXHIBIT NUMBER	DESCRIPTION
4.8.3	Indenture, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(*)
4.8.4	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.(*)
4.8.5	Registration Rights Agreement, dated January 31, 2000, among Calpine Corporation, Calpine Capital Trust II, Credit Suisse First Boston Corporation and ING Barings LLC.(*)
4.8.6	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.(*)
4.8.7	-- Preferred Securities Guarantee Agreement, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Guarantee 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.(j)(*)
10.3	-- Other Agreements.
10.3.1	-- Calpine Corporation Stock Option Program and forms of agreements thereunder.(a)
10.3.2	-- Calpine Corporation 1996 Stock Incentive Plan and forms of agreements thereunder.(b)
10.3.3	-- Calpine Corporation Employee Stock Purchase Plan and forms of agreements thereunder.(b)
10.3.4	-- Amended and Restated Employment Agreement between Calpine Corporation and Mr. Peter Cartwright.(*)
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)
21	-- Subsidiaries of the Company.(*)
23	-- Consent of Arthur Andersen, LLP, Independent Public Accountants.(*)
27	-- Financial Data Schedule.(*)

(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 (Registration Statement No. 333-07497).

- (c) Incorporated by reference to Registrant's Current Report on Form 8-K dated August 29, 1996 and filed on September 13, 1996.
  - (d) Incorporated by reference to Registrant's Annual Report on Form 10-K dated December 31, 1996, and filed on March 27, 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) 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.
- (\*) 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.

Date: February 28, 2000

CALPINE CORPORATION

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)	February 28, 2000
/s/ ANN B. CURTIS ----- Ann B. Curtis	Executive Vice President and Director (Principal Financial Officer)	February 28, 2000
/s/ CHARLES B. CLARK, JR. ----- Charles B. Clark, Jr.	Vice President and Corporate Controller (Principal Accounting Officer)	February 28, 2000
/s/ JEFFREY E. GARTEN ----- Jeffrey E. Garten	Director	February 28, 2000
/s/ SUSAN C. SCHWAB ----- Susan C. Schwab	Director	February 28, 2000
/s/ GEORGE J. STATHAKIS ----- George J. Stathakis	Director	February 28, 2000
/s/ JOHN O. WILSON ----- John O. Wilson	Director	February 28, 2000
/s/ V. ORVILLE WRIGHT ----- V. Orville Wright	Director	February 28, 2000

**CALPINE CORPORATION AND SUBSIDIARIES**

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**CALPINE CORPORATION AND SUBSIDIARIES**

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

	YEARS ENDED DECEMBER 31,				
	1995	1996	1997	1998	1999
<b>STATEMENT OF OPERATIONS DATA:</b>					
<b>REVENUE:</b>					
Electricity and steam sales.....	\$127,799	\$199,464	\$237,277	\$507,897	\$760,325
Service contract revenue.....	7,153	6,455	10,177	20,249	43,773
(Loss) income from unconsolidated investments in power projects.....	(2,854)	6,537	15,819	25,240	36,593
Interest income on loans to power projects.....	--	2,098	13,048	2,562	1,226
Other revenue.....	--	--	--	--	5,818
Total revenue.....	132,098	214,554	276,321	555,948	847,735
Cost of revenue.....	77,388	129,200	153,308	375,327	557,477
Gross profit.....	54,710	85,354	123,013	180,621	290,258
Project development expenses.....	3,087	3,867	7,537	7,165	10,712
General and administrative expenses.....	8,937	14,696	18,289	26,780	53,044
Income from operations.....	42,686	66,791	97,187	146,676	226,502
Interest expense.....	32,154	45,294	61,466	86,726	91,162
Distributions on trust preferred securities.....	--	--	--	--	2,565
Other income.....	(1,895)	(6,259)	(17,438)	(13,423)	(25,441)
Income before provision for income taxes.....	12,427	27,756	53,159	73,373	158,216
Provision for income taxes.....	5,049	9,064	18,460	27,054	61,973
Income before extraordinary charge.....	7,378	18,692	34,699	46,319	96,243
Extraordinary charge, net of tax benefit of \$ -- , \$ -- , \$ -- , \$441 and \$793.....	--	--	--	641	1,150
Net income.....	\$ 7,378	\$ 18,692	\$ 34,699	\$ 45,678	\$ 95,093
===== Basic earnings per common share: Weighted average shares of common stock	=====	=====	=====	=====	=====
Outstanding.....	20,776	25,805	39,892	40,242	52,328
Income before extraordinary charge.....	\$ 0.36	\$ 0.72	\$ 0.87	\$ 1.15	\$ 1.84
Extraordinary charge.....	\$ --	\$ --	\$ --	\$ (0.01)	\$ (0.02)
Net income.....	\$ 0.36	\$ 0.72	\$ 0.87	\$ 1.14	\$ 1.82
Diluted earnings per common share: Weighted average shares of common stock					
Outstanding.....	21,913	29,758	42,032	42,328	55,661
Income before extraordinary charge.....	\$ 0.34	\$ 0.63	\$ 0.83	\$ 1.09	\$ 1.73
Extraordinary charge.....	--	--	--	\$ (0.01)	\$ (0.02)
Net income.....	\$ 0.34	\$ 0.63	\$ 0.83	\$ 1.08	\$ 1.71
<b>OTHER FINANCIAL DATA AND RATIOS:</b>					
Depreciation and amortization.....	\$ 26,896	\$ 40,551	\$ 48,935	\$ 82,913	\$ 83,040
EBITDA(1).....	\$ 69,515	\$ 117,379	\$ 172,616	\$ 255,306	\$ 392,160
EBITDA to Consolidated Interest Expense(2).....	2.11x	2.41x	2.60x	2.74x	3.79x
Total debt to EBITDA.....	5.87x	5.12x	4.96x	4.20x	5.24x
Ratio of earnings to fixed charges(3).....	1.46x	1.45x	1.64x	1.68x	1.78x

AS OF DECEMBER 31,

	1995	1996	1997	1998	1999
<b>BALANCE SHEET DATA:</b>					
Cash and cash equivalents.....	\$ 21,810	\$ 95,970	\$ 48,513	\$ 96,532	\$ 349,371
Property, plant and equipment, net.....	447,751	648,208	736,339	1,094,303	2,866,447
Investment in power projects.....	8,218	13,936	222,542	221,509	284,834
Total assets.....	554,531	1,031,397	1,380,915	1,728,946	3,991,606
Short-term debt.....	85,885	37,492	112,966	5,450	11,638
Borrowings under line of credit, current portion.....	19,851	--	--	--	35,832
Borrowings under line of credit, net of current portion.....	--	--	--	--	86,918
Non-recourse project financing (long-term)....	190,642	278,640	182,893	114,190	357,137
Notes payable, net of current.....	6,348	--	--	--	10,385
Senior notes.....	105,000	285,000	560,000	951,750	1,551,750
Total debt.....	407,726	601,132	855,859	1,071,390	2,053,660
Company-obligated mandatorily redeemable convertible preferred securities of a subsidiary trust.....	--	--	--	--	270,713
Minority interests.....	--	--	--	--	61,705
Stockholders' equity.....	25,227	203,127	239,956	286,966	964,632

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

(1) EBITDA is defined as income from operations plus depreciation, capitalized interest, other income, non-cash charges and cash received from investments in power projects, reduced by the income from unconsolidated investments in power projects. 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).

(2) Consolidated Interest Expense is defined as total interest expense plus one-third of all operating lease obligations, dividends paid in respect of preferred stock and cash contributions to any employee stock ownership plan used to pay interest on loans incurred to purchase our capital stock.

(3) Earnings are defined as income before provision for taxes, extraordinary charge and cumulative effect of change in accounting principle plus cash received from investments in power projects and fixed charges reduced by the equity in income from investments in power projects and capitalized interest. Fixed charges consist of interest expense, capitalized interest, amortization of debt issuance costs and the portion of rental expenses representative of the interest expense component.

## **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 and subject to the safe harbor created by the Securities Litigation Reform Act of 1995. Such statements include declarations regarding our intent, belief or current expectations. Prospective investors are cautioned that any such forward-looking statements are not guarantees of future performance and involve a number of risks and uncertainties; actual results could differ materially from those indicated by such forward-looking statements. Among the important factors that could cause actual results to differ materially from those indicated by such forward-looking statements are: (i) that the information is of a preliminary nature and may be subject to further adjustment, (ii) the possible unavailability of financing, (iii) risks related to the development, acquisition and operation of power plants, (iv) the impact of avoided cost pricing, energy price fluctuations and gas price increases, (v) the impact of curtailment, (vi) the seasonal nature of our business, (vii) start-up risks, (viii) general operating risks, (ix) the dependence on third parties, (x) risks associated with international investments, (xi) risks associated with the power marketing business, (xii) changes in government regulation, (xiii) the availability of natural gas, (xiv) the effects of competition, (xv) the dependence on senior management, (xvi) volatility in the our stock price, (xvii) fluctuations in quarterly results and seasonality, and (xviii) other risks identified from time to time in our 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 February 23, 2000, we had interests in 44 power plants and steam fields predominantly in the United States, having an aggregate capacity of 4,273 megawatts.

On January 4, 1999, we completed the acquisition of a 20% interest in approximately 82 billion cubic feet of proven natural gas reserves located in the Sacramento basin of Northern California. We paid approximately \$14.9 million for \$13.0 million in redeemable non-voting preferred stock and 20% of the outstanding common stock of Sheridan California Energy, Inc. ("SCEI"). Additionally, we signed a ten year gas contract enabling us to purchase 100% of SCEI's production.

On February 17, 1999, we announced that the Delta Energy Center met the California Energy Commission's ("CEC") Data Adequacy requirements. This ruling stated that our Application for Certification contained adequate information for the CEC to begin its analysis of the power plant's environmental impacts and proposed mitigation. The Delta Energy Center, an 880 megawatt gas-fired power plant located at the Dow Chemical Company facility in Pittsburg, California, is the first power plant that will be developed, owned and operated under a joint venture with Bechtel Enterprises, and will provide power to the Pittsburg, California and the greater San Francisco Bay Area. The gas-fired power plant is to be constructed by Bechtel and operated by us.

On February 17, 1999, we announced plans to develop, own and operate a 545 megawatt gas-fired power plant in Westbrook, Maine. We acquired the development rights for the Westbrook Energy Center from Genesis Power Corporation. This power plant is scheduled to begin power deliveries in early 2001, and will serve the New England market.

On February 24, 1999, we announced plans to develop, own and operate a 600 megawatt gas-fired power plant located in San Jose, California. This power plant, called the Metcalf Energy Center, is the second power plant to be developed under the joint venture with Bechtel Enterprises, and will provide electricity to the San Francisco Bay area. We expect the plant to commence operation in mid 2002.

On March 19, 1999, we completed the acquisition of Unocal Corporation's Geysers geothermal steam fields in northern California for approximately \$102.2 million. The steam fields fuel our 12 Sonoma County power plants, totaling 544 megawatts of capacity. We purchased these plants from Pacific Gas and Electric Company ("PG&E") on May 7, 1999.

On April 14, 1999, we received approval from the CEC to construct a 545 megawatt gas-fired power plant near Yuba City, California. This power plant, called the Sutter Power Plant, was the first new power plant approved in California's deregulated power industry. Electricity produced by the Sutter Power Plant will be sold into California's energy market. We expect the plant to commence operation in mid 2001.

On April 22, 1999, we entered into a joint venture with GenTex Power Corporation to develop, own and operate a 545 megawatt gas-fired power plant in Bastrop County, Texas, called Lost Pines I. Construction of this power plant began in October 1999. Under the definitive agreements we entered in September 1999, we will manage all phases of the plant's development process, with GenTex and ourselves jointly operating the plant. The output from Lost Pines I will be divided equally, with GenTex selling its portion to its customer base, while we will sell our portion to the wholesale power market in Texas. We expect the plant to commence operation in mid-2001.

On April 23, 1999, we entered into a joint agreement with Pinnacle West Capital Corporation to develop, own and operate a 545 megawatt gas-fired power plant located in Phoenix, Arizona. This plant, called the West Phoenix Power Plant, will provide power to the Phoenix metropolitan area. The timing of development activities is still under discussion with our partner.

On May 7, 1999, we completed the acquisitions from PG&E of 12 Sonoma County and 2 Lake County power plants for approximately \$212.8 million. The acquisitions were financed with a 24-year operating lease. Our geothermal steam fields fuel the facilities, which have a combined capacity of approximately 694 megawatts of electricity. All of the generation from the facilities is sold to the California power exchange, with the exception of an agreement entered into on April 29, 1999, to sell to Commonwealth Energy Corporation 75 megawatts of geothermal electricity in 1999, 100 megawatts in 2000, and 125 megawatts in 2001 and through June 2002. Historically, we have served as a steam supplier for these facilities, which had been owned and operated by PG&E. These acquisitions have enabled us to consolidate our operations in The Geysers into a single ownership structure and to integrate the power plant and steam field operations, allowing us to optimize the efficiency and performance of the facilities. We believe that these acquisitions provide us with significant synergies that leverage our expertise in geothermal power generation and position us to benefit from the demand for "green" energy in the competitive market.

On June 21, 1999, we acquired the rights to build, own and operate a 545 megawatt gas-fired power plant located in Ontelaunee Township, Pennsylvania. The plant, called the Ontelaunee Energy Center, will provide power to residences and businesses throughout the Pennsylvania-New Jersey-Maryland power pool. Construction will commence in 2000 and the plant is scheduled to begin production in 2002.

On July 8, 1999, we announced a renegotiation of our Gilroy power sales agreement with PG&E. The amendment provides for the termination of the remaining 18 years of the long-term contract in exchange for fixed long-term payments by PG&E to us. The amended agreement was approved by the California Public Utilities Commission on December 2, 1999. We will continue to sell the output from the Gilroy Power Plant through October 2002 to PG&E and thereafter we will market the output in the California wholesale power market.

On August 20, 1999, we announced the purchase of 18 F-class combustion turbines from Siemens Westinghouse Power Corporation that will be capable of producing 4,900 megawatts of electricity in a combined-cycle configuration. Beginning in 2002, Siemens will deliver six turbines per year through 2004. Combined with our existing turbine orders we have 69 turbines under contract, option, letter of intent or other commitment capable of producing approximately 18,800 megawatts in a combined-cycle mode.

On August 31, 1999, we completed the acquisition of an additional 50% of the Aidlin Power Plant from Edison Mission Energy (5%) and General Electric Capital Corporation (45%) for a total purchase price of \$7.2 million. We now own 55% of the 20-megawatt Aidlin Power Plant.

On September 20, 1999, the Board of Directors authorized a two-for-one stock split of our common stock, in the form of a stock dividend, effective October 7, 1999, payable to stockholders of record on September 28, 1999. In the Management's Discussion and Analysis, all references to the number of common shares and per share amounts have been adjusted for this split.

On September 29, 1999 we completed the acquisition of development rights to build, own and operate the Los Medanos Power Plant from Enron North America. The Los Medanos Power Plant is a 500 megawatt gas-fired cogeneration plant located adjacent to USS-POSCO Industries steel mill in Pittsburg, California. Los Medanos will supply USS-POSCO with 60 megawatts of electricity and 75,000 pounds per hour of steam, and market the excess electricity into the California power exchange and under bilateral contracts. Construction commenced in September 1999 and commercial operation is scheduled to occur in 2001.

On September 30, 1999 we announced plans to build, own and operate an 800 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 is estimated to commence in 2000 and commercial operation in late 2001.

On October 1, 1999, we completed the acquisition of Sheridan Energy, Inc., a natural gas exploration and production company, through a \$38.8 million cash tender offer. We purchased all of the outstanding shares of Sheridan Energy's common stock for \$5.50 per share. In addition, we redeemed \$11.9 million of outstanding preferred stock of Sheridan Energy. Sheridan Energy's oil and gas properties, including approximately 148 billion cubic feet equivalent of proven reserves as of July 1, 1999 and certain leasehold acreage, are located in northern California and the Gulf Coast region, where we are developing low-cost natural gas supplies and proprietary pipeline systems to support our strategically-located natural gas-fired power plants. We subsequently renamed Sheridan Energy as Calpine Natural Gas Company ("CNGC").

On October 19, 1999, we completed the acquisition of the Calistoga Power Plant from FPL Energy and Caithness Corporation for approximately \$77.9 million. Located in The Geysers region of northern California, Calistoga is a 67 megawatt facility which provides electricity to PG&E under a long-term contract.

On October 25, 1999, we announced that we had executed a letter of intent which gives us the exclusive right to negotiate with LYONDELL-CITGO Refining LP to build, own and operate a 560 megawatt gas-fired cogeneration power plant 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. Permitting for the facility is currently underway, with construction projected to commence in early 2000 and commercial operation in 2001.

On October 27, 1999, we completed a public offering of 8,280,000 shares of our common stock at \$46.31 per share and 5,520,000 5 3/4% HIGH TIDES issued by a subsidiary trust at \$50.00 each, raising \$636.7 million of aggregate net proceeds.

On November 3, 1999, we completed the acquisition of development rights to build, own and operate the Towantic Energy Center. The Towantic Energy Center is a 500 megawatt gas-fired cogeneration plant located in Oxford, Connecticut. The Towantic Energy Center will market its electricity via bilateral contracts into the New England region. Construction is estimated to commence in 2000 and commercial operation in 2002.

On November 3, 1999, we executed an agreement with Credit Suisse First Boston, New York branch, and The Bank of Nova Scotia, as lead arrangers, for a \$1.0 billion non-recourse revolving construction credit facility. We will use this non-recourse credit facility to finance the construction of our diversified portfolio of gas-fired power plants currently under development.

On December 17, 1999, we acquired 80% of the common stock of Cogeneration Corporation of America, Inc. ("CGCA") for \$25.00 per share or approximately \$137.3 million. NRG Energy, Inc., a wholly owned subsidiary of Northern States Power, owns the remaining 20%. CGCA owns interests in six natural gas-fired power plants, totaling 579 megawatts. The plants are located in Pennsylvania, New Jersey, Illinois and Oklahoma.

On December 31, 1999, but effective as of November 1, 1999, we completed the acquisition of Vintage Petroleum, Inc.'s interest in the Rio Vista Gas Unit and related areas for approximately \$71.5 million. As of the effective date of the acquisition, Vintage owned approximately 90 billion cubic feet of proven natural gas reserves and certain leasehold acreage located in the Sacramento Basin in northern California. As a result of this acquisition and the Sheridan Energy acquisition, we own a 99.5% working interest in the Rio Vista Gas Unit and certain development acreage in northern California.

#### **TRANSACTIONS ANNOUNCED OR CONSUMMATED SUBSEQUENT TO DECEMBER 31, 1999**

On January 11, 2000, we announced our plans to expand our presence into the Florida wholesale power market. Our plans are to invest approximately \$750 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 1,080 megawatt Blue Heron Energy Center, to be located outside of Vero Beach, and the 540 megawatt Osprey Energy Center, to be located in the City of Auburndale adjacent to an existing power facility in which we have an interest.

Construction for the proposed facilities is planned for 2001, with the Osprey project to commence operation in early 2003, followed by the Blue Heron Energy Center in mid-2003.

On January 14, 2000, we acquired a 50% interest in the Aries Power Plant, a 600 megawatt natural gas-fired plant currently under construction near Pleasant Hill, Missouri, from a subsidiary of Aquila Energy Corporation. Construction started in October 1999. Commercial operation of the first 330 megawatts is scheduled to begin June 2001 with the balance of the plant starting in January 2002. 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.

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 545-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 an offering under Rule 144A of the Securities Act of 6,000,000 5 1/2% HIGH TIDES issued by a subsidiary trust at \$50.00 each, raising \$292.4 million of aggregate net proceeds. In February 2000, we sold an additional 1,200,000 5 1/2% HIGH TIDES pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$58.6 million.

On January 28, 2000, we acquired the development rights for the Hermiston Power Plant, a 540 megawatt gas-fired cogeneration power facility located near Hermiston, Oregon, from Ida-West Energy Company and TransCanada Pipelines. Construction of the facility is expected to commence in the summer of 2000 with commercial operation commencing in 2002.

On February 2, 2000, we announced plans to build, own and operate the Decatur Energy Center, a 700 megawatt gas-fired cogeneration power plant at Solutia Inc.'s Decatur, Alabama chemical facility. Under terms of 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, mid, and long term contracts. We will also build a new intrastate natural gas pipeline to fuel the plant. Construction is scheduled to commence in 2000 with commercial operations commencing in 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 ("SRGS") natural gas pipeline, now 100% owned by us.

On February 8, 2000, we announced that the Towantic Energy Center received approval through a townwide 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 Oxford over a 22-year period.

On February 9, 2000, we announced that the CEC approved plans to construct the Delta Energy Center in Pittsburg, California. The Delta Energy Center, an 880 megawatt gas-fired power plant located at the Dow Chemical facility, is the first power plant that will be developed, owned and operated under a joint venture with Bechtel Enterprises, and will provide power to Pittsburg, California and the greater San Francisco Bay area.

On February 22, 2000, we announced plans to build, own and operate the Lone Oak Energy Center, a 800 megawatt gas-fired cogeneration facility located in Lowndes County, Mississippi. We anticipate that construction will commence in early 2001 and that commercial operation of the facility will commence in early 2003.

On February 24, 2000, we announced plans to build, own and operate the Hillabee Energy Center, a 700 megawatt gas-fired cogeneration facility located in Tallapoosa County, Alabama. We anticipate that construction will commence in early 2001 and that commercial operation of the facility will commence in early 2003.

## SELECTED OPERATING INFORMATION

Set forth below is certain selected operating information for the power plants and steam fields, for which results are consolidated in our statements of operations. The information set forth under Power Plants consists of the results for the West Ford Flat Power Plant, Bear Canyon Power Plant, Greenleaf 1 & 2 Power Plants, Watsonville Power Plant, King City Power Plant, Gilroy Power Plant, the Bethpage Power Plant since its acquisition on February 5, 1998, the Texas City and Clear Lake Power Plants since their acquisition on March 31, 1998, the Pasadena Power Plant since it began commercial operation on July 7, 1998, the Sonoma Power Plant since its acquisition on July 17, 1998, the Pittsburg Power Plant since its acquisition on July 21, 1998, the 12 Sonoma County and 2 Lake County power plants purchased from PG&E on May 7, 1999, the acquisition of an additional 50% interest in the Aidlin Power Plant on August 31, 1999, the Calistoga Power Plant since its acquisition on October 21, 1999 and five facilities (Newark, Pryor, Parlin, and Morris Power Plants and Philadelphia Water Project) that we acquired with our purchase of 80% of CGCA on December 17, 1999. The information set forth under Steam Fields consists of the results for the Thermal Power Company Steam Fields prior to the acquisition of Unocal Corporation's interest in the Thermal Power Company steam fields on March 19, 1999 and of the PG&E power plants on May 7, 1999.

YEARS ENDED DECEMBER 31,					
1995	1996	1997	1998	1999	
(DOLLARS IN THOUSANDS)					
<b>POWER PLANTS:</b>					
Electricity revenue(1):					
Energy.....	\$ 54,886	\$ 93,851	\$ 110,879	\$ 252,178	\$ 555,779
Capacity.....	\$ 30,485	\$ 65,064	\$ 84,296	\$ 193,535	\$ 183,696
Megawatt hours produced.....	1,033,566	1,985,404	2,158,008	9,864,080	14,802,709
Average energy price per megawatt hour(2).....	\$ 53.10	\$ 47.27	\$ 51.38	\$ 25.57	\$ 37.55
<b>STEAM FIELDS:</b>					
Steam revenue(3):.....	\$ 39,669	\$ 40,549	\$ 42,102	\$ 36,130	\$ 20,850
Megawatt hours produced.....	2,415,059	2,528,874	2,641,422	2,323,623	1,192,722
Average price per megawatt hour... ..	\$ 16.43	\$ 16.03	\$ 15.94	\$ 15.55	\$ 17.48

(1) Electricity revenue is composed of fixed capacity payments, which are not related to production, and variable energy payments, which are related to production. For the year ended December 31, 1999, Capacity revenues include, besides traditional capacity payments, other revenues such as Reliability Must Run and Ancillary Service revenues.

(2) Represents variable energy revenue divided by the megawatt-hours produced. The significant increase in capacity revenue and the accompanying decline in average energy price per megawatt-hour since 1994 primarily reflects the increase in our megawatt hour production as a result of additional gas-fired power plants.

(3) The decline in steam revenue between 1999 and 1997 reflects the acquisition and consolidation of the Sonoma Power Plant and the related steam fields. Due to the consolidation of our ownership of the steamfields and the power plants purchased from PG&E on May 7, 1999, we have ceased recognizing revenue for the Steam Fields after May 7, 1999.

## **RESULTS OF OPERATIONS**

### **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 revenue increased 50% to \$760.3 million in 1999 compared to \$507.9 million in 1998. Geothermal revenues at the Geysers accounted for \$125.8 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 revenue 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 \$23.5 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 \$4.1 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 \$0 in 1998. In 1999 we recorded \$5.3 million of oil and gas revenue following our acquisition of Sheridan Energy on October 1, 1999. Additionally, we recorded \$0.5 million of equipment sales and service revenue from a group of English subsidiaries of CGCA, which we acquired 80% on December 17, 1999.

Cost of revenue -- Cost of revenue increased to \$557.5 million in 1999 compared to \$375.3 million in 1998, an increase of \$182.2 million, or 49%.

Fuel expense 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 expense increased by \$43.8 million to \$118.3 million in 1999 compared to \$74.5 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.

Operating lease expense increased by \$16.5 million to \$33.6 million in 1999 compared to \$17.1 million in 1998. \$10.8 million of the increase 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.

Production royalty expense 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.

Service contract expense 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 \$109.7 million, or 61%, to \$290.3 million in 1999 compared to \$180.6 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 \$64.6 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 \$53.0 million compared to \$26.8 million in 1998. The increase of 98% or \$26.2 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 9 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 \$241.0 million by acquiring CGCA on December 17, 1999. Interest expense from CGCA debt in 1999 following the acquisition was \$491,000.

**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.

**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.

**Provision for income taxes** -- The effective income tax rate was approximately 39% in 1999 compared to 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.

#### **YEAR ENDED DECEMBER 31, 1998 COMPARED TO YEAR ENDED DECEMBER 31, 1997**

**Revenue** -- Total revenue increased 101% to \$555.9 million in 1998 compared to \$276.3 million in 1997.

Electricity and steam sales revenue increased 114% to \$507.9 million in 1998 compared to \$237.3 million in 1997. The increase is primarily attributable to the acquisition of the remaining interest in the Texas City, Clear Lake and Bethpage Power Plants and the acquisition of the Pittsburg Power Plant. These power plants accounted for \$245.2 million in additional electricity revenues in 1998. We benefited from the startup of our power plant in Pasadena, Texas, which became operational in July 1998. This power plant contributed \$30.5 million in revenue during 1998. During 1998, we produced 9,864,080 megawatt hours, which was 7,706,072 megawatt hours higher than the same period in 1997, as a result of the factors described above. We recently announced three acquisitions, which we expect to complete during 1999, upon government approval. These acquisitions when completed will eliminate steam revenue for The Geysers, reflecting the consolidation of the acquired power plants and related steam fields.

Service contract revenue increased 98% to \$20.2 million in 1998 compared to \$10.2 million in 1997. The \$10.0 million increase was primarily due to \$3.3 million for fuel management fees, and \$7.5 million for third party excess gas sales.

Income from unconsolidated investments in power projects increased 59% to \$25.2 million in 1998 compared to \$15.8 million in 1997. The increase of \$9.4 million is primarily attributable to our investments in the Lockport, Stony Brook and Kennedy International Airport Power Plants, which contributed \$5.2 million of equity income during 1998, as well as \$2.5 million of equity income from the Bayonne Power Plant. For the year ended December 31, 1998, we also recorded \$11.7 million of equity income from the Sumas Power Plant compared to \$8.5 million for the same period in 1997. These increases in equity income were partially offset by a \$1.1 million decrease from the Auburndale Power Plant.

Interest income on loans to power projects decreased 80% to \$2.6 million in 1998 compared to \$13.0 million in 1997. This decrease was attributable to the acquisition of the remaining 50% interest in TCC on March 31, 1998 and the sale of a note receivable in December 1997.

Cost of revenue -- Cost of revenue increased to \$375.3 million in 1998 compared to \$153.3 million in 1997. The increase of \$222.0 million in 1998 was primarily attributable to increased plant operating, fuel and depreciation expenses as a result of the acquisition of the remaining interest in the Texas City, Clear Lake and Bethpage Power Plants, the acquisition of the Pittsburg Power Plant and the startup of the Pasadena Power Plant. Additionally, service contract expenses increased \$8.8 million for the year ended December 31, 1998, of which \$6.6 million was related to costs associated with the sale of third party excess gas and a \$1.8 million increase for fuel management contracts.

General and administrative expenses -- General and administrative expenses increased 46% to \$26.8 million in 1998 compared to \$18.3 million in 1997. The increase was attributable to the continued growth in personnel and overhead costs necessary to support the overall growth in our operations.

Interest expense -- Interest expense increased 41% to \$86.7 million in 1998 compared to \$61.5 million in 1997. The increase was primarily attributable to interest expense of \$35.0 million related to the senior notes issued in 1998 and 1997. This increase was partially offset by \$3.5 million for the repayment of non-recourse project financing for our Geysers facilities, \$2.9 million for reduction of the TCC debt, \$2.0 million for reduction of the indebtedness of the Greenleaf 1 & 2 Power Plants and \$1.7 million of interest capitalized on the development and construction of power projects.

Interest income -- Interest income decreased 14% to \$12.3 million in 1998 compared to \$14.3 million in 1997. The decrease was primarily attributable to less interest earned on restricted cash in 1998.

Other income, net -- Other income decreased 66% to \$1.1 million in 1998 compared to \$3.2 million in 1997. The decrease was primarily attributable to gas refunds received in 1997.

Provision for income taxes -- The effective income tax rate was approximately 37% in 1998 compared to 35% in 1997. The effective rates were lower than the statutory rate (federal and state) primarily due to depletion in excess of tax basis benefits at our geothermal facilities, and a decrease in the California tax liability due to our expansion into states other than California.

## 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 and equity, and proceeds from non-recourse 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,		
	1999	1998	1997
(IN THOUSANDS)			
<b>Cash flows from:</b>			
Operating activities.....	\$ 264,083	\$ 164,579	\$ 106,553
Investing activities.....	(1,490,417)	(400,003)	(400,250)
Financing activities.....	1,479,173	283,443	246,240
Total.....	\$ 252,839	\$ 48,019	\$ (47,457)

Operating activities for 1999 provided \$264.1 million, a 60% increase from 1998, consisting of approximately \$87.2 million of depreciation and amortization, \$95.1 million of net income, \$43.3 million of distributions from unconsolidated investments in power projects, \$47.9 million of deferred income taxes, an \$74.9 million net increase in operating liabilities and a loss on sale of assets of \$1.1 million. This was partially offset by \$48.9 million net increase in operating assets and \$36.6 million of income from unconsolidated investments. The increase in cash provided from operating activities in 1999 is primarily due to higher net income derived from our acquisition activity in 1998 and 1999.

Investing activities for 1999 used \$1.5 billion, primarily due to \$929.7 million for construction costs and capital expenditures including gas turbine-generator costs, \$102.2 million for the acquisition of steam fields from Unocal, \$67.9 million for the acquisition of CNGC, \$71.5 million for the purchase of gas reserves from Vintage Petroleum Inc., \$7.2 million for the acquisition of an additional 50% interest in the Aidlin Power Plant, \$77.9 million for the acquisition of the Calistoga Power Plant, \$212.7 million for the acquisition of CGCA, advances to the Lost Pines I Joint Venture of \$18.1 million, \$30.2 million of capitalized project development costs, \$47.3 million of interest capitalized on construction projects, \$8.2 million of additional loans to principal owners of power plants, offset by \$1.9 million of maturities of collateral securities in connection with the King City Power Plant, the repayment of \$9.5 million of outstanding loans, a \$1.2 million decrease in restricted cash, and \$71.2 million from the sale and leaseback transactions of the Geysers Power Company plants and the Calistoga Power Plant. The increase in cash used in investing activities in 1999 is primarily due to increased acquisition activity compared to 1998.

Financing activities for 1999 provided \$1.5 billion of cash consisting of \$155.8 million of borrowings primarily for the expansion of the Pasadena Power Plant, \$163.7 million of borrowings of notes payable, \$600.0 million of gross proceeds from an additional senior debt financing received in March 1999, \$597.4 million of gross proceeds from public common stock offerings in March and October of 1999, \$276.0 million in gross proceeds from a public offering of a subsidiary trust of 5,520,000 HIGH TIDES in October 1999, \$2.1 million for the issuance of common stock for our Employee Stock Purchase Plan, \$812,000 proceeds from the exercise of stock options and \$1.9 million for the write off of deferred financing costs in April 1999, partially offset by \$129.7 million in repayment of notes payable, \$120.6 million in repayment of non-recourse project financing for the Gilroy Power Plant in April 1999, \$2.8 million of repayments of other non-recourse project financing, and \$65.4 million of financing costs. The increase in cash provided from financing activities in 1999 is primarily due to the debt and equity offerings issued during 1999, as well as the HIGH TIDES issued by a subsidiary trust in 1999.

At December 31, 1999, cash and cash equivalents were \$349.4 million and working capital was \$251.1 million. For 1999, cash and cash equivalents increased by \$252.8 million and working capital increased by \$164.2 million as compared to December 31, 1998. The increases in cash and cash equivalents and working

capital in 1999 is primarily attributable to the equity offering issued in October 1999, as well as the HIGH TIDES issued by a subsidiary trust in October 1999.

As a developer, owner and operator of power generation facilities, we are required to make long-term commitments and investments of substantial capital for our projects. We historically have financed these capital requirements with cash from operations, borrowings under our credit facilities, other lines of credit, construction financing, non-recourse project financing or long-term debt, and the sale of equity.

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 5 to the Notes to Consolidated Financial Statements)

At December 31, 1999, we had a \$100.0 million revolving credit facility available with a consortium of commercial lending institutions. We had no borrowings and \$28.8 million of letters of credit outstanding under this credit facility. Borrowings bear interest at The Bank of Nova Scotia's base rate plus an applicable margin or at LIBOR plus an applicable margin.

At December 17, 1999, we, through our acquisition of CGCA, assumed a \$25.0 million revolving credit facility with MeesPierson Capital Corporation. As of December 31, 1999, all of the available credit under this facility was outstanding. Interest is variable based upon, at our option, LIBOR plus a margin ranging from 1.50% to 1.875% or the prime rate plus a margin ranging from 0.75% to 1.125%.

At December 31, 1999, we had a credit agreement for \$1.0 billion 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. We had no borrowings outstanding under this facility. Borrowings under this facility bear interest, at our option, at the prime commercial lending rate, the Federal Funds Rate plus 0.50% or LIBOR.

On October 1, 1999, we completed the acquisition of Sheridan Energy, a natural gas exploration and production company, through a \$38.8 million cash tender offer. Sheridan Energy, at December 31, 1999, maintains a borrowing base facility of \$24.5 million with Bank One, Texas, N.A. As of December 31, 1999, Sheridan had total borrowings outstanding of \$24.3 million with a final maturity of December 31, 2001. Sheridan may elect to borrow at Bank One's stated rate, or LIBOR plus 2.5%, or a combination thereof.

In conjunction with the acquisition of certain properties located in California, Bank One extended a separate borrowing base facility of \$74.6 million as of December 31, 1999 to Sheridan California Energy, Inc, a wholly owned subsidiary of Sheridan Energy. As of December 31, 1999, there was \$73.5 million outstanding under the SCEI facility with a final maturity of December 31, 2001.

#### Project Financing (see Note 6 to the Notes to Consolidated Financial Statements)

On January 4, 1999, the Company entered into a Credit Agreement with ING (U.S.) Capital LLC to provide up to \$265.0 million of non-recourse project financing for the construction of the Pasadena Power Plant expansion. As of December 31, 1999, \$154.8 million was outstanding as a construction loan under the agreement. The outstanding loan bears interest at ING's base rate plus an applicable margin or at LIBOR plus an applicable margin, and is payable quarterly.

On December 17, 1999, we acquired CGCA, which owns 100% of the debt of Morris LLC. On September 15, 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 20-month construction loan commitments and \$5.4 million in letter of credit commitments. As of December 31, 1999, \$85.6 million was outstanding as a construction loan under the agreement and no amounts were pledged under the letter of credit. Interest on the construction loan is variable based on, at our option, either the base rate, as defined in the construction and term loan agreement, or LIBOR plus 0.75%.

On December 17, 1999, we acquired CGCA, which owns 100% of the Newark and Parlin Power Plants. We have \$125.3 million outstanding on a 15 year non-recourse term loan which is a joint and severable liability of Newark and Parlin. The interest rate on the outstanding principal is variable based on, at our option, LIBOR plus 1.125% margin or a defined base rate plus 0.375% margin.

#### Debt and Equity Offerings (see Notes 7, 8 and 9 to the Notes to Consolidated Financial Statements)

On March 26, 1999, we completed a public offering of 12,000,000 shares of our common stock at \$15.50 per share. The net proceeds from this public offering were approximately \$177.1 million. In April 1999, we sold an additional 1,800,000 shares of common stock at \$15.50 per share pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$26.7 million.

On March 29, 1999, we completed a public offering of \$250.0 million of our 7 5/8% Senior Notes Due 2006 and of our \$350.0 million 7 3/4% Senior Notes Due 2009. After deducting underwriting discounts and expenses of the offering, the aggregate net proceeds from the sale of the Senior Notes were approximately \$589.6 million. The Senior Notes Due 2006 bear interest at 7 5/8% per year, payable semi-annually on April 15 and October 15 each year and mature on April 15, 2006. The Senior Notes Due 2006 are not redeemable prior to maturity. The Senior Notes Due 2009 bear interest at 7 3/4% per year, payable semi-annually on April 15 and October 15 each year and mature on April 15, 2009. The Senior Notes Due 2009 are not redeemable prior to maturity.

The net proceeds from the sale in March 1999 of the common stock, the Senior Notes Due 2006, and the Senior Notes Due 2009 were used as follows: (i) \$120.6 million to refinance indebtedness relating to the Gilroy Power Plant, (ii) \$77.6 million to repay indebtedness under a bridge facility provided by Credit Suisse First Boston to finance a portion of the purchase price to acquire the steam fields that service the Sonoma County power plants, (iii) \$50.0 million to repay outstanding borrowings under our revolving credit facility, (iv) \$25.0 million to complete the expansion of the Clear Lake Power Plant, (v) approximately \$400.0 million to finance a portion of power generation facilities currently under construction and the projects currently under development, and (vi) the remaining \$120.2 million were used for general corporate purposes. Transaction costs incurred in connection with the Senior Notes offering were recorded as a deferred charge and are amortized over the respective lives of the Senior Notes Due 2006 and the Senior Notes Due 2009 using the effective interest rate method.

In October 1999, we completed a public offering of 8,280,000 shares of our common stock at \$46.31 per share and 5,520,000 1999 5 3/4% HIGH TIDES issued by a subsidiary trust at \$50.00 each, raising \$636.7 million of aggregate net proceeds to Calpine.

The net proceeds from the sale in October 1999 of the common stock and HIGH TIDES were used to finance power projects under development and construction. In addition, we used \$137.3 million of the net proceeds to complete the acquisition of 80% of CGCA. The remaining net proceeds will be used for working capital and general corporate purposes.

#### Senior Notes

At December 31, 1999, 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.

## **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 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 twelve new projects under construction, representing an additional 5,935 megawatts of capacity. Of these new projects, we are expanding our Pasadena facility by 545 megawatts to 785 megawatts and the Morris facility by 50 megawatts to 167 megawatts. We have ten new power plants under construction, including the Baytown Power Plant in Texas; Tiverton Power Plant in Rhode Island; the Rumford Power Plant in Maine; the Westbrook Power Plant in Maine; the Sutter Power Plant in California; the Los Medanos Power Plant in California; the South Point Power Plant in Arizona; the Magic Valley Power Plant in Texas; the Lost Pines I Power Plant in Texas; and the Aries Power Plant in Missouri. We have also announced plans to develop twelve additional power generation facilities, totaling 7,990 megawatts, in California, Mississippi, Connecticut, Florida, Texas, Alabama, Oregon, Arizona and Pennsylvania.

- 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 41 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 an aggregate of 54 power plants with an aggregate capacity of approximately 10,208 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, 1999, our total consolidated indebtedness was \$2.1 billion, our total consolidated assets were \$4.0 billion and our stockholders' equity was \$964.6 million. 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 our existing debt agreements, including the indentures relating to our \$1.6 billion aggregate principle amount of senior notes, our \$1.0 billion revolving credit facility, and our \$100.0 million revolving credit facility, contain restrictive covenants. Among other things, these restrictions 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 non-recourse 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, 1999, our subsidiaries had \$365.7 million of non-recourse project financing. We intend to utilize non-recourse 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 non-recourse 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, primarily consisting of senior unsecured indebtedness, non-recourse project financing and lease obligations. As of December 31, 1999, we had approximately \$2.1 billion of total consolidated indebtedness, \$365.7 million of non-recourse project financing, and \$110.8 million of notes payable. Each non-recourse 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 44 of the 54 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. As of December 31, 1999, our gas-fired and geothermal power generation facilities have operated at an average availability of approximately 95% and 95%, 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, 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.

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 1999, PG&E and Texas Utilities Electric Company, comprised approximately 47% 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 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 the Public Utility Regulatory Policies Act of 1978, as amended ("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 to qualifying facilities ("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 exempt wholesale generators ("EWG") under the Energy Policy Act of 1992. In order to be a QF, a facility must be not more than 50% owned by an electric utility company or electric utility holding company. 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 "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 and an independent system operator, and for direct access to generation for all power purchasers outside the power exchange under certain circumstances. Although existing QF power sales contracts are to be honored under such restructuring, and all of our California operating projects are QFs, until the new system is fully implemented, it is impossible to predict what impact, if any, it may have on the operations of those projects.

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. We encounter competition from utilities, industrial companies and other power producers. In recent years, there has been increasing competition in an effort to obtain power sales agreements. This competition has contributed to a reduction in electricity prices. In addition, many states have implemented or are considering regulatory initiatives designed to increase competition in the domestic power industry. This competition has put pressure on electric utilities to lower their costs, including the cost of purchased electricity.

Our international investments may face uncertainties. We have one investment in geothermal steam fields located in Mexico and 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, and
- variations in levels of production.

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 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.

## **YEAR 2000 COMPLIANCE**

The "Year 2000 problem" refers to the fact that some computer hardware, software and embedded systems were designed to read and store dates using only the last two digits of the year. The problem is further complicated by the fact that year 2000 is a leap year and computer systems may fail to recognize it as such.

We have coordinated our efforts to address the Year 2000 problem through a Year 2000 Project Team comprised of representatives from each business unit and our Year 2000 Project Office. The Year 2000 Project Office has been charged with addressing additional Year 2000 related issues including, but not limited to, business continuation and other contingency planning.

In addition, we have been working with the Electric Power Research Institute, a consortium of power companies, including investor-owned utilities, to coordinate vendor contacts and product evaluation. Because many embedded systems are similar across utilities, we believe that this concerted effort helped to reduce total time expended in this area and helped to ensure that our efforts were consistent with the efforts and practices of other power companies and utilities.

As of February 4, 2000, we are not aware of any Year 2000 problem in any of our critical corporate applications, non-information technology/embedded systems, end-user computing systems or business partners' and vendors' systems. In addition, we have not received any notification from any of our critical business partners or vendors of any Year 2000-related disruption in their business. However, the success to date of our Year 2000 efforts and the efforts of our critical third party vendors or business partners cannot guarantee that there will not be a material adverse effect on our business should a Year 2000 problem manifest or become apparent in the future.

**Costs.** The costs of expected modifications were estimated at approximately \$1.7 million, which were charged to expense as incurred. For the year ended December 31, 1999, approximately \$529,000 was charged to expense. Any remaining costs to be incurred in 2000 will not be material, and will be funded through operating cash flow.

**Risks.** Although we have not experienced and do not foresee having a Year 2000 problem, if our systems encounter unforeseen Year 2000 problems, or if one or more of our significant third party business partners or vendors is unable to provide services due to a Year 2000 problem, we could experience a disruption of operations resulting in increased operating costs, loss of revenues and other adverse effects, but we do not

expect any of these circumstances will have a material adverse effect on our financial position or results of operations.

## 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, 1999 (in thousands):

MATURITY DATE	NOTIONAL PRINCIPAL AMOUNT	WEIGHTED AVERAGE INTEREST RATE	FAIR MARKET VALUE
2000.....	\$ 22,900	8.2%	\$ (195)
2001.....	20,000	5.5%	225
2009.....	65,000	6.1%	3,725
2011.....	63,860	6.9%	202
2013.....	73,095	7.2%	(461)
2014.....	76,738	6.7%	1,235
Total.....	\$321,593	6.8%	\$4,731
	=====	====	=====

Short-term investments. As of December 31, 1999, we have short-term investments of \$230.7 million. These short-term investments consist of highly liquid investments with maturities less than three months. These investments are subject to interest rate risk and will increase in value if market interest rates increase. 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. Declines in interest rates over time will reduce our interest income.

Outstanding debt. As of December 31, 1999, we have outstanding debt of approximately \$2.1 billion primarily made up of \$1.6 billion of senior notes, \$365.7 million of non-recourse project financing, \$122.8 million in borrowings under lines of credit, and \$13.4 million of notes payable. As of December 31, 1999, our non-recourse project financing had a floating interest rate of 6.11%. Our outstanding long-term Senior Notes as of December 31, 1999 are as follows (in thousands):

MATURITY DATE	CARRYING AMOUNT	INTEREST RATE	FAIR MARKET VALUE
2004.....	\$ 105,000	9 1/4%	\$ 106,050
2006.....	171,750	10 1/2%	180,939
2006.....	250,000	7 5/8%	238,050
2007.....	275,000	8 3/4%	275,963
2008.....	400,000	7 7/8%	384,600
2009.....	350,000	7 3/4%	320,950
Total.....	\$1,551,750	=====	\$1,506,552
	=====	=====	=====

Gas price fluctuations. We enter into derivative commodity instruments to hedge our exposure to the impact of price fluctuations on gas purchases. Such instruments include regulated natural gas contracts and over-the-counter swaps and basis hedges with major energy derivative product specialists. All hedge transactions are subject to our risk management policy which does not permit speculative positions. These transactions are accounted for under the hedge method of accounting. Cash flows from derivative instruments are recognized as incurred through changes in working capital.

## IMPACT OF RECENT ACCOUNTING PRONOUNCEMENTS

In June 1999, the Financial Accounting Standards Board 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. We have not yet completed our analysis of the impact of adopting SFAS No. 133 on the financial statements and have not determined the timing of or method of the adoption of SFAS No. 133. However, the Statement could increase the volatility of our earnings.

**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, 1999 and 1998, and the related consolidated statements of operations, stockholders' equity and cash flows for each of the three years in the period ended December 31, 1999. 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 generally accepted auditing standards. 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, 1999 and 1998, and the results of their operations and their cash flows for each of the three years in the period ended December 31, 1999, in conformity with generally accepted accounting principles.

**ARTHUR ANDERSEN LLP**

San Jose, California  
January 31, 2000

**CALPINE CORPORATION AND SUBSIDIARIES**

**CONSOLIDATED BALANCE SHEETS**  
**DECEMBER 31, 1999 AND 1998**  
 (IN THOUSANDS)

**ASSETS**

	1999	1998
<b>Current assets:</b>		
Cash and cash equivalents.....	\$ 349,371	\$ 96,532
Accounts receivable, net of allowance of \$3,343 and \$238.....	127,485	79,743
Inventories.....	16,417	14,194
Other current assets.....	33,135	19,034
	-----	-----
Total current assets.....	526,408	209,503
	-----	-----
Property, plant and equipment, net.....	2,866,447	1,094,303
Investments in power projects.....	284,834	221,509
Project development costs.....	24,018	17,001
Notes receivable.....	23,548	10,899
Restricted cash.....	43,615	14,454
Deferred financing costs.....	54,215	22,789
Other assets.....	168,521	138,488
	-----	-----
Total assets.....	\$3,991,606	\$1,728,946
	=====	=====
<b>LIABILITIES &amp; STOCKHOLDERS' EQUITY</b>		
<b>Current liabilities:</b>		
Borrowings under line of credit, current portion.....	\$ 35,832	\$ --
Non-recourse project financing, current portion.....	8,603	5,450
Notes payable, current portion.....	3,035	--
Accounts payable.....	84,353	53,190
Income taxes payable.....	8,835	--
Accrued payroll and related expenses.....	24,345	9,588
Accrued interest payable.....	37,058	25,600
Other current liabilities.....	73,250	28,751
	-----	-----
Total current liabilities.....	275,311	122,579
	-----	-----
Borrowings under line of credit, net of current portion.....	86,918	--
Non-recourse project financing, net of current portion.....	357,137	114,190
Senior notes.....	1,551,750	951,750
Notes payable, net of current.....	10,385	--
Deferred income taxes, net.....	291,458	159,788
Deferred lease incentive.....	64,245	67,814
Other liabilities.....	57,352	25,859
	-----	-----
Total liabilities.....	2,694,556	1,441,980
	-----	-----
Commitments and contingencies (see Note 15).....		
Company-obligated mandatorily redeemable convertible preferred securities of a subsidiary trust.....	270,713	--
Minority interests.....	61,705	--
	-----	-----
<b>Stockholders' equity:</b>		
Preferred stock \$0.001 par value per share; authorized 10,000,000 shares; none issued and outstanding in 1999 and 1998.....	--	--
Common stock, \$0.001 par value per share; authorized 100,000,000 shares; issued and outstanding 63,053,920 shares in 1999 and 40,323,162 shares in 1998.....	63	40
Additional paid-in capital.....	751,404	168,854
Retained earnings.....	213,165	118,072
	-----	-----
Total stockholders' equity.....	964,632	286,966
	-----	-----
Total liabilities and stockholders' equity.....	\$3,991,606	\$1,728,946
	=====	=====

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, 1999, 1998 AND 1997  
(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)**

	1999	1998	1997
<b>Revenue:</b>	-----	-----	-----
Electricity and steam sales.....	\$760,325	\$507,897	\$237,277
Service contract revenue.....	43,773	20,249	10,177
Income from unconsolidated investments in power projects.....	36,593	25,240	15,819
Interest income on loans to power projects.....	1,226	2,562	13,048
Other revenue.....	5,818	--	--
<b>Total revenue.....</b>	<b>847,735</b>	<b>555,948</b>	<b>276,321</b>
<b>Cost of revenue:</b>	-----	-----	-----
Fuel expenses.....	268,734	181,593	44,558
Plant operating expenses.....	118,334	74,486	27,808
Depreciation expense.....	82,812	73,988	47,501
Production royalties.....	13,767	10,714	10,803
Operating lease expenses.....	33,594	17,129	14,031
Service contract expenses.....	40,236	17,417	8,607
<b>Total cost of revenue.....</b>	<b>557,477</b>	<b>375,327</b>	<b>153,308</b>
<b>Gross profit.....</b>	<b>290,258</b>	<b>180,621</b>	<b>123,013</b>
Project development expenses.....	10,712	7,165	7,537
General and administrative expenses.....	53,044	26,780	18,289
<b>Income from operations.....</b>	<b>226,502</b>	<b>146,676</b>	<b>97,187</b>
Interest expense.....	91,162	86,726	61,466
Distributions on trust preferred securities.....	2,565	--	--
Interest income.....	(24,106)	(12,348)	(14,285)
Other income.....	(1,335)	(1,075)	(3,153)
<b>Income before provision for income taxes.....</b>	<b>158,216</b>	<b>73,373</b>	<b>53,159</b>
Provision for income taxes.....	61,973	27,054	18,460
<b>Income before extraordinary charge.....</b>	<b>96,243</b>	<b>46,319</b>	<b>34,699</b>
Extraordinary charge net of tax benefit of \$793, \$441 and \$--.....	1,150	641	--
<b>Net income.....</b>	<b>\$ 95,093</b>	<b>\$ 45,678</b>	<b>\$ 34,699</b>
<b>Basic earnings per common share:</b>	=====	=====	=====
Weighted average shares of common stock outstanding.....	52,328	40,242	39,892
Income before extraordinary charge.....	\$ 1.84	\$ 1.15	\$ 0.87
Extraordinary charge.....	\$ (0.02)	\$ (0.01)	\$ --
Net income.....	\$ 1.82	\$ 1.14	\$ 0.87
<b>Diluted earnings per common share:</b>	=====	=====	=====
Weighted average shares of common stock outstanding.....	55,661	42,328	42,032
Income before extraordinary charge.....	\$ 1.73	\$ 1.09	\$ 0.83
Extraordinary charge.....	\$ (0.02)	\$ (0.01)	\$ --
Net income.....	\$ 1.71	\$ 1.08	\$ 0.83

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, 1999, 1998 AND 1997**  
(IN THOUSANDS)

	COMMON STOCK	ADDITIONAL PAID-IN CAPITAL	RETAINED EARNINGS	TOTAL
Balance, December 31, 1996.....	\$40	\$165,392	\$ 37,695	\$203,127
Issuance of 434,610 shares of common stock, net.....	--	1,022	--	1,022
Tax benefit from stock options exercised and other.....	--	1,108	--	1,108
Net income.....	--	--	34,699	34,699
Balance, December 31, 1997.....	40	167,522	72,394	239,956
-----	-----	-----	-----	-----
Issuance of 201,752 shares of common stock, net.....	--	1,110	--	1,110
Tax benefit from stock options exercised and other.....	--	222	--	222
Net income.....	--	--	45,678	45,678
Balance, December 31, 1998.....	40	168,854	118,072	286,966
-----	-----	-----	-----	-----
Issuance of 22,730,758 shares of common stock, net.....	23	576,573	--	576,596
Tax benefit from stock options exercised and other.....	--	5,977	--	5,977
Net income.....	--	--	95,093	95,093
Balance, December 31, 1999.....	\$63	\$751,404	\$213,165	\$964,632
=====	=====	=====	=====	=====

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, 1999, 1998 AND 1997  
(IN THOUSANDS)**

	1999	1998	1997
<hr/>			
Cash flows from operating activities:			
Net income.....	\$ 95,093	\$ 45,678	\$ 34,699
Adjustments to reconcile net income to net cash provided by operating activities:			
Depreciation and amortization.....	87,210	74,285	46,819
Deferred income taxes, net.....	47,944	13,554	15,082
Income from unconsolidated investments in power projects.....	(36,593)	(25,240)	(15,819)
Distributions from unconsolidated power projects.....	43,318	27,717	21,042
Loss on sale of assets.....	1,058	--	--
Change in operating assets and liabilities, net of effects of acquisitions:			
Accounts receivable.....	(17,258)	10,172	7,249
Notes receivable.....	(13,919)	--	--
Other current assets.....	(8,555)	24,012	(9,936)
Other assets.....	(9,153)	(28,968)	(13,203)
Accounts payable.....	15,867	(4,913)	6,787
Accrued expenses.....	59,000	22,397	10,677
Other liabilities.....	71	5,885	3,156
Net cash provided by operating activities.....	264,083	164,579	106,553
<hr/>			
Cash flows from investing activities:			
Acquisition of property, plant and equipment.....	(929,723)	(98,220)	(107,094)
Proceeds from sale and leaseback of plant.....	71,236	559	--
Acquisitions, net of cash acquired.....	(540,587)	(305,263)	(209,639)
Advances to joint ventures.....	(18,111)	--	--
Decrease (increase) in notes receivable.....	1,270	18,967	(120,604)
Maturities of collateral securities.....	1,850	6,030	5,350
Project development costs.....	(77,568)	(23,206)	(11,938)
Decrease in restricted cash.....	1,216	1,130	43,675
Net cash used in investing activities.....	(1,490,417)	(400,003)	(400,250)
<hr/>			
Cash flows from financing activities:			
Borrowings from line of credit.....	--	--	14,300
Repayment of borrowings from line of credit.....	--	--	(14,300)
Borrowings from non-recourse project financing.....	155,760	57,874	131,600
Repayments of non-recourse project financing.....	(123,386)	(162,145)	(144,529)
Proceeds from notes payable and short-term borrowings.....	163,675	--	--
Repayments of notes payable and short-term borrowings.....	(129,721)	--	(7,131)
Proceeds from issuance of Senior Notes.....	600,000	400,000	275,000
Repurchase of Senior Notes.....	--	(8,250)	--
Proceeds from Company-obligated mandatorily redeemable convertible preferred securities of a subsidiary trust.....	276,000	--	--
Proceeds from equity offerings.....	597,368	--	--
Proceeds from issuance of common stock.....	2,939	1,110	1,022
Write-off of deferred financing costs.....	1,943	--	--
Financing costs.....	(65,405)	(5,146)	(9,722)
Net cash provided by financing activities.....	1,479,173	283,443	246,240
<hr/>			
Net increase (decrease) in cash and cash equivalents.....	252,839	48,019	(47,457)
Cash and cash equivalents, beginning of period.....	96,532	48,513	95,970
Cash and cash equivalents, end of period.....	\$ 349,371	\$ 96,532	\$ 48,513
<hr/>			
Cash paid during the year for:			
Interest.....	\$ 117,376	\$ 71,971	\$ 42,746
Income taxes.....	\$ 16,116	\$ 2,167	\$ 9,795

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, 1999, 1998 AND 1997**

#### **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. 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 northern California, Washington, Texas, Illinois, Oklahoma and various locations on the East Coast. 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. 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 4). 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 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 Property, Plant and Equipment, net).

**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 determined using the weighted average cost method.

**Property, Plant and Equipment, net** -- 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 development costs to be incurred 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

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

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. The value of the above-market pricing provided in power sales agreements acquired is recorded in property, plant and equipment, net and is amortized over the above-market pricing period in the power sales agreement with lives of 3 to 23 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.

As of December 31, 1999 and 1998, the components of property, plant and equipment, net are as follows (in thousands):

	1999	1998
Geothermal properties.....	\$ 366,059	\$ 312,139
Oil and gas properties.....	214,794	--
Buildings, machinery and equipment.....	1,215,063	653,865
Power sales agreements.....	145,957	145,957
Gas contracts.....	122,593	122,561
Other assets.....	78,735	18,955
	-----	-----
Less: accumulated depreciation and amortization.....	(227,059)	(203,984)
	-----	-----
Land.....	1,916,142	1,049,493
Construction in progress.....	3,419	1,590
	-----	-----
Property, plant and equipment, net.....	\$ 2,866,447	\$ 1,094,303
	=====	=====

Construction in progress is primarily attributable to the projects under development during 1999 and 1998.

**Capitalized Interest --** The Company capitalizes interest on projects during the development and construction period. For the years ended December 31, 1999, 1998 and 1997 the Company capitalized \$47.3 million, \$7.0 million and \$6.2 million, respectively, of interest in connection with the development and construction of power plants.

**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 the start-up of plant operations or the completion of an acquisition, these costs are generally transferred to property, plant 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 its debt agreements, lease agreements and by regulatory agencies. The Company's debt agreements specify

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

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** -- Costs incurred in connection with obtaining financing are deferred and amortized using the effective interest rate method. The amortization periods range from 4 to 24 years.

**Stock Split** -- 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 on September 28, 1999. Par value remains at \$0.001 per share as a result of transferring \$27,000 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 stock split for all periods presented.

**Revenue Recognition** -- Revenue from electricity and steam sales is recognized upon transmission to the customer. 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, 1999 would have been approximately \$24.2 million higher and the revenues for the years ended December 31, 1998 and 1997 would have been approximately \$4.7 million and \$20.1 million lower, respectively.

Calpine Gilroy Cogen, LP ("Gilroy") has 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 a bonus payment. On December 2, 1999, the California Public Utilities Commission approved the termination of the PPA between Gilroy and PG&E. Under terms of the termination, PG&E and Gilroy are each released from any further performance under the PPA effective November 1, 2002. PG&E is obligated to pay Gilroy a maximum nominal total of \$303.6 million for firm, bonus and as delivered capacity, which consists of 140 monthly termination payments not to exceed \$20.7 million per year, from February 2002 to September 2014. Gilroy will record a portion of the present value of the monthly termination payments in each month following September 1999 through August 2002 as revenue.

The Company 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.

The Company also recognizes revenue from power marketing activities through its wholly owned subsidiary, Calpine Power Services Company ("CPSC"). Revenue generated from CPSC through sales of purchased power to third parties is also recorded as service contract revenue.

Revenue from the sale of crude oil is recognized upon the passage of title, net of royalties. Revenue from natural gas production is recognized using the sales method, net of royalties.

**Oil and Gas Properties** -- 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.

**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

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

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 13). 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.

**Power Marketing and Oil and Gas Operations** -- The Company, through its wholly owned subsidiary CPSC, markets power and energy services to utilities, wholesalers, and end users. CPSC provides these services by entering into contracts to purchase or supply electricity at specified delivery points and specified future dates. In some cases, CPSC utilizes financial instruments to manage its exposure to electricity price fluctuations. On December 31, 1999, CPSC held swap contracts with several entities in order to hedge electricity prices. Additionally, the Company or its subsidiaries in some cases uses financial instruments to manage its exposure to oil and gas price fluctuations.

At December 31, 1999, the Company had positions with a net fair value of \$440,000 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 counter parties.

**New 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. The Company has not yet completed its analysis on the impact of adopting SFAS No. 133 on the financial statements and has not determined the timing of or method of the adoption of SFAS No. 133. However, the Statement could increase the volatility of the Company's earnings.

**Reclassifications** -- Certain prior years' amounts in the Consolidated Financial Statements have been reclassified to conform to the 1999 presentation.

## **CALPINE CORPORATION AND SUBSIDIARIES**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

#### **3. ACQUISITIONS AND SALE AND LEASEBACK TRANSACTIONS**

The following acquisitions, accounted for as purchases, and the additional investment in Aidlin were consummated during the year ended December 31, 1999:

##### **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 Pacific Gas & Electric Company ("PG&E") for approximately \$212.8 million. These plants have a combined capacity of approximately 694 megawatts of electricity. All of the electricity generated from these facilities is sold into the California energy market, with the exception of megawatts sold under an agreement entered into on April 29, 1999 with Commonwealth Energy Corporation as follows: 75 megawatts in 1999, 100 megawatts in 2000 and 125 megawatts in 2001 through June 2002.

Concurrently with the acquisition, the Company entered into a sale and leaseback financing transaction for these facilities, 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 term of the lease through 2022 (See Note 15).

##### **Aidlin Transaction**

On August 31, 1999, the Company completed the acquisition of an additional 50% interest in the Aidlin Power Plant ("Aidlin") 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 Aidlin.

##### **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. Additionally, on November 5, 1999, the Company entered into a sale and leaseback financing transaction for the Calistoga plant. Under the terms of the agreement, the Company received \$52.8 million in net proceeds and did not record a deferred gain or loss. (See Note 15).

##### **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, 1999, 1998 AND 1997

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 wholly owned subsidiary of Northern States Power. As a result of this acquisition the Company received an ownership interest in six natural gas-fired facilities totaling approximately 579 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.

#### **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, CGCA and Vintage as if the acquisitions had taken place at the beginning of fiscal year 1999 and 1998 (in thousands, except per share amounts):

	1999	1998
Total revenue.....	\$1,057,270	\$833,422
Income before extraordinary charge.....	119,817	66,802
Net income.....	118,667	66,161
Net income per basic share.....	2.27	1.64
Net income per diluted share.....	\$ 2.13	\$ 1.56

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 1999 and 1998.

#### **4. UNCONSOLIDATED INVESTMENTS**

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

	OWNERSHIP INTEREST	DECEMBER 31,	
		1999	1998
Tiverton Power Plant.....	62.8%	\$ 44,853	\$ 40,945
Rumford Power Plant.....	66.7%	44,316	40,416
Aidlin Power Plant.....	55%	--	2,635
Lost Pines Power Plant.....	50%	41,609	--
Kennedy International Airport Power Plant.....	50%	37,880	39,156
Dighton Power Plant.....	50%	14,875	17,970
Grays Ferry.....	40%	21,875	--
Stony Brook Power Plant.....	50%	21,477	20,933

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

	OWNERSHIP INTEREST	DECEMBER 31,	
		1999	1998
Auburndale Power Plant.....	50%	19,565	23,527
Gordonsville Power Plant.....	50%	16,496	16,197
Lockport Power Plant.....	11.4%	12,406	11,858
Bayonne Power Plant.....	7.5%	8,490	7,872
PowerRent.....	40%	741	--
Agnews Power Plant.....	20%	--	--
Sumas Power Plant.....	(1)	--	--
Other.....		251	--
		-----	-----
Total Unconsolidated Investments.....		\$284,834	\$221,509
		=====	=====

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(1) Refer to Footnote (1) of the table in Note 4 detailing the Company's income and distributions from investments in unconsolidated power projects.

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

	DECEMBER 31,		
	1999	1998	1997
<b>Condensed Statement of Operations:</b>			
Revenue.....	\$ 562,401	\$ 495,123	\$ 271,494
Gross profit.....	245,314	214,382	73,438
Income from continuing operations....	214,520	199,601	57,799
Net income.....	113,837	108,563	30,264
Company's share of net income.....	36,593	25,240	15,819
<b>Condensed Balance Sheet:</b>			
Current assets.....	167,805	134,794	193,953
Non-current assets.....	1,387,130	1,240,172	1,499,501
Total assets.....	1,554,935	1,374,966	1,693,454
Current liabilities.....	122,742	110,957	200,613
Non-current liabilities.....	1,087,329	994,570	1,076,309
Total liabilities.....	1,210,071	1,105,527	1,276,922

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

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,			-----		
	1999	1998	1997	1999	1998	1997
Sumas Power Plant(1).....	\$21,779	\$11,699	\$ 8,565	\$21,779	\$11,699	\$20,275
Gordonsville Power Plant.....	4,299	3,807	404	4,000	3,125	--
Lockport Power Plant.....	4,255	3,628	200	3,741	3,297	767
Texas Cogeneration Company(4).....	--	2,922	6,331	--	--	--
Bayonne Power Plant.....	3,426	2,446	--	2,808	2,701	--
Kennedy International Airport Power Plant.....	1,968	1,159	(190)	3,350	4,100	--
Stony Brook Power Plant.....	857	252	60	370	--	--
Aidlin Power Plant(3).....	181	625	454	--	--	--
Sheridan.....	163	--	--	--	--	--
Grays Ferry(2).....	(3)	--	--	--	--	--
Auburndale Power Plant.....	(712)	(1,377)	(245)	3,250	2,475	--
Dighton Power Plant.....	323	--	--	3,810	--	--
Other.....	57	79	240	210	320	--
Total.....	\$36,593	\$25,240	\$15,819	\$43,318	\$27,717	\$21,042
	=====	=====	=====	=====	=====	=====

(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. The newly amended agreement adjusts the earnings the Company is entitled to under that agreement from a variable payment schedule to a fixed payment schedule. In 1997, the partnership agreement was amended changing the distribution percentages to the partners. The Company's percentage share of the project's cash flow was increased from 50% to approximately 70% through June 30, 2001. Thereafter, the Company will receive 50% of the project's cash flow until a 24.5% pre-tax rate of return on its original investment is achieved, at which time the Company's equity interest in the partnership will be reduced to 0.1%. As a result of the amendment of the partnership agreement and the receipt of certain distributions during 1997, the Company's investment in Sumas was reduced to zero. Because the investment has been reduced to zero and there are no continuing obligations of the Company related to Sumas, the Company expects that income recorded in future periods will approximate the amount of cash received from partnership distributions.

(2) On December 17, 1999, the Company acquired 80% of the common stock CGCA which has a 50% partnership interest in the Grays Ferry Cogeneration Partnership ("Grays Ferry") (see Note 3), with the remaining 50% partnership interest being owned by Trigen Energy Corporation. Grays Ferry has constructed a 150 MW cogeneration facility located in Philadelphia, which began commercial operations in January 1998. Grays Ferry has a 25-year contract to supply all the steam produced by the project to an affiliate of Trigen through 2022 and two 20-year contracts to supply all of the electricity produced by the project to PECO Energy Company through 2017.

(3) The Company completed the acquisition of an additional 50% interest in the Aidlin Power Plant in August, 1999. As such, the Company has consolidated the operations of the Aidlin Power Plant.

(4) The Company acquired the remaining 50% interest in Texas Cogeneration Company ("TCC") in 1998 and thereafter has consolidated TCC's financial results.

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

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

#### 5. REVOLVING CREDIT FACILITY AND LINES OF CREDIT

The Company maintains a credit facility of \$100.0 million, which is available through a consortium of commercial lending institutions led by The Bank of Nova Scotia as agent. A maximum of \$50.0 million of the credit facility may be allocated to letters of credit. At December 31, 1999, the Company had no borrowings and \$28.8 million of letters of credit outstanding under the credit facility. Borrowings bear interest at The Bank of Nova Scotia's base rate plus an applicable margin or at LIBOR plus an applicable margin. Interest is paid on the last day of each interest period for such loans. The credit facility specifies that the Company maintain certain covenants, with which the Company was in compliance as of December 31, 1999. Commitment fees related to this credit facility are charged based on 0.375% of committed unused funds.

CGCA maintains a credit facility of \$25.0 million with MeesPierson Capital Corporation ("MeesPierson"). As of December 31, 1999, all of the available credit under the facility was outstanding. Interest is variable based on, at the Company's option, LIBOR plus a margin ranging from 1.50% to 1.875% or the prime rate plus a margin ranging from 0.75% to 1.125%. At December 31, 1999, the interest rate was 8.25%. The interest rate margin is dependent upon CGCA's debt service ratio. Commitment fees of 0.375% accrue on any unused portion of the facility. Borrowings are secured by the assets, capital stock and cash flows of the Philadelphia Water Project, which was acquired as part of the acquisition of CGCA (see Note 3), as well as the distributable cash flows of the Newark, Parlin and the Grays Ferry Projects, as permitted by primary lenders of each project.

On November 3, 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 will be 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, 1999, the Company had no borrowings outstanding under the facility. Borrowings under this facility bear interest, at the Company's option, at the prime commercial lending rate, the Federal Funds Rate plus 0.50% or LIBOR. The credit facility specifies that the Company maintain certain covenants, with which the Company was in compliance as of December 31, 1999. Costs associated with the credit agreement have been deferred and will be amortized over the life of the assets financed.

CNGC maintains a borrowing base facility of \$24.5 million with Bank One, Texas, N.A. ("Bank One"). As of December 31, 1999, CNGC had total borrowings outstanding of \$24.3 million with final maturity of December 31, 2001. CNGC may elect to borrow at Bank One's stated rate, or LIBOR plus 2.5%, or a combination thereof. At December 31, 1999, the interest rate was 8.6%. The facility is secured by substantially all of CNGC's oil and gas properties and is repayable through monthly payments of \$350,000. The monthly payments are redetermined every six months or at Bank One's discretion. The facility requires the maintenance of certain covenants such as ratios relating to working capital, and tangible net worth. CNGC was in compliance with all of the facility's covenants as of December 31, 1999.

In conjunction with the acquisition of certain properties located in California, Bank One extended a separate borrowing base facility of \$74.6 million as of December 31, 1999, to Sheridan California Energy, Inc. ("SCEI"), a wholly owned subsidiary of CNGC. As of December 31, 1999, there was \$73.5 million outstanding under the SCEI facility with a final maturity of December 31, 2001. At December 31, 1999, the interest rate was 8.4%. The SCEI facility is secured by substantially all of SCEI's oil and gas properties and is repayable through monthly payments of \$775,000. The monthly payments are redetermined every six months or at Bank One's discretion. The SCEI facility is repayable only by SCEI and is not an obligation of CNGC. The SCEI facility requires the maintenance of certain covenants such as ratios relating to working capital, and tangible net worth. SCEI was in compliance with all of the facility's covenants as of December 31, 1999.

# CALPINE CORPORATION AND SUBSIDIARIES

## NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

Costs incurred regarding the establishment of the CNGC and SCEI facilities are deferred and amortized over the term of the facilities.

### 6. PROJECT FINANCING AND INTEREST RATE SWAP AGREEMENTS

The components of project financing as of December 31, 1999 and 1998 are (in thousands):

PROJECTS	INTEREST RATE (1)			DECEMBER 31,	
	1999	1998	FINAL MATURITY	1999	1998
Gilroy Power Plant(4).....	--	6.8%		\$ --	\$119,640
Morris Power Plant(2)(4).....	7.50%	--	2004	85,622	--
Newark & Parlin Power Plants(2)(3)(4).....	6.51%	--	2011	125,318	--
Pasadena Power Plant(4).....	5.58%	5.8%	2005	154,800	--
Total project financing.....				365,740	119,640
Less: current portion.....				8,603	5,450
Long-term project financing.....				\$357,137	\$114,190

(1) Weighted average rate before giving effect to amortization of financing cost or interest rate swaps.

(2) Debt assumed as part of the CGCA acquisition on December 17, 1999.

(3) \$20.2 million of the Newark & Parlin Plant Debt is guaranteed by CGCA.

(4) The fair value of the project financing approximates its carrying value.

#### **Gilroy Power Plant Debt**

In August 1996, the Company entered into an agreement with Banque Nationale de Paris ("BNP") to finance the acquisition of the Gilroy Power Plant. In April 1999, the Company 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. The Company 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.

#### **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") (see Note 3). 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, 1999, \$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 based on, at CGCA's option, either the base rate, as defined in the term loan agreement, or LIBOR plus 0.75%. The interest rate resets based on CGCA's selection of the borrowing period ranging from one to six months. The interest rate was 7.5% at December 31, 1999. Borrowings are secured by CGCA's ownership interest in Morris, its cash flows, dividends and any other property of Morris.

#### **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") (see Note 3). At December 31, 1999 there was \$125.3 million outstanding on a fifteen year non-recourse term loan which is a joint and severable liability of Newark & Parlin. The term loan is amortized by quarterly principal payments ranging from 1.275% to 1.825%

## **CALPINE CORPORATION AND SUBSIDIARIES**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

through the fourteenth year and 3.075% in the fifteenth year. 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 \$20.2 million as of December 31, 1999.

The interest rate on the outstanding principal is variable based on, at CGCA's option, LIBOR plus 1.125% margin or a defined base rate plus 0.375% margin. For any quarterly period where the debt service coverage is in excess of 1.4:1, both margins are reduced by 0.125%. The interest rate resets based on the borrowing period selected, generally one to three months. The interest rate was 6.5% at December 31, 1999. Nominal margin increases for both the LIBOR and the defined base rate will occur in year six and eleven of the Newark & Parlin Credit Agreement.

The effective interest rate for 1999, after giving effect to the interest rate swap, was 7.2%. Interest on the loan is payable at least quarterly. At December 31, 1999, the fair market value of the interest rate swap was approximately \$202,000.

#### **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. As of December 31, 1999, \$154.8 million was outstanding as a construction loan under the agreement. The outstanding loan bears interest at ING's base rate plus an applicable margin or at LIBOR plus an applicable margin and is payable quarterly. The construction loan will convert to a term loan once the project has completed construction. The construction loan will mature on or before July 1, 2000, but is subject to an extension to October 1, 2000 if there are sufficient construction funds available. The term loan will be available for a period not to exceed five years from the construction loan maturity date. In connection with the credit agreement, the Company entered into a \$10.0 million letter of credit facility. At December 31, 1999, there were no letters of credit outstanding under the facility.

The effective interest rate for 1999, after giving effect to two interest rate swaps, was 8.2%. Interest on the loan is payable at least quarterly. At December 31, 1999, the fair market value of these interest rate swaps was approximately \$3.3 million.

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

The Company has entered into two interest rate swap agreements to fix the interest rates on the Newark & Parlin and CNGC floating rate debt. These hedges fix an interest rate on \$94.3 million at 6.5%. At December 31, 1999, the fair market value of these hedges was approximately \$432,000 and is being deferred and will be amortized over the lives of the respective project financings.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

**7. SENIOR NOTES**

Senior Notes payable consist of the following as of December 31, 1999 and 1998 (in thousands):

	INTEREST RATES	FIRST CALL DATE	DECEMBER 31,	
			1999	1998
Senior Notes due 2004.....	9 1/4%	1999	\$ 105,000	\$105,000
Senior Notes due 2006.....	10 1/2%	2001	171,750	171,750
Senior Notes due 2006(1).....	7 5/8%	--	250,000	--
Senior Notes due 2007.....	8 3/4%	2002	275,000	275,000
Senior Notes due 2008(1).....	7 7/8%	--	400,000	400,000
Senior Notes due 2009(1).....	7 3/4%	--	350,000	--
 Total.....			 \$1,551,750	 \$951,750
			=====	=====

(1) The Senior Notes are not redeemable prior to maturity.

The Company has completed a series of public debt offerings since 1994. Transaction costs in connection with the debt offerings are capitalized as deferred financing costs and are being amortized over the ten-year life of the related offerings. Interest is payable semiannually at specified rates. There are no sinking fund or mandatory redemptions of principal before the maturity dates of each offering. 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, 1999 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 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 from the proceeds of any public equity offering. The effective interest rate on the \$105.0 million, after amortization of deferred financing costs, was 9.7%. Based on the traded yield to maturity, the approximate fair market value of the Senior Notes due 2004 was \$106.1 million and \$108.2 million as of December 31, 1999 and 1998, respectively.

**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 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 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%. Based on the traded yield to maturity, the approximate fair market value of the Senior Notes due 2006 was \$180.9 million and \$188.9 million as of December 31, 1999 and 1998, respectively.

On March 29, 1999, the Company completed a public offering of \$250.0 million of its 7 5/8% Senior Notes Due 2006. The Senior Notes bear interest at 7 5/8% per year, payable semi-annually on April 15 and October 15 and mature on April 15, 2006. The Senior Notes are not redeemable prior to maturity. The effective interest rate on the \$250.0 million, after amortization of deferred financing costs, was 8.0%. Based on the traded yield to maturity, the approximate fair market value of the Senior Notes due 2006 was \$238.1 million as of December 31, 1999. Transaction costs incurred in connection with the Senior Notes offering were recorded as

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

a deferred charge and are amortized over the life of the Senior Notes Due 2006 using the effective interest rate method.

#### 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 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 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%. Based on the traded yield to maturity, the approximate fair market value of the Senior Notes due 2007 was \$276.0 million and \$288.8 million as of December 31, 1999 and 1998, respectively.

#### 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 are not redeemable prior to maturity. The effective interest rate on the \$400.0 million, after amortization of deferred financing costs, was 8.0%. Based on the traded yield to maturity, the approximate fair market value of the Senior Notes due 2008 was \$384.6 million and \$403.0 million as of December 31, 1999 and 1998, respectively.

#### Senior Notes Due 2009

On March 29, 1999, the Company completed a public offering of \$350.0 million of its 7 3/4% Senior Notes Due 2009 ("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 8.1%. Based on the traded yield to maturity, the approximate fair market value of the Senior Notes due 2009 was \$321.0 million as of December 31, 1999. Transaction costs incurred in connection with the Senior Notes offering were recorded as a deferred charge and are amortized over the life of the Senior Notes Due 2009 using the effective interest rate method.

The annual principal maturities of the borrowings under line of credit, recourse project financings, non-recourse project financings, notes payable and Senior Notes as of December 31, 1999 are as follows (in thousands):

2000.....	\$ 47,470
2001.....	29,423
2002.....	30,847
2003.....	29,959
2004.....	209,875
Thereafter.....	1,706,086
	-----
Total.....	\$2,053,660
	=====

#### 8. TRUST PREFERRED SECURITIES

Concurrently with its public offering in October 1999, the Company, through its wholly-owned subsidiary, Calpine Capital Trust, a statutory business trust created under Delaware law, completed an offering of 4,800,000 Remarketable Term Income Deferrable Equity Securities ("trust preferred securities") ("HIGH TIDES") at a value of \$50.00 per share. The net proceeds from the offering were approximately

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

\$233.2 million. The Company sold an additional 720,000 trust preferred securities at a value of \$50.00 per share pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$35.0 million. The net proceeds from the offering were used by the Company's subsidiary to invest in convertible subordinated debentures of the Company, which represent substantially all of the subsidiary's assets. The Company has guaranteed all of the subsidiary's obligations under the trust preferred securities. The trust preferred securities are reflected on the balance sheet as "Company-obligated mandatorily redeemable convertible preferred securities of a subsidiary trust", while distributions are reflected in the statements of operations as "Distributions on trust preferred securities". Financing costs related to the issuance of the trust preferred securities are amortized over 30 years. The trust preferred securities accrue distributions at a rate of 5 3/4% per annum, have a liquidation value of \$50.00 per share, are convertible into shares of the Company's common stock at the holders option on or prior to the tender notification date, at a rate of 0.8565 shares of common stock for each trust preferred security, and 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. Additionally, 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.

#### 9. COMMON STOCK

On March 26, 1999, the Company completed a public offering of 12,000,000 shares of its common stock at \$15.50 per share for net proceeds of approximately \$177.1 million. Additionally, in April 1999, the Company sold an additional 1,800,000 shares of common stock at \$15.50 per share pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$26.7 million.

On October 27, 1999, the Company completed a public offering of 7,200,000 shares of its common stock at \$46.31 per share for net proceeds of approximately \$320.3 million. The Company sold an additional 1,080,000 shares of common stock at \$46.31 per share pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$48.2 million.

#### 10. PROVISION FOR INCOME TAXES

The components of the deferred income taxes, net as of December 31, 1999 and 1998 are as follows (in thousands):

	1999	1998
Expenses deductible in a future period.....	\$ 7,949	\$ 3,721
Net operating loss and credit carryforwards.....	50,358	19,550
Other differences.....	1,545	4,340
Deferred tax assets.....	59,852	27,611
Property differences.....	(340,164)	(178,171)
Difference in taxable income and income from investments recorded on the equity method.....	(2,305)	(3,796)
Other differences.....	(8,841)	(5,432)
Deferred tax liabilities.....	(351,310)	(187,399)
Net deferred income taxes.....	<u>\$ (291,458)</u>	<u>\$ (159,788)</u>

The net operating loss and credit carryforwards consist of federal and state net operating loss carryforwards which expire 2005 through 2014, federal and state alternative minimum tax credits and federal depletion deduction carryforwards which can be carried forward indefinitely. The federal and state net

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

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, 1999, 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.

The provision for income taxes for the years ended December 31, 1999, 1998 and 1997 consists of the following (in thousands):

	1999	1998	1997
<b>Current:</b>	-----	-----	-----
Federal.....	\$26,564	\$ 1,582	\$ 1,892
State.....	6,728	277	917
<b>Deferred:</b>	-----	-----	-----
Federal.....	23,142	26,830	14,989
State.....	4,305	1,772	2,897
Adjustment in state tax rate (net of federal benefit).....	--	(4,826)	(2,113)
Revision in prior years' tax estimates.....	1,234	1,419	(122)
<b>Total provision.....</b>	<b>\$61,973</b>	<b>\$27,054</b>	<b>\$18,460</b>
	=====	=====	=====

The Company's effective rate for income taxes for the years ended December 31, 1999, 1998 and 1997 differs from the United States statutory rate, as reflected in the following reconciliation:

	1999	1998	1997
United States statutory tax rate.....	35.0%	35.0%	35.0%
State income tax, net of federal benefit.....	3.6	3.8	5.0
Depletion allowance.....	--	(1.5)	(2.1)
Decrease in California deferred tax due to Company's expansion into other states, net of federal benefit.....	--	--	(4.1)
Other, net.....	0.6	(0.4)	0.9
<b>Effective income tax rate.....</b>	<b>39.2%</b>	<b>36.9%</b>	<b>34.7%</b>
	=====	=====	=====

## 11. 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 automatically become participants on the first quarterly entry date after completion of three months of service. Contributions include employee salary deferral contributions and a 3% employer profit-sharing contribution. Employer profit-sharing contributions in 1999, 1998 and 1997 totaled \$1.3 million, \$829,000 and \$588,000, respectively.

### **1996 Employee Stock Purchase Plan**

The Company adopted the 1996 Employee Stock Purchase Plan ("ESPP") in July 1996. Eligible employees may purchase up to 550,000 shares of common stock at semi-annual intervals through periodic payroll deductions. Purchases are limited to 15 percent of an employee's eligible compensation, up to a maximum of \$25,000 per year. Shares are purchased on January 31 and July 31 of each year until termination

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

of the plan on February 1, 2000. Under the ESPP, 205,522 shares were issued at a weighted average fair value of \$7.69 per share in 1999. In January 2000, employees participating in the ESPP purchased an additional 101,712 shares at a weighted average fair value of \$10.65 per share. 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):

		1999	1998	1997
Net income.....	As reported	\$95,093	\$45,678	\$34,699
	Pro Forma	87,417	43,965	33,272
Earnings per share data:				
Basic earnings per share.....	As reported	\$ 1.82	\$ 1.14	\$ 0.87
	Pro Forma	1.67	1.09	0.83
Diluted earnings per share.....	As reported	1.71	1.08	0.83
	Pro Forma	1.57	1.04	0.79

The fair value of options granted in 1999, 1998 and 1997 was \$17.88, \$3.61 and \$5.14 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 69% for 1999, 35% for 1998 and 44% for 1997, risk-free interest rates of 5.74% for 1999, 5.25% for 1998, 5.8%, for 1997, respectively, and expected lives of 7 years for 1999, 1998 and 1997.

The Company may grant options for up to 9,285,028 shares under the SIP. As of December 31, 1999, the Company had granted options to purchase 8,252,780 shares of common stock, net of cancellations. Over the life of the SIP, options exercised have equaled 749,128, leaving 7,503,652 granted and not yet exercised. Under the SIP, the option exercise price equals the stock's fair market value on date of grant. The SIP options generally vest after four years and expire after 10 years. Changes in options outstanding, granted, exercisable

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

and cancelled by the Company during the years 1999, 1998 and 1997, whether under the option or purchase plan were as follows:

	AVAILABLE FOR OPTION OR AWARD	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE
Beginning as of January 1, 1997.....	3,393,128	4,680,588	\$ 1.85
Granted.....	(788,434)	788,434	9.15
Exercised.....	--	(326,312)	0.66
Cancelled.....	103,104	(103,104)	4.28
Outstanding December 31, 1997.....	2,707,798	5,039,606	3.01
Additional shares reserved.....	798,082	--	--
Granted.....	(841,450)	841,450	8.52
Exercised.....	--	(67,580)	1.48
Cancelled.....	44,596	(44,596)	7.82
Outstanding December 31, 1998.....	2,709,026	5,768,880	3.80
Additional shares reserved.....	403,230	--	--
Granted.....	(2,086,608)	2,086,608	24.52
Exercised.....	--	(345,236)	2.89
Cancelled.....	6,600	(6,600)	15.20
Outstanding December 31, 1999.....	1,032,248	7,503,652	\$ 9.59
Options exercisable:			
December 31, 1997.....		3,270,938	\$ 1.61
December 31, 1998.....		3,853,610	2.19
December 31, 1999.....		4,352,513	\$ 2.95

The following tables summarizes information concerning outstanding and exercisable options at December 31, 1999:

RANGE OF EXERCISE PRICES	OUTSTANDING OPTIONS			OPTIONS EXERCISABLE		
	NUMBER OF SHARES	WEIGHTED AVERAGE REMAINING CONTRACTUAL LIFE IN YEARS	EXERCISE PRICE	NUMBER OF SHARES	WEIGHTED AVERAGE EXERCISE PRICE	
\$ 0.25 - \$ 0.25.....	1,604,940	3.00	\$ 0.25	1,604,940	\$ 0.25	
\$ 0.93 - \$ 2.29.....	629,846	4.48	2.04	629,846	2.04	
\$ 2.45 - \$ 2.45.....	754,710	5.33	2.45	754,710	2.45	
\$ 2.58 - \$ 4.29.....	919,034	6.31	4.25	684,005	4.24	
\$ 4.43 - \$ 8.60.....	762,798	8.18	8.43	219,048	8.02	
\$ 8.78 - \$13.28.....	865,364	7.49	9.60	444,964	9.47	
\$15.01 - \$15.44.....	1,059,200	9.12	15.44	--	--	
\$16.97 - \$39.81.....	883,400	9.56	36.48	15,000	27.72	
\$40.00 - \$54.63.....	24,120	9.86	49.19	--	--	
\$57.00 - \$57.00.....	240	9.97	57.00	--	--	
Total.....	7,503,652	6.47	\$ 9.59	4,352,513	\$ 2.95	

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

#### 12. STOCKHOLDERS' EQUITY

##### **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, 1999, there were 63,053,920 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.

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.

#### 13. SIGNIFICANT CUSTOMERS

The Company's electricity and steam sales revenue is primarily from two sources -- Pacific Gas & Electric Company ("PG&E") and Texas Utilities Electric Company ("TUEC").

Revenues earned from these sources for the years ended December 31, 1999, 1998 and 1997 were as follows (in thousands):

	1999	1998	1997
REVENUES:			
PG&E .....	\$215,264	\$222,593	\$221,457
TUEC .....	144,016	128,724	--

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

Accounts receivable at December 31, 1999, and 1998 were as follows (in thousands):

	1999	1998
ACCOUNTS RECEIVABLE:	-----	-----
PG&E .....	\$33,251	\$25,186
TUEC .....	9,918	15,052

**14. 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 reconciliation of basic earnings per common share to diluted earnings per share is shown in the following table (dollars in thousands except share data). All share data has been adjusted to reflect the two-for-one stock split effective October 7, 1999.

FOR THE YEARS ENDED DECEMBER 31,									
	1999			1998			1997		
	NET INCOME	SHARES	EPS	NET INCOME	SHARES	EPS	NET INCOME	SHARES	EPS
<b>BASIC EARNINGS PER COMMON SHARE:</b>									
Income before extraordinary									
Charge.....	\$96,243	52,328	\$ 1.84	\$46,319	40,242	\$ 1.15	\$34,699	39,892	\$0.87
Extraordinary charge net of tax benefit of \$793 and \$441 for 1999 and 1998, respectively.....	1,150	-----	(0.02)	641	-----	(0.01)	--	--	--
Net income.....	\$95,093	52,328	\$ 1.82	\$45,678	40,242	\$ 1.14	\$34,699	39,892	\$0.87
Common shares issuable upon Exercise of stock options using treasury stock method.....	-----	3,333	-----	2,086	-----	-----	2,140	-----	-----
<b>DILUTED EARNINGS PER COMMONSHARE:</b>									
Income before extraordinary									
Charge.....	\$96,243	55,661	\$ 1.73	\$46,319	42,328	\$ 1.09	\$34,699	42,032	\$0.83
Extraordinary charge net of tax benefit of \$793 and \$441 for 1999 and 1998, respectively.....	1,150	-----	(0.02)	641	-----	(0.01)	--	--	--
Net income.....	\$95,093	55,661	\$ 1.71	\$45,678	42,328	\$ 1.08	\$34,699	42,032	\$0.83

The Company recognized an extraordinary charge of \$1.2 million or \$0.02 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 240 shares of the Company's common stock during the year ended December 31, 1999 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. Unexercised employee stock options to purchase 385,000 shares of the Company's common stock during the year ended December 31, 1997 were not included in the computation of diluted shares outstanding because such inclusion would be anti-dilutive.

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

**15. 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 we 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 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.

Expenses under these agreements for the years ended December 31, 1999, 1998 and 1997 are (in thousands):

	1999	1998	1997
Production royalties.....	\$13,767	\$10,714	\$10,803

Natural Gas Purchases -- The Company enters into short-term gas purchase contracts 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 in Boston, Massachusetts, Houston, Texas, Pleasanton, California, San Jose, California, Sacramento, California, and Minneapolis, Minnesota under noncancelable operating leases expiring through 2006. Future minimum lease payments under these leases are as follows (in thousands):

2000.....	\$ 4,781
2001.....	5,121
2002.....	4,936
2003.....	4,712
2004.....	3,573
Thereafter.....	2,429
	-----
Total.....	\$25,552
	=====

Lease payments are subject to adjustments for the Company's pro rata portion of annual increases or decreases in building operating costs. In 1999, 1998 and 1997 rent expense for noncancelable operating leases amounted to \$3.1 million, \$1.2 million and \$1.2 million, respectively.

Cogeneration Facilities Operating Leases -- The Company entered into long-term operating leases in June 1995, April 1996, August 1998 and May 1999 for its Watsonville, King City, and Greenleaf cogeneration facilities and for The Geysers Power Plants. Future minimum lease payments under these leases are as follows (in thousands):

	2000	2001	2002	2003	2004	THEREAFTER	TOTAL
Watsonville.....	\$ 2,905	\$ 2,905	\$ 2,905	\$ 2,905	\$ 2,905	\$ 15,682	\$ 30,207
King City.....	20,254	21,015	21,848	22,781	13,975	130,011	229,884
Greenleaf.....	8,991	9,070	8,990	8,994	8,858	71,651	116,554
Geysers (see Note 3).....	45,009	43,676	47,992	37,152	37,541	246,378	457,748
	-----	-----	-----	-----	-----	-----	-----
Total.....	\$77,159	\$76,666	\$81,735	\$71,832	\$63,279	\$463,722	\$834,393
	=====	=====	=====	=====	=====	=====	=====

## CALPINE CORPORATION AND SUBSIDIARIES

### NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997

In 1999, 1998 and 1997, rent expense for cogeneration facilities operating leases amounted to \$33.6 million, \$15.7 million and \$16.6 million, respectively. The Watsonville operating lease provides for additional contingent rents payable during the period from July through December. Contingent rent expense for 1999, 1998 and 1997 amounted to \$393,000, \$1.5 million and \$864,000, respectively.

The King City operating lease commitment is supported by \$90.7 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.

Capital expenditures -- At December 31, 1999, the Company is under contract or letter of intent with Siemens Westinghouse Power Corporation for 63 turbines for a total purchase price of \$2.3 billion related to the Company's power development projects. Approximate payments related to these turbines are \$496.4 million, \$655.4 million, \$398.9 million, \$227.0 million, \$84.5 million and \$10.6 million in 2000, 2001, 2002, 2003, 2004 and thereafter, respectively.

At December 31, 1999, the Company is also under contract with General Electric Company for 6 turbines for a total purchase price of \$374.5 million related to the Company's power development projects. Approximate payments related to these turbines are \$118.8 million, \$53.9 million, \$18.0 million and \$4.5 million in 2000, 2001, 2002 and 2003, respectively.

### Litigation

Legal Matters -- On September 30, 1997, a lawsuit was filed by Indeck North American Power Fund ("Indeck") in the Circuit Court of Cook County, Illinois against Norweb plc. and certain other parties, including the Company. Some of Indeck's claims relate to Calpine Gordonsville, Inc.'s acquisition of a 50% interest in Gordonsville Energy L.P. from Northern Hydro Limited and Calpine Auburndale, Inc.'s acquisition of a 50% interest in Auburndale Power Plant Partners Limited Partnership from Norweb Power Services (No. 1) Limited. Indeck claimed that Calpine Gordonsville, Inc., Calpine Auburndale, Inc. and the Company tortuously interfered with Indeck's contractual rights to purchase such interests and conspired with other parties to do so. Indeck is seeking \$25.0 million in compensatory damages, \$25.0 million in punitive damages, and the recovery of attorneys' fees and costs. In April 1999, the court dismissed the claims against Calpine Auburndale and Calpine Gordonsville with prejudice. Indeck appealed the court's decision. The outcome of the appeal is not expected until late 2000. The Company is unable to predict the outcome of these proceedings but it does not expect that the outcome of these proceedings will have a material adverse effect on its financial position or results of operations.

An action was filed against Lockport Energy Associates, L.P. and the New York Public Service Commission ("NYPSC") in August 1997 by NYSEG in the Federal District Court for the Northern District of New York. NYSEG has requested the Court to direct NYPSC and 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 PURPA and the Federal Power Act by failing to reform the NYSEG contract that was previously approved by the NYPSC. The Company is unable to predict the outcome of these proceedings but it does not expect that the outcome of these proceedings will have a material adverse effect on the Company's financial position or results of operation. 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.

## **CALPINE CORPORATION AND SUBSIDIARIES**

### **NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED) FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

#### **16. SUBSEQUENT EVENTS**

In January 2000, the Company completed an offering under Rule 144A of the Securities Act of 6,000,000 5 1/2% HIGH TIDES issued by a subsidiary trust at \$50.00 each, raising \$292.4 million of aggregate net proceeds. In February 2000, the Company sold an additional 1,200,000 5 1/2% HIGH TIDES pursuant to the exercise of the underwriters' over-allotment option for net proceeds of approximately \$58.6 million.

In January and February 2000, the Company acquired various assets for approximately \$60.5 million, including a 50% interest in the Aries Power Plant and 100% of the stock of Western Gas Resources California.

#### **17. 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.

The Company's common stock has been traded on the New York stock exchange since September 19, 1996. There were 110 common stockholders of record at December 31, 1999. No dividends were paid for the

**CALPINE CORPORATION AND SUBSIDIARIES**

**NOTES TO CONSOLIDATED FINANCIAL STATEMENTS (CONTINUED)**  
**FOR THE YEARS ENDED DECEMBER 31, 1999, 1998 AND 1997**

years ended December 31, 1999 and 1998. All share data has been adjusted to reflect the two-for-one stock split effective October 7, 1999.

	QUARTER ENDED			
	DECEMBER 31,	SEPTEMBER 30,	JUNE 30,	MARCH 31,
	(IN THOUSANDS, EXCEPT PER SHARE AMOUNTS)			
<b>1999</b>				
Total revenue.....	\$247,497	\$263,648	\$190,677	\$145,913
Gross profit.....	88,023	103,815	62,014	36,406
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.....	\$ 0.51	\$ 0.79	\$ 0.35	\$ 0.09
Extraordinary charge.....	--	--	(0.02)	--
Net income.....	0.51	0.79	0.33	0.09
Diluted earnings per common share:				
Income before extraordinary charge.....	\$ 0.48	\$ 0.74	\$ 0.33	\$ 0.09
Extraordinary charge.....	--	--	(0.02)	--
Net income.....	0.48	0.74	0.31	0.09
Common stock price per share:				
High.....	\$ 64.94	\$ 47.88	\$ 29.50	\$ 18.69
Low.....	42.69	27.41	17.56	12.63
<b>1998</b>				
Total revenue.....	\$173,033	\$186,173	\$141,597	\$ 55,145
Gross profit.....	50,935	69,069	44,841	15,776
Income from operations.....	40,262	59,959	37,596	8,859
Income before extraordinary charge.....	14,033	23,415	11,928	(3,057)
Extraordinary charge.....	--	339	302	--
Net income (loss).....	14,033	23,076	11,626	(3,057)
Basic earnings per common share:				
Income before extraordinary charge.....	\$ 0.35	\$ .58	\$ 0.30	\$ (0.08)
Extraordinary charge.....	--	(0.01)	(0.01)	--
Net income.....	0.35	.57	0.29	(0.08)
Diluted earnings per common share:				
Income before extraordinary charge.....	\$ 0.33	\$ .55	\$ 0.29	\$ (0.07)
Extraordinary charge.....	--	(0.01)	(0.01)	--
Net income (loss).....	0.33	.54	0.28	(0.07)
Common stock price per share:				
High.....	\$ 13.81	\$ 10.75	\$ 10.63	\$ 9.25
Low.....	8.59	8.56	8.63	6.38

## EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
-----	
3.1	-- Amended and Restated Certificate of Incorporation of Calpine Corporation, a Delaware corporation.(b)
3.2	-- Amended and Restated Bylaws of Calpine Corporation, a Delaware corporation.(b)
4.1	-- Indenture dated as of February 17, 1994 between the Company and Shawmut Bank of Connecticut, National Association, as Trustee, including form of Notes.(a)
4.2	-- Indenture dated as of May 16, 1996 between the Company and Fleet National Bank, as Trustee, including form of Notes.(c)
4.3	-- Indenture dated as of July 8, 1997 between the Company and The Bank of New York, as Trustee, including form of Notes.(e)
4.4	-- Indenture dated as of March 31, 1998 between the Company and The Bank of New York, as Trustee, including form of Notes.(g)
4.5	-- Indenture dated as of March 26, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.6	-- Indenture dated as of April 21, 1999 between the Company and The Bank of New York, as Trustee, including form of Notes.(h)
4.7	-- 1999 HIGH TIDES.
4.7.1	-- Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, filed October 4, 1999.(i)
4.7.2	-- Corrected Certificate of Certificate of Trust of Calpine Capital Trust, a Delaware statutory trust, dated September 29, 1999.(i)
4.7.3	-- 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)
4.7.4	-- Indenture, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(i)
4.7.5	-- 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)
4.7.6	-- 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)
4.7.7	-- Preferred Securities Guarantee Agreement, dated as of November 2, 1999, between Calpine Corporation and The Bank of New York, as Guarantee Trustee.(i)
4.8	-- 2000 HIGH TIDES.
4.8.1	-- Certificate of Trust of Calpine Capital Trust II, a Delaware statutory trust, filed January 25, 2000.(*)
4.8.2	-- 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.(*)
4.8.3	-- Indenture, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Trustee, including form of Debenture.(*)

EXHIBIT NUMBER	DESCRIPTION
4.8.4	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.(*)
4.8.5	Registration Rights Agreement, dated January 31, 2000, among Calpine Corporation, Calpine Capital Trust II, Credit Suisse First Boston Corporation and ING Barings LLC.(*)
4.8.6	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.(*)
4.8.7	-- Preferred Securities Guarantee Agreement, dated as of January 31, 2000, between Calpine Corporation and The Bank of New York, as Guaranteee 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.(j)(*)
10.3	-- Other Agreements.
10.3.1	-- Calpine Corporation Stock Option Program and forms of agreements thereunder.(a)
10.3.2	-- Calpine Corporation 1996 Stock Incentive Plan and forms of agreements thereunder.(b)
10.3.3	-- Calpine Corporation Employee Stock Purchase Plan and forms of agreements thereunder.(b)
10.3.4	-- Amended and Restated Employment Agreement between Calpine Corporation and Mr. Peter Cartwright.(*)
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)
21	-- Subsidiaries of the Company.(*)
23	-- Consents from Arthur Andersen for Form S-8.(*)
27	-- Financial Data Schedule.(*)

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(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 (Registration Statement No. 333-07497).

(c) Incorporated by reference to Registrant's Current Report on Form 8-K dated August 29, 1996 and filed on September 13, 1996.

- (d) Incorporated by reference to Registrant's Annual Report on Form 10-K dated December 31, 1996, and filed on March 27, 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) 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.
- (\*) Filed herewith.

**EXHIBIT 4.8.1**

**CERTIFICATE OF TRUST**

The undersigned, the trustees of Calpine Capital Trust II, desiring to form a business trust pursuant to Delaware Business Trust Act, 12 Del. C. Section 3810 et seq., hereby certify as follows:

1. The name of the business trust being formed hereby (the "Trust") is "Calpine Capital Trust II."
2. The name and business address of the trustee of the Trust which has its principal place of business in the State of Delaware is as follows:

The Bank of New York (Delaware) White Clay Center, Route 273 Newark, Delaware 19711

3. This Certificate of Trust shall be effective as of the date of filing.

Dated: January \_\_, 2000

Name:

Title: Administrative Trustee

Name:

Title: Administrative Trustee

Name:

Title: Administrative Trustee

**THE BANK OF NEW YORK (DELAWARE),  
as Delaware Trustee**

By:

Name:

Authorized Signatory

**THE BANK OF NEW YORK, as  
Property Trustee**

By:  
Name:  
Authorized Signatory

**DECLARATION OF TRUST**

**CALPINE CAPITAL TRUST II**

**Dated as of January 24, 2000**

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**DECLARATION OF TRUST  
OF  
Calpine Capital Trust II**

January 24, 2000

DECLARATION OF TRUST ("Declaration") dated and effective as of January 24, 2000 by the Trustees (as defined herein), the Depositor (as defined herein), and by the holders, from time to time, of undivided beneficial interests in the assets of Trust to be issued pursuant to this Declaration;

WHEREAS, the parties hereto desire to establish a trust (the "Trust") pursuant to the Delaware Business Trust Act for the purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Debentures of the Debenture Issuer;

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

**ARTICLE I  
DEFINITIONS**

**SECTION I.1 Definitions.**

Unless the context otherwise requires:

- (a) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Section 1.1;
- (b) a term defined anywhere in this Declaration has the same meaning throughout;

(c) all references to "the Declaration" or "this Declaration" are to this Declaration of Trust as modified, supplemented or amended from time to time;

(d) all references in this Declaration to Articles and Sections are to Articles and Sections of this Declaration unless otherwise specified; and

(e) a reference to the singular includes the plural and vice versa.

"Administrative Trustee" means any Trustee other than the Delaware Trustee and the Property Trustee (as hereinafter defined).

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

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

"Business Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. C. Section 3801 et seq., as it may be amended from time to time, or any successor legislation.

"Commission" means the Securities and Exchange Commission.

"Common Securities" means securities representing undivided beneficial ownership interests in the assets of the Trust with such terms as may be set out in any amendment to this Declaration.

"Covered Person" means (a) any officer, director, shareholder, partner, member, representative, employee or agent of (i) the Trust or (ii) the Trust's Affiliates and (b) any holder of Securities.

"Debenture Issuer" means the Parent in its capacity as the issuer of the Debentures under the Indenture.

"Debentures" means the series of Debentures to be issued by the Debenture Issuer and acquired by the Trust.

"Debenture Trustee" means the trustee under the Indenture until a successor is appointed thereunder, and thereafter means such successor trustee.

"Delaware Trustee" has the meaning set forth in Section 3.3.

"Depositor" means the Parent in its capacity as Depositor of the Trust.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time or any successor legislation.

"Fiduciary Indemnified Person" has the meaning set forth in  
Section 4.3(b).

"Indemnified Person" means a Parent Indemnified Person or a Fiduciary Indemnified Person.

"Indenture" means the indenture to be entered into between the Parent and the Debenture Trustee and any indenture supplemental thereto pursuant to which the Debentures are to be issued.

"Offering Circular" means the offering circular, dated as of January [\_\_], 2000, relating to the issuance by the Trust of Preferred Securities.

"Parent" means Calpine Corporation, a Delaware corporation or any successor entity in a merger.

"Parent Indemnified Person" means (a) any Administrative Trustee;  
(b) any Affiliate of any Administrative Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Administrative Trustee; or (d) any employee or agent of the Trust or its Affiliates.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Preferred Securities" means securities representing undivided beneficial ownership interests in the assets of the Trust with such terms as may be set out in any amendment to this Declaration.

"Property Trustee" has the meaning set forth in Section 3.4.

"Securities" means the Common Securities and the Preferred Securities.

"Securities Act" means the Securities Act of 1933, as amended from time to time, or any successor legislation.

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

## **ARTICLE II ORGANIZATION**

### **SECTION II.1 Name.**

The Trust created by this Declaration is named "Calpine Capital Trust II." The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

### **SECTION II.2 Office.**

The address of the principal office of the Trust is c/o Calpine Corporation, 50 West San Fernando Street, San Jose, California 95113. At any time, the Administrative Trustees may designate another principal office.

### **SECTION II.3 Purpose.**

The Depositor hereby assigns, transfers, conveys and sets over to the Trustees the sum of \$10. The Trustees hereby acknowledge receipt of such amount in trust from the Depositor, which amount shall constitute the initial trust estate. The Trustees hereby declare that they will hold the trust estate in trust for the Depositor. It is the intention of the parties hereto that the Trust created hereby constitute a business trust under the Business Trust Act, and that this Declaration constitute the governing instrument of the Trust. The Trustees are hereby authorized and directed to execute and file a certificate of trust in the office of the Secretary of State of the State of Delaware in the form attached hereto. The Trust is hereby established by the

Depositor and the Trustees for the purposes of (i) issuing Preferred Securities representing undivided beneficial interests in the assets of the Trust in exchange for cash and investing the proceeds thereof in Debentures, (ii) issuing and selling Common Securities to the Depositor representing undivided beneficial interests in the assets of the Trust in exchange for cash and investing the proceeds thereof in additional Debentures and (iii) engaging in such other activities as are necessary, convenient or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States federal income tax purposes as a grantor trust.

Concurrent with the first issuance of any Securities by the Trust, the Depositor and the Trustees intend to enter into an amended and restated Declaration of Trust, satisfactory to each such party to provide for the contemplated operation of the Trust created hereby and the issuance of the Preferred Securities and the Common Securities referred to therein. Prior to the execution and delivery of such amended and restated Declaration of Trust, the Trustees shall not have any duty or obligation hereunder or with respect to the trust estate, except as otherwise required by applicable law or as may be necessary to obtain, prior to such execution and delivery, any licenses, consents or approvals required by applicable law or otherwise.

#### SECTION II.4 Authority.

Subject to the limitations provided in this Declaration, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust. In dealing with the Administrative Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Administrative Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Administrative Trustees as set forth in this Declaration.

#### SECTION II.5 Title to Property of the Trust.

Subject to Section 2.6(c), legal title to all assets of the Trust shall be vested in the Trust.

#### SECTION II.6 Powers of the Trustees.

The Administrative Trustees shall have the exclusive power and

authority to cause the Trust to engage in the following activities:

- (a) to issue and sell the Preferred Securities and the Common Securities in accordance with this Declaration; provided, however, that the Trust may issue no more than one series of Preferred Securities and no more than one series of Common Securities, and, provided further, that there shall be no interests in the Trust other than the Securities and the issuance of the Securities shall be limited to a one-time, simultaneous issuance of both Preferred Securities and Common Securities;
- (b) in connection with the issue and sale of the Preferred Securities:
  - (i) assist in the preparation of the Offering Circular and preliminary offering circular, if any, in each case prepared by the Depositor, in relation to the offering and sale of the Preferred Securities to qualified institutional buyers in reliance of Rule 144A under the Securities Act and to execute and file with the Commission, at such time as determined by the Depositor a registration statement under the Securities Act prepared by the Depositor, including any amendments thereto in relation to the Preferred Securities, and all other registrations, applications, statements, certificates, and other instruments;
  - (ii) execute and file any documents prepared by the Depositor, or take any acts as determined by the Depositor to be necessary in order to qualify or register all or part of the Preferred Securities in any state or foreign jurisdiction in which the Depositor has determined to qualify or register such Preferred Securities for sale;
  - (iii) execute and deliver letters, documents, or instruments with The Depository Trust Company relating the Preferred Securities;
  - (iv) execute and enter into a purchase agreement, remarketing agreement, a registration rights agreement and other related agreements providing for the sale and registration of the Preferred Securities; and
  - (v) execute and file any agreement, certificate or other document which such Administrative Trustee deems necessary or appropriate in connection with the issuance and sale of the Preferred

**Securities;**

- (c) to acquire the Debentures with the proceeds of the sale of the Preferred Securities and the Common Securities; provided, however, that the Administrative Trustees shall cause legal title to the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Preferred Securities and the Holders of Common Securities;
- (d) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors and consultants and provide for reasonable compensation for such services;
- (e) to incur expenses that are necessary or incidental to carry out any of the purposes of this Declaration; and
- (f) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing.

**SECTION II.7 Filing of Certificate of Trust.**

On or after the date of execution of this Declaration, the Trustees shall cause the filing of the Certificate of Trust for the Trust in the form attached hereto as Exhibit A with the Secretary of State of the State of Delaware.

**SECTION II.8 Duration of Trust.**

The Trust, absent dissolution pursuant to the provisions of Section 5.2, shall have existence for fifty-five (55) years from the date hereof.

**SECTION II.9 Responsibilities of the Depositor.**

In connection with the issue and sale of the Preferred Securities, the Depositor shall have the exclusive right and responsibility to engage in the following activities:

- (a) to prepare the Offering Circular and any preliminary offering circular, and to prepare for filing by the Trust with the Commission the registration statement pursuant to a registration rights agreement;

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

(c) to prepare for filing by the Trust an application to PORTAL and to the New York Stock Exchange or any other national stock exchange or the NASDAQ National Market for listing or quotation of the Preferred Securities (including at the time of the Remarketing); and

(e) to negotiate the terms of a purchase agreement, a registration rights agreement and a remarketing agreement relating to a remarketing of the Preferred Securities and other related agreements providing for the sale of the Preferred Securities.

#### **SECTION II.10 Declaration Binding on Securities Holders.**

Every Person by virtue of having become a holder of a Security or any interest therein in accordance with the terms of this Declaration, shall be deemed to have expressly assented and agreed to the terms of, and shall be bound by, this Declaration.

### **ARTICLE III TRUSTEES**

#### **SECTION III.1 Trustees.**

The number of Trustees initially shall be five (5), and thereafter the number of Trustees shall be such number as shall be fixed from time to time by a written instrument signed by the Depositor. The Depositor is entitled to appoint or remove without cause any Trustee at any time; provided, however that the number of Trustees shall in no event be less than two (2); provided further that one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, is an entity that has its principal place of business in the State of Delaware (the "Delaware Trustee"); provided further that there shall be at least one trustee who is an employee or officer of, or is affiliated

with the Parent (an "Administrative Trustee").

### SECTION III.2 Administrative Trustees.

The initial Administrative Trustees shall be:

Peter Cartwright Ann B. Curtis Thomas R. Mason

(a) Except as expressly set forth in this Declaration, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee;

(b) Any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to cause the Trust to execute pursuant to Section 2.6; and

(c) an Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents that the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 2.6.

### SECTION III.3 Delaware Trustee.

The initial Delaware Trustee shall be:

#### **The Bank of New York (Delaware)**

Notwithstanding any other provision of this Declaration, the Delaware Trustee shall not be entitled to exercise any of the powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Trustees (except as required by the Business Trust Act) described in this Declaration. The Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act. Notwithstanding anything herein to the contrary, the Delaware Trustee shall not be liable for the acts or omissions to act of the Trust or of the Administrative Trustees except such acts as the Delaware Trustee is expressly obligated or authorized to undertake under this Declaration or the Business Trust Act and except for the negligence or willful misconduct of the Delaware Trustee.

#### **SECTION III.4 Property Trustee.**

The Depositor hereby appoints The Bank of New York as the Property Trustee, as the trustee meeting the requirements of an eligible trustee of the Trust Indenture Act of 1939, as amended.

Notwithstanding any other provision of this Declaration, the Property Trustee shall not be entitled to exercise any of the powers, nor shall the Property Trustee have any of the duties and responsibilities of the Trustees (except as required by the Business Trust Act) described in this Declaration. Notwithstanding anything herein to the contrary, the Property Trustee shall not be liable for the acts or omissions to act of the Trust or of the Administrative Trustees except such acts as the Property Trustee is expressly obligated or authorized to undertake under this Declaration or the Business Trust Act and except for the negligence or willful misconduct of the Property Trustee.

#### **SECTION III.5 Not Responsible for Recitals or Sufficiency of Declaration.**

The recitals contained in this Declaration shall be taken as the statements of the Depositor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration.

### **ARTICLE IV LIMITATION OF LIABILITY OF HOLDERS OF SECURITIES, TRUSTEES OR OTHERS**

#### **SECTION IV.1 Exculpation.**

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

such acts or omissions; and

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

#### SECTION IV.2 Fiduciary Duty.

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

(b) unless otherwise expressly provided herein:

(i) whenever a conflict of interest exists or arises between a Covered Persons; or

(ii) and an Indemnified Person whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any holder of Securities,

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

tion of the Indemnified Person at law or in equity or otherwise; and

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

(i) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(ii) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

#### SECTION IV.3 Indemnification.

(a) (i) The Debenture Issuer shall indemnify, to the full extent permitted by law, any Parent Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Trust) by reason of the fact that he is or was a Parent Indemnified Person against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the Parent Indemnified Person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Trust, and, with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(ii) The Debenture Issuer shall indemnify, to the full extent permitted by law, any Parent Indemnified Person who was or is a party or is threatened to be made a party to any threatened, pending or completed

action or suit by or in the right of the Trust to procure a judgment in its favor by reason of the fact that he is or was a Parent Indemnified Person against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Trust and except that no such indemnification shall be made in respect of any claim, issue or matter as to which such Parent Indemnified Person shall have been adjudged to be liable to the Trust unless and only to the extent that the Court of Chancery of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses that such Court of Chancery or such other court shall deem proper.

(iii) To the extent that a Parent Indemnified Person shall be successful on the merits or otherwise (including dismissal of an action without prejudice or the settlement of an action without admission of liability) in defense of any action, suit or proceeding referred to in paragraphs (i) and (ii) of this Section 4.3(a), or in defense of any claim, issue or matter therein, he shall be indemnified, to the full extent permitted by law, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith.

(iv) Any indemnification under paragraphs (i) and (ii) of this Section 4.3(a) (unless ordered by a court) shall be made by the Debenture Issuer only as authorized in the specific case upon a determination that indemnification of the Parent Indemnified Person is proper in the circumstances because he has met the applicable standard of conduct set forth in paragraphs (i) and (ii). Such determination shall be made (1) by the Administrative Trustees by a majority vote of a quorum consisting of such Administrative Trustees who were not parties to such action, suit or proceeding, (2) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion, or (3) by the holder(s) of the Common Securities of the Trust.

(v) Expenses (including attorneys' fees) incurred by a Parent Indemnified Person in defending a civil, criminal, administrative or investigative action, suit or proceeding referred to in paragraphs

(i) and (ii) of this Section 4.3(a) shall be paid by the Debenture Issuer in advance of the

final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such Parent Indemnified Person to repay such amount if it shall ultimately be determined that he is not entitled to be indemnified by the Debenture Issuer as authorized in this Section 4.3(a). Notwithstanding the foregoing, no advance shall be made by the Debenture Issuer if a determination is reasonably and promptly made (i) by the Administrative Trustees by a majority vote of a quorum of disinterested Administrative Trustees, (ii) if such a quorum is not obtainable, or, even if obtainable, if a quorum of disinterested Administrative Trustees so directs, by independent legal counsel in a written opinion or (iii) the holder(s) of the Common Securities of the Trust, that, based upon the facts known to the Administrative Trustees, counsel or the holder(s) of the Common Securities of the Trust at the time such determination is made, such Parent Indemnified Person acted in bad faith or in a manner that such person did not believe to be in or not opposed to the best interests of the Trust, or, with respect to any criminal proceeding, that such Parent Indemnified Person believed or had reasonable cause to believe his conduct was unlawful. In no event shall any advance be made in instances where the Administrative Trustees, independent legal counsel or the holder(s) of the Common Securities of the Trust reasonably determine that such person deliberately breached his duty to the Trust or to the holder(s) of its Common Securities or Preferred Securities.

(vi) The indemnification and advancement of expenses provided by, or granted pursuant to, the other paragraphs of this Section 4.3(a) shall not be deemed exclusive of any other rights to which those seeking indemnification and advancement of expenses may be entitled under any agreement, vote of shareholders or disinterested directors of the Debenture Issuer or of the holder(s) of the Preferred Securities of the Trust or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office. All rights to indemnification under this Section 4.3(a) shall be deemed to be provided by a contract between the Debenture Issuer and each Parent Indemnified Person who serves in such capacity at any time while this Section 4.3(a) is in effect. Any repeal or modification of this Section 4.3(a) shall not affect any rights or obligations then existing.

(vii) The Debenture Issuer or the Trust may purchase and maintain insurance on behalf of any person who is or was a Parent Indemnified Person against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the

Debenture Issuer would have the power to indemnify him against such liability under the provisions of this Section 4.3(a).

(viii) For purposes of this Section 4.3(a), references to "the Trust" shall include, in addition to the resulting or surviving entity, any constituent entity (including any constituent of a constituent) absorbed in a consolidation or merger, so that any person who is or was a director, trustee, officer or employee of such constituent entity, or is or was serving at the request of such constituent entity as a director, trustee, officer, employee or agent of another entity, shall stand in the same position under the provisions of this Section 4.3(a) with respect to the resulting or surviving entity as he would have with respect to such constituent entity if its separate existence had continued.

(ix) The indemnification and advancement of expenses provided by, or granted pursuant to, this Section 4.3(a) shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a Parent Indemnified Person and shall inure to the benefit of the heirs, executors and administrators of such a person.

(b) The Debenture Issuer agrees to indemnify (i) the Delaware Trustee and the Property Trustee, (ii) any Affiliate of the Delaware Trustee or the Property Trustee, and (iii) any officers, directors, stockholders, members, partners, employees, representatives, nominees, custodians or agents of the Delaware Trustee or the Property Trustee (each of the Persons in (i) through (iii) being referred to as a "Fiduciary Indemnified Person") for, and to hold each Fiduciary Indemnified Person harmless against, any loss, liability or expense incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses (including reasonable legal fees and expenses) of defending itself against, or investigating, any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The provisions of this Section 4.3(b) shall survive the termination of this Declaration or the resignation or removal of the Delaware Trustee or Property Trustee.

#### SECTION IV.4 Outside Businesses.

Any Covered Person, the Depositor, the Delaware Trustee and the Property Trustee may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the holders of Securities shall have no rights

by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of any Covered Person, the Depositor, the Delaware Trustee or the Property Trustee shall be obligated to present any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Depositor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Depositor or any Affiliate of the Depositor, or may act as depositary, trustee or agent for, or may act on any committee or body of holders of, securities or other obligations of the Depositor or its Affiliates.

## **ARTICLE V** **AMENDMENTS, TERMINATION, MISCELLANEOUS**

### **SECTION V.1 Amendments.**

At any time before the issue of any Securities, this Declaration may be amended by, and only by, a written instrument executed by all of the Administrative Trustees and the Depositor.

### **SECTION V.2 Termination of Trust.**

(a) The Trust shall dissolve and be of no further force or effect:

- (i) upon the bankruptcy of the Depositor;
- (ii) upon the filing of a certificate of dissolution or its equivalent with respect to the Depositor or the revocation of the Depositor's charter or of the Trust's certificate of trust;
- (iii) upon the entry of a decree of judicial dissolution of the Depositor, or the Trust; and
- (iv) before the issue of any Securities, with the consent of all of the Administrative Trustees and the Depositor.

(b) As soon as is practicable after the occurrence of an event referred to in Section 5.2(a), the Trustees shall file, after satisfaction of all liabilities of the Trust in accordance with applicable law, a certificate of cancellation with the Secretary of State of the State of Delaware and the Trust shall terminate.

#### SECTION V.3 Governing Law.

This Declaration and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws.

#### SECTION V.4 Headings.

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

#### SECTION V.5 Successors and Assigns.

Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Depositor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether or not so expressed.

#### SECTION V.6 Partial Enforceability.

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

#### SECTION V.7 Counterparts.

This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same

force and effect as though all of the signers had signed a single signature page.

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

**Administrative Trustee**

**Administrative Trustee**

**Administrative Trustee**

**THE BANK OF NEW YORK (DELAWARE), as  
Delaware Trustee**

By:

**Authorized Signatory**

**THE BANK OF NEW YORK, as  
Property Trustee**

By:

**Authorized Signatory**

CALPINE CORPORATION as Depositor and  
Debenture Issuer

By:

Name:

Title:

20

**EXHIBIT A**

(begins on next page)

## **CERTIFICATE OF TRUST**

The undersigned, the trustees of Calpine Capital Trust II, desiring to form a business trust pursuant to Delaware Business Trust Act, 12 Del. C. Section 3810 et seq., hereby certify as follows:

- (a) The name of the business trust being formed hereby (the "Trust") is "Calpine Capital Trust II."
- (b) The name and business address of the trustee of the Trust which has its principal place of business in the State of Delaware is as follows:

The Bank of New York (Delaware) White Clay Center, Route 273 Newark, Delaware 19711

- (c) This Certificate of Trust shall be effective as of the date of filing.

Dated: January \_\_, 2000

Name:

Title: Administrative Trustee

Name:  
Title: Administrative Trustee

Name:  
Title: Administrative Trustee

**THE BANK OF NEW YORK (DELAWARE), as  
Delaware Trustee**

By:  
Name:  
Authorized Signatory

**THE BANK OF NEW YORK, as  
Property Trustee**

By:  
Name:  
Authorized Signatory

**EXHIBIT 4.8.3**

**CALPINE CORPORATION**

**TO**

**THE BANK OF NEW YORK,  
as Trustee**

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**Indenture**

**Dated as of January 31, 2000**

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up to \$371,134,100

**Convertible Subordinated Debentures due 2030**

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INDENTURE, dated as of January 31, 2000, between Calpine Corporation, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company") having its principal office at 50 West San Fernando Street, San Jose, California 95113, and The Bank of New York, a New York banking corporation, as Trustee (herein called the "Trustee").

## **RECITALS OF THE COMPANY**

WHEREAS, Calpine Capital Trust II, a Delaware business trust (the "Trust"), governed by the Amended and Restated Declaration of Trust among the Company, as sponsor, The Bank of New York, as property trustee (the "Property Trustee"), and The Bank of New York (Delaware), as Delaware trustee (the "Delaware Trustee"), and Peter Cartwright, Ann B. Curtis and Thomas R. Mason, as trustees (together with the Property Trustee and the Delaware Trustee, the "Issuer Trustees"), and the holders from time to time of undivided beneficial interest in the assets of the Trust, dated as of January 31, 2000 (the "Declaration"), pursuant to the Purchase Agreement (the "Purchase Agreement") dated January 25, 2000, among the Company, the Trust and the Initial Purchasers named therein, will issue and sell up to 6,000,000 (or up to 7,200,000 to the extent the option granted by the Trust is exercised in full) of its Remarketable Term Income Deferrable Equity Securities (HIGH TIDES) (the "Preferred Securities") with a liquidation preference of \$50 per Preferred Security, having an aggregate liquidation amount with respect to the assets of the Trust of up to \$300,000,000 (or up to \$360,000,000 to the extent the option granted by the Trust is exercised in full);

WHEREAS, the trustees of the Trust, on behalf of the Trust, will execute and deliver to the Company Common Securities evidencing an ownership interest in the Trust, registered in the name of the Company, in an aggregate amount equal to at least three percent of the capitalization of the Trust, equivalent to up to 185,568 Common Securities, (or up to 222,682 to the extent the option granted by the Trust is exercised in full) with a liquidation preference of \$50 per Common Security, having an aggregate liquidation amount with respect to the assets of the Trust of up to \$9,278,400 (or up to \$11,134,100 to the extent the option granted by the Trust is exercised in full) (the "Common Securities");

WHEREAS, the Trust will use the proceeds from the sale of the Preferred Securities and the Common Securities to purchase Securities (as defined below) from the Company in an aggregate principal amount of up to \$309,278,400 (or up to \$371,134,100 to the extent the option granted by the Trust is exercised in full);

WHEREAS, the Company is guaranteeing the payment of distributions on the Preferred Securities (as defined herein), and payment of the Redemption Price (as

defined herein) and payments on liquidation with respect to the Preferred Securities, to the extent provided in the Guarantee (the "Guarantee") between the Company and The Bank of New York, as Guarantee Trustee, for the benefit of the Holders of the Trust Securities from time to time;

WHEREAS, the Company has duly authorized the creation of an issue of its Convertible Subordinated Debentures Due 2030 (the "Securities"), of substantially the tenor and amount hereinafter set forth and to provide therefor the Company has duly authorized the execution and delivery of this Indenture;

WHEREAS, so long as the Trust is a Holder of Securities, and any Preferred Securities are outstanding, the Declaration provides that the Holders of Preferred Securities may cause the Conversion Agent (as defined herein) to

- (i) exchange such Preferred Securities for Securities held by the Trust and (ii) immediately convert such Securities into Common Stock (as defined herein);

WHEREAS, the Company, the Trust, the Remarketing Agent (as defined herein) and The Bank of New York, as Tender Agent have entered into a Remarketing Agreement (as defined herein) dated as of the date hereof pursuant to which such Remarketing Agent has agreed to use its best efforts to (i) remarket all Preferred Securities tendered for remarketing (the "Remarketing") and (ii) establish, beginning on the Reset Date (as defined herein), (a) the rate at which distributions will accrue on the Preferred Securities, (b) the number of shares of Common Stock, if any, into which each Preferred Security may be converted and (c) the price, manner and time, if any, at which the Preferred Securities may be redeemed; and

WHEREAS, all things necessary to make the Securities, when executed by the Company and authenticated and delivered hereunder and duly issued by the Company, the valid obligations of the Company, and to make this Indenture a valid agreement of the Company, in accordance with their and its terms, have been done.

**NOW, THEREFORE, THIS INDENTURE WITNESSETH:**

For and in consideration of the premises and the purchase of the Securities by the Holders (as defined herein) thereof, it is mutually agreed, for the equal and proportionate benefit of all Holders of the Securities, as follows:

## **ARTICLE I**

### **Definitions and Other Provisions of General Application**

**SECTION 1.1 Definitions.** For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires:

- (1) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (2) all other terms used herein which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (3) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles; and
- (4) the words "herein", "hereof" and "hereunder" and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or other subdivision.

"Act", when used with respect to any Holder, has the meaning specified in Section 1.04.

"Additional Amounts" has the meaning specified in Section 3.01(d).

"Additional Interest" has the meaning set forth in the Registration Rights Agreement.

"Additional Payments" means Compounded Interest and Additional Amounts, if any.

"Additional Sums" has the meaning specified in Section 3.01(d).

"Adjusted Reference Market Price" has the meaning specified in Section 13.07(a)(i).

"Adjusted Relevant Price" has the meaning specified in Section 13.07(a)(i).

"Administrative Action" has the meaning specified in the definition of "Tax Event" in this Section 1.01.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with respect to any specified Person means 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; the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Security Registrar, co-registrar, Paying Agent or Conversion Agent.

"Agent Member" means any member of, or participant in, the Depositary.

"Applicable Conversion Price" has the meaning specified in Section 13.01.

"Applicable Conversion Ratio" has the meaning specified in Section 13.01.

"Applicable Rate" means the rate at which the Securities accrue interest and the corresponding Trust Securities accrue distributions. From the date of original issuance of the Securities to (but excluding) the Reset Date, the Applicable Rate shall be 5.50% per annum (the "Initial Rate"). Beginning with and after the Reset Date, the Applicable Rate shall be the Term Rate (as defined herein). In the event of a Registration Default, the Applicable Rate shall increase as set forth in Section 10.07 hereof.

"Board of Directors" means either the board of directors of the Company or any duly authorized committee of that board.

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

"Business Day" means any day other than a Saturday or a Sunday, or a day on which banking institutions in The City of New York are authorized or required by law or executive order to remain closed, or a day on which the corporate trust office of the Property Trustee or the Trustee is closed for business.

"Closing Price" has the meaning specified in Section 13.07(b).

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Exchange Act, or, if at any time after the execution of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body performing such duties at such time.

"Common Securities" has the meaning specified in the Second Recital to this Indenture.

"Common Securities Guarantee" means the Common Securities Guarantee Agreement dated of even date herewith delivered by the Company for the benefit of the holders of the Common Securities from time to time.

"Common Stock" includes any stock of any class of the Company which has no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which is not subject to redemption by the Company. However, subject to the provisions of Article XIII, shares issuable on conversion of Securities shall include only shares of the class designated as the Common Stock, par value \$.001 per share, of the Company at the date of this Indenture or shares of any class or classes resulting from any reclassification or reclassifications thereof and which have no preference in respect of dividends or of amounts payable in the event of any voluntary or involuntary liquidation, dissolution or winding up of the Company and which are not subject to redemption by the Company; provided, that if at any time there shall be more than one such resulting class, the shares of each such class then so issuable on conversion shall be substantially in the proportion which the total number of shares of such class resulting from all such reclassifications bears to the total number of shares of all such classes resulting from all such reclassifications.

"Common Stock Fundamental Change" has the meaning specified in Section 13.07(b).

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

"Company Request" or "Company Order" means a written request or order signed in the name of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or a Vice President, and by its Treasurer, an Assistant Treasurer, its Secretary or an Assistant Secretary, and delivered to the Trustee.

"Company Transaction" has the meaning specified in Section 13.04.

"Compounded Interest" has the meaning specified in Section 3.13.

"Conversion Agent" means the Person appointed to act on behalf of the Holders of Preferred Securities in effecting the conversion of Preferred Securities as and in the manner set forth in the Declaration and Section 13.02 hereof.

"Conversion Date" has the meaning specified in Section 13.02.

"Convertible Remarketing" means the remarketing of the Preferred Securities in the Remarketing as securities which will be convertible into Common Stock.

"Corporate Trust Office" means the principal office of the Trustee in New York, New York, at which at any particular time its corporate trust business shall be administered and which at the date of this Indenture is 101 Barclay Street, Floor 21 West, New York, New York 10286.

"Declaration" has the meaning specified in the First Recital to this Indenture.

"Debt" means (i) the principal of and premium and interest, if any, on indebtedness for money borrowed, (ii) purchase money and similar obligations, (iii) obligations under capital leases, (iv) guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the Company is responsible for the payment of such indebtedness of others, (v) renewals, extensions and refunding of any such indebtedness, (vi) interest or obligations in respect of any such indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings and (vii) net payment obligations associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts and similar arrangements.

"Defaulted Interest" has the meaning specified in Section 3.08.

"Deferral Notice" has the meaning specified in Section 3.13.

"Deferral Period" has the meaning specified in Section 3.13.

"Delaware Trustee" has the meaning given it in the First Recital to this Indenture.

"Depository" means The Depository Trust Company, or any successor thereto.

"Direct Action" has the meaning specified in Section 5.16.

"Dissolution Tax Opinion" has the meaning specified in the definition of "Tax Event" in this Section 1.01.

"Entitlement Date" has the meaning specified in Section 13.07(b).

"Event of Default" has the meaning specified in Section 5.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"ex" date has the meaning specified in Section 13.03(vii).

"Expiration Date" has the meaning specified in Section 1.04(d).

"Expiration Time" has the meaning specified in Section 13.03(vi).

"Failed Final Remarketing" has the meaning specified in Section 2(d) of the Remarketing Agreement.

"Fundamental Change" has the meaning specified in Section 13.07(b).

"Global Security" means a Security issued in the form prescribed in Section 2.03, issued to the Depository or its nominee, and registered in the name of the Depository or its nominee.

"Guarantee" has the meaning specified in the Fourth Recital to this Indenture.

"Holder" means a Person in whose name a Security is registered in the Security Register or a Person in whose name a Preferred Security is registered in the List of Holders, as the case may be.

"Indenture" means this instrument as originally executed or as it may from time to time be supplemented or amended by one or more indentures supplemental hereto entered into pursuant to the applicable provisions hereof, including, for all purposes of this instrument and any such supplemental indenture, the provisions of the Trust Indenture Act that are deemed to be a part of and govern this instrument and any such supplemental indenture, respectively.

"Initial Conversion Price" has the meaning specified in Section 13.01.

"Initial Conversion Ratio" has the meaning specified in Section 13.01.

"Initial Purchasers," with respect to the Preferred Securities, means Credit Suisse First Boston Corporation and ING Barings LLC.

"Initial Rate" has the meaning specified in the definition of "Applicable Rate" in this Section 1.01.

"Initial Redemption Price" has the meaning specified in Section 11.01.

"Interest Payment Date" has the meaning specified in Section 3.01(b).

"Investment Company Event" has the meaning specified in the Declaration.

"Issuer Trustees" has the meaning specific in the First Recital to this Indenture.

"List of Holders" has the meaning specified in the Declaration.

"Maturity", when used with respect to any Security, means the date on which the principal of such Security becomes due and payable as therein or herein provided, whether at the Stated Maturity or by declaration of acceleration, call for redemption or otherwise.

"90 Day Period" has the meaning specified in Section 11.03.

"NNM" means the National Market System of the National Association of Securities Dealers, Inc., or any successor national automated interdealer quotation system.

"Non-Stock Fundamental Change" has the meaning specified in Section 13.07(b).

"No Recognition Opinion" means the receipt by the Property Trustee of an opinion of a nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters, which opinion may rely on published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any income, gain or loss for United States federal

income tax purposes as a result of the liquidation of the Trust and the distribution of the Securities to the Holders of the Preferred Securities.

"Notice of Conversion" means the notice to be given by a Holder of Preferred Securities to the Conversion Agent directing the Conversion Agent to exchange such Preferred Securities for Securities and to convert such Securities into Common Stock on behalf of such Holder.

"Obligations" means all obligations for principal, premium, interest, penalties, fees, indemnifications, reimbursements, damages and other liabilities payable under, or with respect to, any Debt (including claims for rescission).

"Officers' Certificate" means a certificate signed by the Chairman of the Board, the Vice Chairman of the Board, the President or a Vice President, and by the Treasurer, an Assistant Treasurer, the Secretary or an Assistant Secretary, of the Company, and delivered to the Trustee. One of the officers signing an Officers' Certificate given pursuant to Section 10.04 shall be the principal executive, financial or accounting officer of the Company.

"OID" means original issue discount.

"Opinion of Counsel" means a written opinion of counsel, who may be counsel for the Company, and who shall be reasonably acceptable to the Trustee.

"Optional Redemption" has the meaning specified in Section 11.01(a).

"Optional Redemption Date" means the date which is not less than 20, nor more than 60, days following the date on which the Optional Redemption Notice is sent, as specified in the Optional Redemption Notice (or if such date is not a Business Day, the next succeeding Business Day).

"Optional Redemption Notice" has the meaning specified in Section 11.01(b).

"Optional Redemption Price" has the meaning specified in Section 11.01(a).

"Optional Redemption Ratio" has the meaning specified in Section 13.07(a)(i).

"Outstanding", when used with respect to Securities, means, as of the date of determination, all Securities theretofore authenticated and delivered under this

Indenture, except: (i) Securities theretofore canceled by the Trustee or delivered to the Trustee for cancellation; (ii) Securities for whose payment or redemption money in the necessary amount has been theretofore deposited with the Trustee or any Paying Agent (other than the Company) in trust or set aside and segregated in trust by the Company (if the Company shall act as its own Paying Agent) for the Holders of such Securities; provided, that if such Securities are to be redeemed, notice of such redemption has been duly given pursuant to this Indenture or provision therefor satisfactory to the Trustee has been made; and

(iii) Securities that have been paid pursuant to Article XI, converted into Common Stock pursuant to Section 13.01, or in exchange for or in lieu of which other Securities have been authenticated and delivered pursuant to this Indenture, other than any such Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it that such Securities are held by a bona fide purchaser in whose hands such Securities are valid obligations of the Company.

"Paying Agent" means any Person authorized by the Company to pay the principal of or interest on any Securities on behalf of the Company.

"Payment Resumption Date" has the meaning specified in Section 3.13(b).

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

"Predecessor Security" of any particular Security means every previous Security evidencing all or a portion of the same debt as that evidenced by such particular Security; and, for the purposes of this definition, any Security authenticated and delivered under Section 3.07 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Security shall be deemed to evidence the same debt as the mutilated, destroyed, lost or stolen Security.

"Preferred Securities" has the meaning specified in the First Recital to this Indenture.

"Primary Treasury Dealer" has the meaning specified in the Remarketing Agreement.

"Property Trustee" has the meaning specified in the First Recital to this Indenture.

"Purchase Agreement" has the meaning specified in the First Recital to this Indenture.

"Purchased Shares" has the meaning specified in Section 13.03(vi).

"Purchaser Stock Price" has the meaning specified in Section 13.07(b).

"Redemption Date", when used with respect to any Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture, including without limitation, the Optional Redemption Date with respect to an Optional Redemption.

"Redemption Price", when used with respect to any Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture, including without limitation, the Optional Redemption Price with respect to an Optional Redemption. "Redemption Tax Opinion" means the receipt by the Property Trustee of an opinion of a nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that (a) the Trust would not be considered to be a grantor trust for United States federal income tax purposes or (b) the Company would be precluded from deducting the interest on the Securities for United States federal income tax purposes, even after the Trust was liquidated and the Securities were distributed to the Holders of the Preferred Securities.

"Reference Date" has the meaning specified in Section 13.03(iv).

"Reference Market Price" has the meaning specified in Section 13.07(b).

"Reference Treasury Dealer" has the meaning specified in the Remarketing Agreement.

"Reference Treasury Dealer Quotations" has the meaning specified in the Remarketing Agreement.

"Registrable Securities" has the meaning specified in Section 10.07.

"Registration Default" has the meaning set forth in the Registration Rights Agreement.

"Registration Rights Agreement" has the meaning specified in Section 10.07.

"Regular Record Date" has the meaning specified in Section 3.01(b).

"Relevant Price" has the meaning specified in Section 13.07(b).

"Remarketing" has the meaning specified in the Seventh Recital to this Indenture.

"Remarketing Agent" means an investment bank, broker, dealer, or other organization which, in the opinion of the Company and the Trust, is qualified to remarket the Preferred Securities substantially in accordance with the terms of the Remarketing Agreement. The initial Remarketing Agent shall be Credit Suisse First Boston Corporation. The term "Remarketing Agent" shall also include any successor Person appointed as such by the Company and the Trust.

"Remarketing Agreement" means the Remarketing Agreement with the Remarketing Agent dated the date hereof substantially in the form set forth in Exhibit B to this Indenture and any substantially similar agreement entered into by the Company with any successor Remarketing Agent.

"Remarketing Notice" shall have the meaning specified in the Remarketing Agreement.

"Reset Date" means any date that is (i) not later than February 1, 2005 (or, if such day is not a Business Day, the next succeeding Business Day), and

(ii) not earlier than 70 business days prior to February 1, 2005, as may be determined by the Remarketing Agent, in its sole discretion, for settlement of a successful remarketing.

"Responsible Officer", when used with respect to the Trustee, means the chairman or any vice-chairman of the board of directors, the chairman or any vice-chairman of the executive committee of the board of directors, the chairman of the trust committee, the president, any vice president, any assistant vice president, the treasurer, any assistant treasurer, any trust officer or assistant trust officer, the controller or any assistant controller or any other officer of the Trustee customarily performing functions similar to those performed by any of the above designated officers, and having direct responsibility for the administration of this Indenture, and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of his knowledge of and familiarity with the particular subject.

"Restricted Preferred Securities" means each Preferred Security required to bear the restricted securities legend required by Section 9.02(h) of the Declaration.

"Restricted Securities" means each Security required to bear a Restricted Securities Legend pursuant to Section 2.02 hereof.

"Restricted Securities Legend" has the meaning specified in Section 2.02.

"Securities" has the meaning specified in the Fifth Recital to this Indenture.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Security Register" and "Security Registrar" have the respective meanings specified in Section 3.06(a).

"Senior Debt" means (i) all indebtedness of the Company evidenced by securities, debentures, bonds or other similar instruments issued by the Company, (ii) all obligations to make net payment pursuant to the terms of financial instruments, such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity futures contracts and commodity options contracts, and (c) similar financial instruments; except, in the case of (i) above, such indebtedness and obligations that are expressly stated to rank junior in right of payment to, or pari passu in right of payment with, the Securities, (iii) and indebtedness or obligations of others of the kind described in (i) and (ii) above for the payment of which the Company is responsible or liable as guarantor or otherwise and (iv) deferrals, renewals or extensions of any such Senior Debt; provided, however, that Senior Debt shall not be deemed to include (a) any Debt of the Company which, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, as amended, or any succession statute thereto, was without recourse to the Company, (b) trade accounts payable and accrued liabilities arising in the ordinary course of business, which will not constitute Debt for purposes of the Preferred Securities (c) any Debt of the Company to any of its subsidiaries, except to the extent incurred for the benefit of third parties, (d) Debt to any employee of the Company and (e) Debt that expressly provides that it is not senior in right of payment to the Securities.

"Shelf Registration Statement" has the meaning specified in the Registration Rights Agreement.

"Significant Subsidiary" of any Person means a Subsidiary of such Person meeting the requirements set forth in Rule 1-02(w) of Regulation S-X of the Securities Act.

"Special Record Date" for the payment of any Defaulted Interest means a date fixed by the Trustee pursuant to Section 3.08.

"Stated Maturity", when used with respect to any Security or any installment of principal thereof or interest or Additional Payments thereon, means the date specified in such Security as the fixed date on which the principal, together with any accrued and unpaid interest (and Additional Payments, if any), of such Security or such installment of interest or Additional Payments is due and payable.

"Subsidiary" of any Person means (i) a corporation more than 50% of the outstanding Voting Stock of which is owned, directly or indirectly, by such Person or by one or more other Subsidiaries of such Person or by such Person and one or more Subsidiaries thereof or (ii) any other Person (other than a corporation) in which such Person, or one or more other Subsidiaries of such Person or such Person and one or more other Subsidiaries thereof, directly or indirectly, has at least a majority ownership and power to direct the policies, management and affairs thereof.

"Tax Event" means the receipt by the Property Trustee of an opinion of a nationally recognized independent tax counsel to the Company (reasonably acceptable to the Issuer Trustees) experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (a) any amendment to or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (b) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action") or (c) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced, in each case, on or after the date of the date of original issuance of the Securities or the issue date of the Preferred Securities issued by the Trust, there is more than an insubstantial risk that (x) if the Securities are held by the Property Trustee, (i) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to interest accrued or received on the Securities or subject to more than a de minimis amount of other taxes, duties or other governmental charges as determined by such counsel, or (ii) any portion of interest payable by the Company to the Trust (or OID accruing) on the Securities is not, or within 90 days of the date of such opinion will not be, deductible by the Company in whole or in part for United States federal income tax purposes or  
(y) with respect to Securities which are no longer held by the Property Trustee, any portion of interest payable by the Company (or OID accruing) on the Securities is not, or within 90 days of

the date of such opinion will not be, deductible by the Company in whole or in part for United States federal income tax purposes.

"Tender Notification Date" means a Business Day no earlier than 10 Business Days following the date of the Remarketing Notice, or such shorter period as agreed to by the Remarketing Agent.

"Term Call Protections" means the price, manner and time, if any, at which the Securities may be redeemed at the option of the Company after the Reset Date. The Term Call Protections, if any, will be established in connection with the Remarketing.

"Term Provisions" shall have the meaning specified in the Remarketing Agreement.

"Term Rate" means the rate established by the Remarketing Agent in connection with the Remarketing at which distributions shall accrue on the Securities from and after the Reset Date.

"Term Redemption Price" has the meaning specified in Section 11.01(a).

"Trading Day" has the meaning specified in Section 13.07(b).

"Trust" has the meaning specified in the First Recital to this Indenture.

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

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in force at the date as of which this Indenture was executed; provided, however, that in the event the Trust Indenture Act of 1939 is amended after such date, "Trust Indenture Act" means, to the extent required by any such amendment, the Trust Indenture Act of 1939 as so amended.

"Trust Securities" means Common Securities and Preferred Securities.

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

"Voting Stock" of any Person means capital stock of such Person which ordinarily has voting power for the election of directors (or Persons performing similar functions) of such Person, whether at all times or only so long as no senior class of securities has such voting power by reason of any contingency.

**SECTION 1.2 Compliance Certificates and Opinions.** Upon any application or request by the Company to the Trustee to take any action under any provision of this Indenture, the Company shall furnish to the Trustee such certificates and opinions as may be required under the Trust Indenture Act or reasonably requested by the Trustee in connection with such application or request. Each such certificate or opinion shall be given in the form of an Officers' Certificate, if to be given by an officer of the Company, or an Opinion of Counsel, if to be given by counsel, and shall comply with the applicable requirements of the Trust Indenture Act and any other applicable requirement set forth in this Indenture.

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture 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 or caused to be 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 Trustee.** In any case where several matters are required to be certified by, or covered by an opinion of, any specified Person, it is not necessary that all such matters be certified by, or covered by the opinion of, only one such Person, or that they be so certified or covered by only one document, but one such Person may certify or give an opinion with respect to some matters and one or more other such Persons as to other matters, and any such Person may certify or give an opinion as to such matters in one or several documents.

Any certificate or opinion of an officer of the Company may be based, insofar as it relates to legal matters, upon a certificate or opinion of, or representations by, counsel, unless such officer knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to the matters upon which 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 a certificate or opinion of, or representations by, an officer or officers of the Company stating that the information with respect to such factual matters is in the possession of the Company, unless such counsel knows, or in the exercise of reasonable care should know, that the certificate or opinion or representations with respect to such matters are erroneous.

Where any Person is required to make, give or execute two or more applications, requests, consents, certificates, statements, opinions or other instruments under this Indenture, they may, but need not, be consolidated and form one instrument.

**SECTION 1.4** Acts of Holders; Record Dates. (a) Any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be given to or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing; and, except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments is or are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments. Proof of execution of any such instrument or of a writing appointing any such agent shall be sufficient for any purpose of this Indenture and (subject to Section 6.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section.

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

(c) The Company may, in the circumstances permitted by the Trust Indenture Act, fix any day as the record date for the purpose of determining the Holders of Outstanding Securities entitled to give, make or take any request, demand,

authorization, direction, notice, consent, waiver or other action, or to vote on any action, authorized or permitted to be given or taken by Holders. If not set by the Company prior to the first solicitation of a Holder made by any Person in respect of any such action, or, in the case of any such vote, prior to such vote, the record date for any such action or vote shall be the 30th day (or, if later, the date of the most recent list of Holders required to be provided pursuant to Section 7.01) prior to such first solicitation or vote, as the case may be. With regard to any record date, only the Holders on such date (or their duly designated proxies) shall be entitled to give or take, or vote on, the relevant action.

(d) The Trustee may set any day as a record date for the purpose of determining the Holders of Outstanding Securities entitled to join in the giving or making of (i) any notice of default, (ii) any declaration of acceleration referred to in Section 5.02, (iii) any request to institute proceedings referred to in Section 5.07(2) or (iv) any direction referred to in Section 5.12. If any record date is set pursuant to this paragraph, the Holders of Outstanding Securities on such record date, and no other Holders, shall be entitled to join in such notice, declaration, request or direction, whether or not such Holders remain Holders after such record date; provided that no such action shall be effective hereunder unless taken on or prior to the date set by the Trustee by which any such determination shall be made (the "Expiration Date") by Holders of the requisite principal amount of Outstanding Securities on such record date. Nothing in this paragraph shall be construed to prevent the Trustee from setting a new record date for any action for which a record date has previously been set pursuant to this paragraph (whereupon the record date previously set shall automatically and with no action by any Person be canceled and of no effect), and nothing in this paragraph shall be construed to render ineffective any action taken by Holders of the requisite principal amount of Outstanding Securities of the date such action is taken. Promptly after any record date is set pursuant to this paragraph, the Trustee, at the Company's expense, shall cause notice of such record date, the proposed action by Holders and the applicable Expiration Date to be given to the Company in writing and to each Holder of Securities in the manner set forth in Section 1.06.

(e) The ownership of Securities shall be proved by the Security Register.

(f) Any request, demand, authorization, direction, notice, consent, waiver or other Act of the Holder of any Security shall bind every future Holder of the same Security and the Holder of every Security issued upon the registration of transfer thereof or in exchange therefor or in lieu thereof in respect of anything done, omitted or suffered to be done by the Trustee or the Company in reliance thereon, whether or not notation of such action is made upon such Security.

(g) Without limiting the foregoing, a Holder entitled hereunder to give or take any such action with regard to any particular Security may do so with regard to all or

any part of the principal amount of such Security or by one or more duly appointed agents each of which may do so pursuant to such appointment with regard to all or any different part of such principal amount.

SECTION 1.5 Notices, Etc., to Trustee and the Company. Any request, demand, authorization, direction, notice, consent, waiver or Act of Holders or other document provided or permitted by this Indenture to be made upon, given or furnished to, or filed with,

(1) the Trustee by any Holder or by the Company shall be sufficient for every purpose hereunder if made, given, furnished or filed in writing to or with the Trustee at its Corporate Trust Office, Attention: Corporate Trust Administration, or

(2) the Company by the Trustee or by any Holder shall be sufficient for every purpose hereunder (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to the Company addressed to it at the address of its principal office specified in the first paragraph of this instrument or at any other address previously furnished in writing to the Trustee by the Company.

SECTION 1.6 Notice to Holders; Waiver. Where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given (unless otherwise herein expressly provided) if in writing and mailed, first-class postage prepaid, to each Holder affected by such event, at such Holder's address as it appears in the Security Register, not later than the latest date (if any), and not earlier than the earliest date (if any), prescribed for the giving of such notice. In any case where notice to Holders is given by mail, neither the failure to mail such notice, nor any defect in any notice so mailed, to any particular Holder shall affect the sufficiency of such notice with respect to other Holders. Any notice when mailed to a Holder in the aforesaid manner shall be conclusively deemed to have been received by such Holder whether or not actually received by such Holder. Where this Indenture provides for notice in any manner, such notice may be waived in writing by the Person entitled to receive such notice, either before or after the event, and such waiver shall be the equivalent of such notice. Waivers of notice by Holders shall be filed with the Trustee, but such filing shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder.

**SECTION 1.7 Conflict with Trust Indenture Act.** This Indenture is, or will be upon qualification under the Trust Indenture Act, subject to the provisions of the Trust Indenture Act and if any provision hereof limits, qualifies or conflicts with a provision of the Trust Indenture Act that is required under such Act to be a part of and govern this Indenture, the latter provision shall control. Until such time as this Indenture is qualified under the Trust Indenture Act, the parties hereto have agreed that the provisions of Sections 310-317, inclusive, of the Trust Indenture Act shall be incorporated herein by reference, subject to the provisions of this Indenture. If any provision of this Indenture 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 1.8 Effect of Headings and Table of Contents.** The Article and Section headings herein and the Table of Contents are for convenience only and shall not affect the construction hereof.

**SECTION 1.9 Successors and Assigns.** All covenants and agreements in this Indenture by the Company shall bind its successors and assigns, whether so expressed or not.

**SECTION 1.10 Separability Clause.** In case any provision in this Indenture or in the Securities shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

**SECTION 1.11 Benefits of Indenture.** Nothing in this Indenture or in the Securities, express or implied, shall give to any Person, other than the parties hereto and their successors hereunder, the holders of Senior Debt, the Holders of Preferred Securities (to the extent provided herein) and the Holders of Securities, any benefit or any legal or equitable right, remedy or claim under this Indenture.

**SECTION 1.12 Governing Law.** THIS INDENTURE AND THE SECURITIES 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.

**SECTION 1.13 Legal Holidays.** In any case where any Redemption Date or Stated Maturity of any Security or the last date on which a Holder has the right to convert his Securities shall not be a Business Day, then  
(notwithstanding any other provision of this Indenture or of the Securities)  
payment of interest (and Additional Payments, if any) or principal or conversion of the Securities need not be made on such date, but may be made on the next succeeding Business Day (except that, if such Business

Day is in the next succeeding calendar year, such Redemption Date or Stated Maturity, as the case may be, shall be the immediately preceding Business Day) with the same force and effect as if made on the Redemption Date or at the Stated Maturity or on such last day for conversion, provided that no interest shall accrue for the period from and after such Redemption Date or Stated Maturity, as the case may be.

## **ARTICLE II**

### **Security Forms**

**SECTION 1.14 Forms Generally.** The Securities and the Trustee's certificates of authentication shall be substantially in the form of Exhibit A which is hereby incorporated in and expressly made a part of this Indenture. The Securities may have notations, legends or endorsements required by law, stock exchange rule, agreements to which the Company is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Company). The Company shall furnish any such legend not contained in Exhibit A to the Trustee in writing. Each Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Exhibit A are part of the terms of this Indenture and to the extent applicable, the Company and the Trustee, by their execution and delivery of this Indenture, expressly agree to such terms and provisions and to be bound thereby.

The definitive Securities shall be typewritten or printed, lithographed or engraved or produced by any combination of these methods on steel engraved borders or may be produced in any other manner permitted by the rules of any securities exchange on which the Securities may be listed, all as determined by the officers executing such Securities, as evidenced by their execution of such Securities.

**SECTION 1.15 Initial Issuance to Property Trustee.** The Securities initially issued to the Property Trustee of the Trust shall be in the form of one or more individual certificates in definitive, fully registered form without coupons and shall bear the following legend (the "Restricted Securities Legend") unless the Company determines otherwise in accordance with applicable law:

THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY AND ANY COMMON STOCK OF THE COMPANY ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS

SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY 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 SECURITY AGREES FOR THE BENEFIT OF THE ISSUER AND THE COMPANY THAT (A) THIS SECURITY AND ANY COMMON STOCK OF THE COMPANY ISSUABLE UPON CONVERSION THEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (i) 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) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iii) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iii) 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 SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.

SECTION 1.16 Additional Provisions Required in Global Security. Any Global Security issued hereunder shall, in addition to the provisions contained in section 2.02, bear a legend in substantially the following form:

"THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITORY") OR A NOMINEE OF THE DEPOSITORY. THIS SECURITY IS EXCHANGEABLE FOR SECURITIES REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK) TO CALPINE CORPORATION OR ITS AGENT FOR

REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN."

SECTION 1.17 Issuance of Global Securities to Holders. The Securities will be represented by one or more Global Securities registered in the name of the Depository or its nominee if, and only if, the Securities are distributed to the holders of the Trust Securities. Until such time, the Securities shall be registered in the name of and held by the Property Trustee. Securities distributed to holders of book-entry Trust Securities shall be distributed in the form of one or more Global Securities registered in the name of the Depository or its nominee, and deposited with the Security Registrar, as custodian for such Depository, or held by such Depository for credit by the Depository to the respective accounts of the beneficial owners of the Securities represented thereby (or such other accounts as they may direct). Securities distributed to holders of Trust Securities other than book-entry Trust Securities shall not be issued in the form of a Global Security or any other form intended to facilitate book-entry trading in beneficial interests in such Securities.

## **ARTICLE III**

### **The Securities**

SECTION 1.18 Title and Terms. (a) The aggregate principal amount of Securities that may be authenticated and delivered under this Indenture is limited to the sum of (a) \$371,134,100 plus (b) such aggregate principal amount (which may not exceed \$61,855,700 aggregate principal amount of Securities, if any, as shall be purchased by the Trust pursuant to an option granted by the Trust in accordance with the terms and provisions of the Purchase Agreement, except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Securities pursuant to Section 3.04, 3.05, 3.06, 3.07, 9.06, 11.09 or 13.01.

(b) The Securities shall be known and designated as the "Convertible Subordinated Debentures Due 2030" of the Company. Their Stated Maturity shall be February 1, 2030, and they shall bear interest at the Applicable Rate, from January 31, 2030, or from the most recent Interest Payment Date (as defined below) to which interest has been paid or duly provided for, as the case may be, payable quarterly (subject to

deferral as set forth herein), in arrears, on February 1, May 1, August 1 and November 1 (each an "Interest Payment Date") of each year, commencing May 1, 2000 until the principal thereof is paid or made available for payment, and they shall be paid to the Person in whose name the Security is registered at the close of business on the regular record date for such interest installment, which shall be the close of business on the fifteenth day of each January, April, July and October next preceding the applicable Interest Payment Date (the "Regular Record Date"). If the Reset Date is prior to the Regular Record Date for the immediately following Interest Payment Date, then interest and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Interest Payment Date shall be paid on such Interest Payment Date to the person in whose name each Security is registered on the relevant Regular Record Date, subject to the right of the Company to initiate a Deferral Period. If the Reset Date is on or after the Regular Record Date for the immediately following Interest Payment Date, then (1) interest and Additional Amounts, if any, accrued from and after the Regular Record Date to but excluding the Reset Date shall be paid on the immediately following Interest Payment Date to the person in whose name each Security is registered on the relevant Regular Record Date and (2) interest and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Interest Payment Date shall be paid on the second Interest Payment Date immediately following the Reset Date to the person in whose name each Security is registered on the relevant Regular Record Date for such second Interest Payment Date, subject in each case to the right of the Company to initiate a Deferral Period. Interest will compound quarterly and will accrue at the Applicable Rate on any interest installment in arrears for more than one quarter or during an extension of an interest payment period as set forth in Section 3.13 hereof.

(c) The amount of interest payable for any period will be computed on the basis of a 360-day year of twelve 30-day months. Except as provided in the following sentence, the amount of interest payable for any period shorter than a full quarterly period for which interest is computed, will be computed on the basis of the actual number of days elapsed in such a 30-day month. In the event that any date on which interest is payable on the Securities is not a Business Day, then payment of interest payable on such date will be made on the next succeeding day which is a Business Day (and without any interest or other payment in respect of any such delay), except that, if such Business Day is in the next succeeding calendar year, such payment shall be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) If at any time (including upon the occurrence of a Tax Event) while the Property Trustee is the Holder of all the Securities, the Trust or the Property Trustee is required to pay any taxes, duties, assessments or governmental charges of whatever nature ("Additional Sums") (other than withholding taxes) imposed by the United States, or any other taxing authority, then, in any case, subject to the provisions of Section 11.03 hereof,

the Company will pay as additional amounts on the Securities held by the Property Trustee, such additional amounts ("Additional Amounts") as shall be required so that the net amounts received and retained by the Trust and the Property Trustee after paying such taxes, duties, assessments or other governmental charges will be equal to the amounts the Trust and the Property Trustee would have received had no such taxes, duties, assessments or other governmental charges been imposed.

(e) The principal of and interest (and Additional Payments, if any) on the Securities shall be payable at the office or agency of the Company in New York, New York maintained for such purpose and at any other office or agency maintained by the Company for such purpose in such coin or currency of the United States of America as at the time of payment is legal tender for payment of public and private debts; provided, however, that at any time that the Property Trustee is not the sole holder of the Securities, payment of interest may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer.

(f) The Securities shall be redeemable as provided in Article XI hereof.

(g) The Securities shall be subordinated in right of payment to Senior Debt as provided in Article XII hereof.

(h) The Securities shall be convertible as provided in Article XIII hereof.

(i) The Securities shall rank pari passu with the Company's Convertible Subordinated Debentures due 2029.

SECTION 1.19 Denominations. The Securities shall be issuable only in registered form without coupons and only in denominations of \$50 and integral multiples thereof.

SECTION 1.20 Execution, Authentication, Delivery and Dating. The Securities shall be executed on behalf of the Company by its Chairman of the Board, its Vice Chairman of the Board, its President or one of its Vice Presidents. The signature of any of these officers on the Securities may be manual or facsimile.

Securities bearing the manual or facsimile signatures of individuals who were at any time the proper officers of the Company shall bind the Company, notwithstanding that such individuals or any of them have ceased to hold such offices prior to the authentication and delivery of such Securities or did not hold such offices at the date of such Securities.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Securities executed by the Company to the Trustee for authentication, together with a Company Order for the authentication and delivery of such Securities; and the Trustee in accordance with such Company Order shall authenticate and make available for delivery such Securities as in this Indenture provided and not otherwise.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, begin advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

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

**SECTION 1.21 Temporary Securities.** Pending the preparation of definitive Securities complying with the requirements of Section 2.01, if necessary, the Company may execute, and upon Company Order the Trustee shall authenticate and make available for delivery, temporary Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Securities may determine, as evidenced by their execution of such Securities.

If temporary Securities are issued, the Company will cause definitive Securities to be prepared without unreasonable delay. After the preparation of definitive Securities, the temporary Securities shall be exchangeable for definitive Securities upon surrender of the temporary Securities at any office or agency of the Company designated pursuant to Section 10.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Securities the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a like principal amount of definitive Securities of authorized denominations. Until so exchanged the temporary Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Securities.

**SECTION 1.22 Global Securities.** (a) Each Global Security issued under this Indenture shall be registered in the name of the Depository designated by the

Company for such Global Security or a nominee thereof and delivered to such Depositary or a nominee thereof or custodian therefor, and each such Global Security shall constitute a single Security for all purposes of this Indenture.

(b) Notwithstanding any other provision in this Indenture, no Global Security may be exchanged in whole or in part for Securities registered, and no transfer of a Global Security in whole or in part may be registered, in the name of any Person other than the Depositary for such Global Security or a nominee thereof unless (i) such Depositary advises the Trustee in writing that such Depositary is no longer willing or able to continue as a Depositary with respect to such Global Security, and no successor depositary shall have been appointed, or if at any time the Depositary ceases to be a "clearing agency" registered under the Exchange Act, at a time when the Depositary is required to be so registered to act as such depositary, (ii) the Company in its sole discretion determines that such Global Security shall be so exchangeable or (iii) there shall have occurred and be continuing an Event of Default.

(c) If any Global Security is to be exchanged for other Securities or canceled in whole, it shall be surrendered by or on behalf of the Depositary or its nominee to the Security Registrar for exchange or cancellation as provided in this Article III. If any Global Security is to be exchanged for other Securities or canceled in part, or if another Security is to be exchanged in whole or in part for a beneficial interest in any Global Security, then either (i) such Global Security shall be so surrendered for exchange or cancellation as provided in this Article III or (ii) the principal amount thereof shall be reduced or increased by an amount equal to the portion thereof to be so exchanged or canceled, or equal to the principal amount of such other Security to be so exchanged for a beneficial interest therein, as the case may be, by means of an appropriate adjustment made on the records of the Security Registrar, whereupon the Trustee shall instruct the Depositary or its authorized representative to make a corresponding adjustment to its records. Upon any such surrender or adjustment of a Global Security by the Depositary, accompanied by registration instructions and, to the extent required by Section 3.06, a certificate bearing the Restricted Securities Legend, the Trustee shall, subject to Section 3.05(b) and as otherwise provided in this Article III, authenticate and make available for delivery any Securities issuable in exchange for such Global Security (or any portion thereof) in accordance with the instructions of the Depositary. The Trustee shall not be liable for any delay in delivery of such instructions and may conclusively rely on, and shall be fully protected in relying on, such instructions.

(d) The Depositary or its nominee, as registered owner of a Global Security, shall be the Holder of such Global Security for all purposes under this Indenture and the Securities, and owners of beneficial interests in a Global Security shall hold such interest pursuant to the rules and procedures of the Depositary. Accordingly, any such owner's beneficial interests in a Global Security shall be shown only on, and the transfer

of such interest shall be effected only through, records maintained by the Depositary or its nominee or its Agent Members. Neither the Trustee nor the Security Registrar shall have any liability in respect of any transfers effected by the Depositary.

(e) The rights of the beneficial interests in a Global Security shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such owners and the Depositary and/or its Agent Members.

**SECTION 1.23 Registration, Transfer and Exchange Generally; Certain Transfers and Exchanges.** (a) The Company shall cause to be kept at the Corporate Trust Office of the Trustee a register (the register maintained in such office and in any other office or agency designated pursuant to Section 10.02 being herein sometimes collectively referred to as the "Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Securities and of transfers of Securities. The Trustee is hereby appointed "Security Registrar" for the purpose of registering Securities and transfers of Securities as herein provided.

Upon surrender for registration of transfer of any Security at an office or agency of the Company designated pursuant to Section 10.02 for such purpose, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture.

At the option of the Holder, Securities may be exchanged for other Securities of any authorized denominations and of a like aggregate principal amount and bearing such restrictive legends as may be required by this Indenture, upon surrender of the Securities to be exchanged at such office or agency. Whenever any Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and make available for delivery, the Securities which the Holder making the exchange is entitled to receive.

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

Every Security presented or surrendered for registration of transfer or for exchange shall (if so required by the Company or the Trustee) be duly endorsed, or be accompanied by a written instrument of transfer in form satisfactory to the Company and

the Security Registrar duly executed, by the Holder thereof or his attorney duly authorized in writing.

No service charge shall be made for any registration of transfer or exchange of Securities, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Securities, other than exchanges pursuant to Section 3.04, 3.05, 9.06, 11.09 or 13.01 not involving any transfer.

Neither the Company nor the Trustee shall be required (i) in the case of a partial redemption of the Securities, to issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before the day of the mailing of a notice of redemption of Securities selected for redemption under Section 11.05 and ending at the close of business on the day of such mailing or (ii) to register the transfer of or exchange any Security so selected for redemption in whole or in part, except the unredeemed portion of any Security being redeemed in part.

(b) Transfer and Exchange Procedures and Restrictions. The Securities may not be transferred except in compliance with the Restricted Securities Legend unless otherwise determined by the Company in accordance with applicable law. Upon any distribution of the Securities to the holders of the Trust Securities in accordance with the Declaration, the Company and the Trustee shall enter into a supplemental indenture pursuant to Section 9.01(6) to provide for transfer procedures and restrictions with respect to the Securities substantially similar to those contained in the Declaration to the extent applicable in the circumstances existing at the time of such distribution. Notwithstanding any other provision of the Indenture, transfers and exchanges of Securities and beneficial interests in a Global Security of the kinds specified in this Section 3.06(b) shall be made only in accordance with this Section 3.06(b).

(1) Non-Global Security to Global Security. If the Holder of a Security (other than a Global Security) wishes at any time to transfer all or any portion of such Security to a Person who wishes to take delivery thereof in the form of a beneficial interest in a Global Security, such transfer may be effected only in accordance with the provisions of this clause (b)(1) and subject to the rules and procedures of the Depositary. Upon receipt by the Security Registrar of (A) such Security as provided in Section 3.06(a) and instructions satisfactory to the Security Registrar directing that a beneficial interest in the Global Security in a specified principal amount not greater than the principal amount of such Security be credited to a specified Agent Member's account and (B) a Securities Certificate duly executed by such Holder or such Holder's attorney duly authorized in writing, then the Security Registrar shall cancel such Security (and issue a new Security in respect of the untransferred portion thereof) as provided in Section 3.06(a) and increase the aggregate principal amount of the Global Security by the specified principal amount as provided in Section 3.05(c).

(2) Non-Global Security to Non-Global Security. A Security that is not a Global Security may be transferred, in whole or in part, to a Person who takes delivery in the form of another Security that is not a Global Security as provided in Section 3.06(a) provided, that if such Security to be transferred in whole or in part is a Restricted Security, the Security Registrar shall have received the assignment form attached to the Security duly executed by the transferor Holder or such Holder's attorney duly authorized in writing.

(3) Exchanges Between Global Security and Non-Global Security. A beneficial interest in a Global Security may be exchanged for a Security that is not a Global Security as provided in Section 3.05.

(c) Restricted Securities Legend. (1) Except as set forth below, all Securities shall bear the Restricted Securities Legend set forth in Section 2.02.

(2) Subject to the following clauses of this Section 3.06(c), a Security (other than a Global Security) that does not bear a Restricted Securities Legend may be issued in exchange for or in lieu of a Restricted Security or any portion thereof that bears such legend if, in the Company's judgment, placing such a legend upon such new Security is not necessary to ensure compliance with the registration requirements of the Securities Act, and the Trustee, at the written direction of the Company in the form of an Officers' Certificate, shall countersign and deliver such a new Security.

(3) Notwithstanding the foregoing provisions of this Section 3.06(c), a successor Security of a Security that does not bear a Restricted Securities Legend shall not bear such form of legend unless the Company has reasonable cause to believe that such successor Security is a "restricted security" within the meaning of Rule 144 under the Securities Act, in which case the Trustee, at the written direction of the Company in the form of an Officers' Certificate, shall countersign and deliver a new Security bearing a Restricted Securities Legend in exchange for such successor Security.

(4) Upon any sale or transfer of a Restricted Security (including any Restricted Security represented by a Global Security) pursuant to an effective registration statement under the Securities Act or pursuant to Rule 144 under the Securities Act after such registration ceases to be effective: (A) in the case of any Restricted Security that is a definitive Security, the Security Registrar shall permit the Holder thereof to exchange such Restricted Security for a definitive Security that does not bear the Restricted Securities Legend and rescind any restriction on the transfer of such Restricted Security; and (B) in the case of any Restricted Security that is represented by a Global Security, the Security Registrar shall permit the Holder of such Global Security to exchange such Global Security for another Global Security that does not bear the Restricted Securities Legend.

(5) If Restricted Securities are being presented or surrendered for transfer or exchange then there shall be (if so required by the Trustee), (A) if such Restricted Securities are being delivered to the Security Registrar by a Holder for registration in the name of such Holder, without transfer, a certification from such Holder to that effect; or (B) if such Restricted Securities are being transferred, a certification from the transferor in as to the compliance with the restrictions set forth in the Restricted Securities Legend.

SECTION 1.24 Mutilated, Destroyed, Lost and Stolen Securities. If any mutilated Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and make available for delivery in exchange therefor a new

Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (i) evidence to their satisfaction of the destruction, loss or theft of any Security and (ii) such security or indemnity as may be required by them to save each of them and any agent of either of them harmless, then, in the absence of notice to the Company or the Trustee that such Security has been acquired by a bona fide purchaser, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Security, a new Security of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

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

Every new Security issued pursuant to this Section in lieu of any destroyed, lost or stolen Security shall constitute an original additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Security shall be at any time enforceable by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Securities duly issued hereunder.

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

**SECTION 1.25 Payment of Interest; Interest Rights Preserved.** Subject to Section 3.01(b), interest (and Additional Payments, if any) on any Security which is payable, and is punctually paid or duly provided for, on any Interest Payment Date shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date.

Any interest on any Security which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the relevant Regular Record Date by virtue of having been such Holder, and such Defaulted Interest may be paid by the Company, at its election in each case, as provided in clause (1) or (2) below:

- (1) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on a Special Record Date (as defined below) for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a special record date (the "Special Record Date") for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder at his address as it appears in the Security Register, not less than 10 days prior to such Special Record Date. Notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor having been so mailed, such Defaulted Interest shall be paid to the Persons in whose names the Securities (or their respective Predecessor Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following clause (2).
- (2) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and, if so listed, upon such notice as may be required by such exchange (or by the Trustee if the Securities are not listed), if, after notice given by the Company to the Trustee of the proposed payment pursuant to this clause, such manner of payment shall be deemed practicable by the Trustee; provided that any such payment shall be made in coin or currency of the United States of America which at the time of payment is a legal tender for payment of public and private debt.

Subject to the foregoing provisions of this Section, each Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Security shall carry the rights to interest accrued and unpaid, and to accrue (including in each such case Additional Payments), which were carried by such other Security.

In the case of any Security which is converted after any Regular Record Date and on or prior to the next succeeding Interest Payment Date (other than any Security whose Maturity is prior to such Interest Payment Date), interest whose Stated Maturity is on such Interest Payment Date shall be payable on such Interest Payment Date notwithstanding such conversion, and such interest (and Additional Payments, if any) (whether or not punctually paid or duly provided for) shall be paid to the Person in whose name that Security (or one or more Predecessor Securities) is registered at the close of business on such Regular Record Date. Except as otherwise expressly provided in the immediately preceding sentence, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable, and the Company shall not make nor be required to make any other payment, adjustment or allowance with respect to accrued but unpaid interest (and Additional Payments, if any) on the Securities being converted, which shall be deemed to be paid in full.

**SECTION 1.26 Persons Deemed Owners.** The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Security is registered as the owner of such Security for the purpose of receiving payment of principal of and (subject to Section 3.08) interest (and Additional Payments, if any) on such Security and for all other purposes whatsoever, whether or not such Security be overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary. No holder of any beneficial interest in any Global Security held on its behalf by a Depositary shall have any rights under this Indenture with respect to such Global Security, and such Depositary may be treated by the Company, the Trustee and any agent of the Company or the Trustee as the owner of such Global Security for all purposes whatsoever.

Notwithstanding the foregoing, nothing herein shall prevent the Company or the Trustee from giving effect to any written certification, proxy, or other authorization furnished by a Depositary or impair, as between the Depositary and such holders of beneficial interests, the operation of customary practices governing the exercise of the rights of the Depositary (or its nominee) as Holder of any Security.

**SECTION 1.27 Cancellation.** All Securities surrendered for payment, redemption, registration of transfer or exchange or conversion shall, if surrendered to any Person other than the Trustee, be delivered to the Trustee and shall be promptly canceled by it. The Company may at any time deliver to the Trustee for

cancellation any Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and all Securities so delivered shall be promptly canceled by the Trustee. No Securities shall be authenticated in lieu of or in exchange for any Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All canceled Securities held by the Trustee shall be disposed of as directed by a Company Order; provided, however, that the Trustee shall not be required to destroy the certificates representing such canceled Securities.

**SECTION 1.28 Right of Set Off.** Notwithstanding anything to the contrary in this Indenture, the Company shall have the right to set off any payment it is otherwise required to make hereunder to the extent the Company has theretofore made, or is concurrently on the date of such payment making, a payment under the Guarantee.

**SECTION 1.29 CUSIP Numbers.** The Company in issuing the Securities may use "CUSIP" numbers (if then generally in use), and, if so, the Trustee shall use "CUSIP" numbers in notices of redemption as a convenience to Holders; provided, that any such notice may state that no representation is made as to the correctness of such numbers either as printed on the Securities or as contained in any notice of a redemption and that reliance may be placed only on the other identification numbers printed on the Securities, and any such redemption shall not be affected by any defect in or omission of such numbers.

**SECTION 1.30 Extension of Interest Payment Period; Notice of Extension.** (a) So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of this Security, from time to time to defer payments of interest by extending for successive periods not exceeding 20 consecutive quarters for each such period (a "Deferral Period"); provided that no Deferral Period may extend beyond (i) the maturity (whether at February 1, 2030 or by declaration of acceleration, call for redemption or otherwise) or (ii) in the case of a Deferral Period that begins prior to the Reset Date, the Reset Date. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to this Section 3.13, will bear interest thereon at the Applicable Rate compounded quarterly for each quarter of the Deferral Period ("Compounded Interest"). On the applicable Payment Resumption Date, the Company shall pay all interest then accrued and unpaid on the Securities, including any Compounded Interest that shall be payable, to the Holders of the Securities in whose names the Securities are registered in the Security Register on the Regular Record Date relating to such Payment Resumption Date. A Deferral Period shall terminate upon the payment by the Company of all interest then accrued and unpaid on the Securities (together with Additional Payments), to the extent permitted by applicable law. Before the termination of any Deferral Period, the Company may further extend such period as provided in paragraph (b) of this Section 3.13, provided that such period together with all such further

extensions thereof shall not exceed 20 consecutive quarters or extend beyond (i) the maturity (whether at February 1, 2030 or by declaration of acceleration, call for redemption or otherwise) or (ii) in the case of a Deferral Period that begins prior to the Reset Date, the Reset Date. Upon the termination of any Deferral Period, and subject to the foregoing requirements, the Company may elect to begin a new Deferral Period. No interest shall be due and payable during a Deferral Period except on the Payment Resumption Date as determined pursuant to paragraph (b) of this Section 3.13. There is no limitation on the number of times that the Company may elect to begin a Deferral Period.

(b) The Company shall give the Holder of the Security and the Trustee written notice (a "Deferral Notice") of its selection of a Deferral Period at least ten days prior to the record date for any distributions that would have been payable on the Trust Securities except for the decision to begin or extend a Deferral Period. On or prior to the Regular Record Date immediately preceding the Interest Payment Date on which the Company elects to pay all interest then accrued and unpaid on the Securities, including Compounded Interest (the "Payment Resumption Date"), the Company shall give the Holder of the Security and the Trustee written notice that the Deferral Period will end on such Payment Resumption Date. Notwithstanding the provision of such notice, the Company may elect to further extend the Deferral Period, subject to the limitations set forth in Section 3.13(a), by providing the Holder of the Security and the Trustee with a new Deferral Notice not less than three Business Days prior to the Regular Record Date immediately preceding the previously scheduled Payment Resumption Date. The Company may elect to pay all interest then accrued and unpaid on the Securities, including Compounded Interest, on an Interest Payment Date prior to its most recently established Payment Resumption Date; provided that the Company gives the Holder of the Security and the Trustee a new Deferral Notice setting forth the revised Payment Resumption Date at least three Business Days prior to the Regular Record Date for such revised Payment Resumption Date.

(c) The quarter in which any Deferral Notice is given pursuant to paragraph (b) hereof shall be counted as one of the 20 quarters permitted in the maximum Deferral Period permitted under paragraph (a) hereof.

SECTION 1.31 Paying Agent, Security Registrar and Conversion Agent. The Trustee will initially act as Paying Agent, Security Registrar and Conversion Agent. The Company may change any Paying Agent, Security Registrar, co-registrar or Conversion Agent without prior notice. The Company or any of its Affiliates may act in any such capacity.

## **ARTICLE IV**

## **Satisfaction and Discharge**

SECTION 1.32 Satisfaction and Discharge of Indenture. This Indenture shall cease to be of further effect (except as to any surviving rights of conversion, registration of transfer or exchange of Securities herein expressly provided for), and the Trustee, on demand of and at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(1) either

(A) all Securities theretofore authenticated and delivered (other than (i) Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.06 and (ii) Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Section 10.03) have been delivered to the Trustee for cancellation; or

(B) all such Securities not theretofore delivered to the Trustee for cancellation

(i) have become due and payable, or

(ii) will become due and payable at their Stated Maturity within one year, or

(iii) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense, of the Company

and the Company, in the case of (i), (ii) or (iii) above, has deposited or caused to be deposited with the Trustee as trust funds in trust for the purpose an amount sufficient to pay and discharge the entire indebtedness on such Securities not theretofore delivered to the Trustee for cancellation, for principal and interest (and Additional Payments, if any) to the date of such deposit (in the case of Securities which have become due and payable) or to the Stated Maturity or Redemption Date, as the case may be;

(2) the Company has paid or caused to be paid all other sums payable hereunder by the Company; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the satisfaction and discharge of this Indenture have been complied with.

Notwithstanding the satisfaction and discharge of this Indenture, the obligations of the Company to the Trustee under Section 6.07 and, if money shall have been deposited with the Trustee pursuant to subclause (B) of clause (1) of this Section, the obligations of the Trustee under Section 4.02 and the last paragraph of Section 10.03 shall survive.

**SECTION 1.33 Application of Trust Money.** Subject to the provisions of the last paragraph of Section 10.03, all money deposited with the Trustee pursuant to Section 4.01 shall be held in trust and applied by it, in accordance with the provisions of the Securities and this Indenture, to the payment, either directly or through any Paying Agent (including the Company acting as its own Paying Agent) as the Trustee may determine, to the Persons entitled thereto, of the principal and interest (and Additional Payments, if any) for whose payment such money has been deposited with the Trustee. All moneys deposited with the Trustee pursuant to Section 4.01 (and held by it or any Paying Agent) for the payment of Securities subsequently converted shall be returned to the Company upon Company Request.

## **ARTICLE V**

### **Remedies**

**SECTION 1.34 Events of Default.** "Event of Default," wherever used herein, means any one of the following events that has occurred and is continuing (whatever the reason for such Event of Default and whether it shall be occasioned by the provisions of Article XI or Article XII or 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):

- (1) default in the payment of any interest upon any Security, including any Additional Payments, when it becomes due and payable, and continuance of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period); or
- (2) default in the payment of the principal or premium, if any, of any Security at its Maturity;

(3) default in the observation or performance in any material respect of any covenant of the Company in this Indenture (other than a covenant a default in the performance of which or the breach of which is elsewhere in this Section specifically dealt with), and continuance of such default for a period of 90 days after there has been given, by registered or certified mail, to the Company by the Trustee or to the Company and the Trustee by the Holders of at least 25% in aggregate outstanding principal amount of the Securities a written notice specifying such default and requiring it to be remedied; or

(4) failure by the Company to issue and deliver Common Stock upon an election to convert the Securities into Common Stock; or

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

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

(7) the voluntary or involuntary dissolution, winding up or termination of the Trust, except in connection with (i) the distribution of Securities to Holders of

Preferred Securities in liquidation or redemption of their interests in the Trust, (ii) the redemption of all of the outstanding Preferred Securities of the Trust or (iii) certain mergers, consolidations or amalgamations, each as permitted by the Declaration.

**SECTION 1.35 Acceleration of Maturity; Rescission and Annulment.** If an Event of Default occurs and is continuing, then and in every such case the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities may declare the principal of all the Outstanding Securities and any other amounts payable hereunder (including any Additional Payments) to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by Holders); provided that, if the Property Trustee is the sole Holder of the Securities and if upon an Event of Default, the Trustee or the Holders of not less than 25% in principal amount of the Outstanding Securities fail to declare the principal of all the Securities to be immediately due and payable, the Holders of at least 25% in aggregate liquidation amount of Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee, and upon any such declaration such principal and all accrued interest (and Additional Payments, if any) shall become immediately due and payable. The Holders of a majority in aggregate principal amount of the Outstanding Securities of a series may annul such declaration and waive the default by written notice to the Property Trustee, the Company and the Trustee if the default (other than the nonpayment of the principal of these Securities which has become due solely by such acceleration) has been cured and a sum sufficient to pay all matured installments of interest (and Additional Payments, if any) and principal due otherwise than by acceleration has been deposited with the Trustee. Should the Holders of the Securities of such a series fail to annul such declaration and waive such default, the Holders of a majority in aggregate liquidation amount of the Preferred Securities shall have such right. Upon the effectiveness of any such declaration such principal amount (or specified amount) of and the accrued interest (including any Additional Payments) on all the Securities of such series shall then become immediately due and payable; provided that the payment of principal and interest on, and all other Obligations relating to, such Securities (including Additional Payments) shall remain subordinated to the extent provided in Article XII.

At any time after such a declaration of acceleration has been made and before a judgment or decree for payment of the money due has been obtained by the Trustee as provided in this Article hereinafter, the Holders of a majority in aggregate principal amount of the Outstanding Securities, by written notice to the Company and the Trustee, may rescind and annul such declaration and its consequences if

(1) the Company has paid or deposited with the Trustee a sum sufficient to pay

(A) all overdue interest and Additional Payments on all Securities,

(B) the principal of any Securities which have become due otherwise than by such declaration of acceleration and interest (and Additional Payments, if any) thereon at the rate borne by the Securities, and

(C) all sums paid or advanced by the Trustee hereunder and the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel;

and

(2) all Events of Default, other than the non-payment of the principal of Securities which have become due solely by such declaration of acceleration, have been cured or waived as provided in Section 5.13.

The Company is required to file annually with the Trustee a certificate as to whether or not the Company is in compliance with all the conditions and covenants applicable to it under this Indenture.

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

Upon receipt by the Trustee of written notice declaring such an acceleration, or rescission and annulment thereof, with respect to Securities all or part of which are represented by a Global Security, a record date shall be established for determining Holders of such Outstanding Securities entitled to join in such notice, which record date shall be at the close of business on the day the Trustee receives such notice. The Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to join in such notice, whether or not such Holders remain Holders after such record date; provided, however, that, unless such declaration of acceleration, or rescission and annulment, as the case may be, shall have become effective by virtue of the

requisite percentage having joined in such notice prior to the day which is 90 days after such record date, such notice of declaration of acceleration, or rescission and annulment, as the case may be, shall automatically and without further action by any Holder be canceled and of no further effect. Nothing in this paragraph shall prevent a Holder, or a proxy of a Holder, from giving, after expiration of such 90-day period, a new written notice of declaration of acceleration, or rescission and annulment thereof, as the case may be, that is identical to a written notice which has been canceled pursuant to the proviso to the preceding sentence, in which event a new record date shall be established pursuant to the provisions of this Section 5.02.

**SECTION 1.36 Collection of Indebtedness and Suits for Enforcement by Trustee.** The Company covenants that if

(1) default is made in the payment of any interest or any Additional Payments on any Security when such interest or Additional Payments become due and payable and such default continues for a period of 30 days, or

(2) default is made in the payment of the principal of any Security at the Maturity thereof,

the Company will, upon demand of the Trustee, pay to it, for the benefit of the Holders of such Securities, the whole amount then due and payable on such Securities for principal and interest (including any Additional Payments) and, to the extent that payment thereof shall be legally enforceable, interest on any overdue principal and on any overdue interest (including any Additional Payments), at the rate borne by the Securities, and, in addition thereto, all amounts owing to the Trustee under Section 6.07.

If an Event of Default occurs and is continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any such rights, whether for the specific enforcement of any covenant or agreement in this Indenture or in aid of the exercise of any power granted herein, or to enforce any other proper remedy.

**SECTION 1.37 Trustee May File Proofs of Claim.** In case of any judicial proceeding relative to the Company (or any other obligor upon the Securities), its property or its creditors, the Trustee shall be entitled and empowered, by intervention in such proceeding or otherwise, to take any and all actions authorized under the Trust Indenture Act in order to have claims of the Holders and the Trustee allowed in any such proceeding. In particular, the Trustee shall be authorized to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other

similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amount due it, and any predecessor Trustee under Section 6.07.

No provision of this Indenture shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Securities or the rights of any Holder thereof or to authorize the Trustee to vote in respect of the claim of any Holder in any such proceeding.

**SECTION 1.38 Trustee May Enforce Claims Without Possession of Securities.** All rights of action and claims under this Indenture or the Securities may be prosecuted and enforced by the Trustee without the possession of any of the Securities or the production thereof in any proceeding relating thereto, and any such proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall, after provision for the payment of all the amounts owing to the Trustee and any predecessor Trustee under Section 6.07, be for the ratable benefit of the Holders of the Securities in respect of which such judgment has been recovered.

**SECTION 1.39 Application of Money Collected.** Subject to Article XII, any money collected by the Trustee pursuant to this Article shall be applied in the following order, at the date or dates fixed by the Trustee and, in case of the distribution of such money on account of principal or interest (including any Additional Payments), upon presentation of the Securities and the notation thereon of the payment if only partially paid and upon surrender thereof if fully paid:

FIRST: To the payment of all amounts due the Trustee and any predecessor Trustee under Section 6.07;

SECOND: To the payment of the amounts then due and unpaid for principal of and interest (including any Additional Payments) on the Securities in respect of which or for the benefit of which such money has been collected, ratably, without preference or priority of any kind, according to the amounts due and payable on such Securities for principal and interest (including any Additional Payments), respectively; and

THIRD: The balance, if any, to the Person or Persons entitled thereto.

**SECTION 1.40 Limitation on Suits.** Subject to Section 5.08, no Holder of any Security shall have any right to institute any proceeding, judicial or otherwise, with respect to this Indenture, or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless

- (1) such Holder has previously given written notice to the Trustee of a continuing Event of Default;
- (2) the Holders of not less than 25% in aggregate principal amount of the Outstanding Securities shall have made written request to the Trustee to institute proceedings in respect of such Event of Default, in its own name as Trustee hereunder;
- (3) such Holder or Holders have offered to the Trustee reasonable indemnity against the costs, expenses and liabilities to be incurred in compliance with such request;
- (4) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity has failed to institute any such proceeding; and
- (5) no direction inconsistent with such written request has been given to the Trustee during such 60-day period by the Holders of a majority in principal amount of the Outstanding Securities;

it being understood and intended that no one or more Holders shall have any right in any manner whatever by virtue of, or by availing of, any provision of this Indenture to affect, disturb or prejudice the rights of any other Holders, or to obtain or to seek to obtain priority or preference over any other Holders or to enforce any right under this Indenture, except in the manner herein provided and for the equal and ratable benefit of all the Holders.

**SECTION 1.41 Unconditional Right of Holders to Receive Principal and Interest and Convert.** Notwithstanding any other provision in this Indenture, the Holder of any Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and (subject to Section 3.08) interest (including any Additional Payments) on such Security on the respective Stated Maturities expressed in such Security (or, in the case of redemption, on the Redemption Date) and to convert such Security in accordance with Article XIII and to institute suit for the enforcement of any such payment and right to convert, and such rights shall not be impaired without the consent of such Holder. If the Property Trustee is the sole Holder of the Securities, any Holder of the Preferred Securities shall have the right to institute suit on behalf of the Trust for the enforcement of any such payment and right to convert.

**SECTION 1.42 Restoration of Rights and Remedies.** If the Trustee or any Holder has instituted any proceeding to enforce any right or remedy under this Indenture and such proceeding has been discontinued or abandoned for any reason, or has been determined adversely to the Trustee or to such Holder, then and in every such case, subject to any determination in such proceeding, the Company, the Trustee and the Holders shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and the Holders shall continue as though no such proceeding had been instituted.

**SECTION 1.43 Rights and Remedies Cumulative.** Except as otherwise provided with respect to the replacement or payment of mutilated, destroyed, lost or stolen Securities in the last paragraph of Section 3.07, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

**SECTION 1.44 Delay or Omission Not Waiver.** No delay or omission of the Trustee or of any Holder of any Security to exercise any right or remedy accruing upon any Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Trustee or to the Holders may be exercised from time to time, and as often as may be deemed expedient, by the Trustee or by the Holders, as the case may be.

**SECTION 1.45 Control by Holders.** The Holders of a majority in principal amount of the Outstanding Securities shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee or exercising any trust or power conferred on the Trustee; provided, that

- (1) such direction shall not be in conflict with any rule of law or with this Indenture; and
- (2) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

**SECTION 1.46 Waiver of Past Defaults.** Subject to Section 9.02 hereof, the Holders of not less than a majority in principal amount of the Outstanding Securities may on behalf of the Holders of all the Securities waive any past default hereunder and its consequences, except a default

(1) in the payment of the principal of, premium, if any, or interest (including any Additional Payments) on any Security (unless such default has been cured and a sum sufficient to pay all matured installments of interest (and Additional Payments, if any) and principal due otherwise than by acceleration has been deposited with the Trustee); or

(2) in respect of a covenant or provision hereof which under Article IX cannot be modified or amended without the consent of the Holder of each Outstanding Security affected.

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

**SECTION 1.47 Undertaking for Costs.** In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act; provided, that neither this Section nor the Trust Indenture Act shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or the Trustee or in any suit for the enforcement of the right to receive the principal of and interest (and Additional Payments, if any) on any Security or to convert any Security in accordance with Article XIII.

**SECTION 1.48 Waiver of Stay or Extension Laws.** The Company covenants (to the extent that it may lawfully do so) that it will not at any time insist upon, or plead, or in any manner whatsoever claim or take the benefit or advantage of, any stay or extension law wherever enacted, now or at any time hereafter in force, which may affect the covenants or the performance of this Indenture; and the Company (to the extent that it may lawfully do so) hereby expressly waives all benefit or advantage of any such law and covenants that it will not hinder, delay or impede the execution of any power herein granted to the Trustee, but will suffer and permit the execution of every such power as though no such law had been enacted.

**SECTION 1.49 Enforcement by Holders of Preferred Securities.** Notwithstanding anything to the contrary contained herein, but subject to Article XII, if an Event of Default has occurred and is continuing and such event is attributable to the failure of the Company to pay interest, Additional Payments or principal on the Securities on the date such interest, Additional Payments or principal is otherwise payable, the Company acknowledges that, in such event, a Holder of Preferred Securities may institute a legal proceeding directly for enforcement of payment to such Holder of the principal of, interest or Additional Payments on the Securities having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder (a "Direct Action") on or after the due date specified in the Securities. The Company may not amend this Indenture to remove the foregoing right to bring a Direct Action without the prior written consent of all the Holders of Preferred Securities. Notwithstanding any payment made to such Holder of Preferred Securities by the Company in connection with a Direct Action, the Company shall remain obligated to pay the principal of and interest (and Additional Payments, if any) on the Securities held by the Trust or the Property Trustee, and the Company shall be subrogated to the rights of the Holders of such Preferred Securities with respect to payments on the Preferred Securities to the extent of any payments made by the Company to such Holders in any Direct Action. The Holders of Preferred Securities will not be able to exercise directly any other remedy available to the Holders of the Securities.

## **ARTICLE VI**

### **The Trustee**

**SECTION 1.50 Certain Duties and Responsibilities.** (a) Except during the continuance of an Event of Default, the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee.

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his own affairs.

(c) At the direction of the Remarketing Agent, the Trustee shall

- (i) select the Primary Treasury Dealer to be a Reference Treasury Dealer and
- (ii) determine the Reference Treasury Dealer Quotations, both in accordance with the terms of the Remarketing Agreement. In addition, if the Securities are no longer held by the Property Trustee, the Trustee shall act as Tender Agent in accordance with the provisions of the Remarketing Agreement.

(d) Notwithstanding the foregoing, (i) the duties and responsibilities of the Trustee shall be as provided by the Trust Indenture Act and (ii) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it. Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

**SECTION 1.51 Notice of Defaults.** The Trustee shall give the Holders notice of any default hereunder as and to the extent provided by the Trust Indenture Act; provided, however, that in the case of any default of the character specified in Section 5.01(3), no such notice to Holders shall be given until at least 30 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

**SECTION 1.52 Certain Rights of Trustee.** Subject to the provisions of Section 6.01:

- (a) the Trustee may conclusively rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request or direction of the Company mentioned herein shall be sufficiently evidenced by a Company Request or Company Order and any resolution of the Board of Directors may be sufficiently evidenced by a Board Resolution;
- (c) whenever in the administration of this Indenture the Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon an Officers' Certificate;
- (d) the Trustee may consult with counsel of its choice 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 Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders pursuant to this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to it against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

(f) the Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit, and, if the Trustee shall determine to make such further inquiry or investigation, it shall be entitled to reasonable examination of the books, records and premises of the Company, personally or by agent or attorney at the sole cost of the Company;

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

(h) the Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith, without negligence or willful misconduct, and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture.

**SECTION 1.53 Not Responsible for Recitals or Issuance of Securities.** The recitals contained herein and in the Securities, except the Trustee's certificates of authentication, shall be taken as the statements of the Company, and the Trustee assumes no responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Securities. The Trustee shall not be accountable for the use or application by the Company of the Securities or the proceeds thereof.

**SECTION 1.54 May Hold Securities.** The Trustee, any Paying Agent, any Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Securities and, subject to

Sections 6.08 and 6.13, may otherwise deal with the Company with the same rights it would have if it were not Trustee, Paying Agent, Security Registrar, or such other agent.

**SECTION 1.55 Money Held in Trust.** Money held by the Trustee in trust hereunder need not be segregated from other funds except to the extent required by law. The Trustee shall be under no liability for interest on any money received by it hereunder except as otherwise agreed with the Company.

**SECTION 1.56 Compensation and Reimbursement.** The Company agrees:

- (1) to pay to the Trustee from time to time such reasonable compensation as the Company and the Trustee shall from time to time agree in writing 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);
- (2) except as otherwise expressly provided herein, to reimburse the Trustee upon its request for all reasonable expenses, fees, disbursements and advances incurred or made by the Trustee in accordance with any provision of this Indenture (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except any such expense, disbursement or advance as may be attributable to its negligence or bad faith; and
- (3) to indemnify the Trustee and any predecessor Trustee for, and to hold it harmless against, any loss, liability or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Trustee) incurred without negligence or bad faith on its part, arising out of or in connection with the acceptance or administration of this trust, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder.

The Trustee shall have a lien prior to the Securities as to all property and funds held by it hereunder for any amount owing it or any predecessor Trustee pursuant to this Section 6.07, except with respect to funds held in trust of the benefit of the Holders of particular Securities.

When the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 5.01(5) or Section 5.01(6); the expenses (including the reasonable charges and expenses of its counsel) and the compensation for the services are intended to constitute expenses of administration under any applicable Federal or state bankruptcy, insolvency or other similar law.

The provisions of this Section shall survive the termination of this Indenture.

**SECTION 1.57 Disqualification; Conflicting Interests.** If the Trustee has or shall acquire a conflicting interest within the meaning of the Trust Indenture Act, the Trustee shall either eliminate such interest or resign, to the extent and in the manner provided by, and subject to the provisions of, the Trust Indenture Act and this Indenture.

**SECTION 1.58 Corporate Trustee Required; Eligibility.** There shall at all times be a Trustee hereunder which shall be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000 and has its corporate trust office in New York, New York. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of said supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such Person 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 Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

**SECTION 1.59 Resignation and Removal; Appointment of Successor.**

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee under Section 6.11.

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

(c) The Trustee may be removed at any time by Act of the Holders of a majority in principal amount of the Outstanding Securities, delivered to the Trustee and to the Company. If an instrument of acceptance by a successor Trustee shall not have been delivered to the Trustee within 30 days after the giving of such notice of removal, the removed Trustee may petition any court of competent jurisdiction for the appointment of a successor Trustee.

(d) If at any time:

- (1) the Trustee shall fail to comply with Section 6.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Security for at least six months; or
- (2) the Trustee shall cease to be eligible under Section 6.09 and shall fail to resign after written request therefor by the Company or by any such Holder; or

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

then, in any such case, (i) the Company may remove the Trustee, or (ii) subject to Section 5.14, any Holder who has been a bona fide Holder of a Security 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 Trustee and the appointment of a successor Trustee.

(e) If the Trustee shall resign, be removed or become incapable of acting, or if a vacancy shall occur in the office of Trustee for any cause, the Company, by a Board Resolution, shall promptly appoint a successor Trustee. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Securities delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment, become the successor Trustee and supersede the successor Trustee appointed by the Company. If no successor Trustee shall have been so appointed by the Company or the Holders and accepted appointment in the manner hereinafter provided, any Holder who has been a bona fide Holder of a Security 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 Trustee.

(f) The Company shall give written notice of each resignation and each removal of the Trustee and each appointment of a successor Trustee to all Holders in the manner provided in Section 1.06. Each notice shall include the name of the successor Trustee and the address of its Corporate Trust Office.

SECTION 1.60 Acceptance of Appointment by Successor. Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to the Company and to the retiring Trustee an instrument accepting such appointment, and

thereupon the resignation or removal of the retiring Trustee shall become effective and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, trusts and duties of the retiring Trustee; provided, that on request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of its charges, execute and deliver an instrument transferring to such successor Trustee all the rights, powers and trusts of the retiring Trustee and shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder. Upon request of any such successor Trustee, the Company shall execute any and all instruments required to more fully and certainly vest in and confirm to such successor Trustee all such rights, powers and trusts.

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

**SECTION 1.61 Merger, Conversion, Consolidation or Succession to Business.** Any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder; provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Securities shall have been authenticated, but not delivered, by the Trustee then in office, any successor by merger, conversion or consolidation to such authenticating Trustee may adopt such authentication and deliver the Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Securities.

**SECTION 1.62 Preferential Collection of Claims Against Company.** If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act regarding the collection of claims against the Company (or any such other obligor).

## **ARTICLE VII**

## **Holders' Lists and Reports by Trustee and Company**

SECTION 1.63 Company to Furnish Trustee Names and Addresses of Holders. The Company will furnish or cause to be furnished to the Trustee

(a) semiannually, not later than March 15 and October 15 in each year, a list, in such form as the Trustee may reasonably require, of the names and addresses of the Holders as of a date not more than 15 days prior to the delivery thereof, and

(b) at such other times as the Trustee may request in writing, within 30 days after the receipt by the Company of any such request, a list of similar form and content as of a date not more than 15 days prior to the time such list is furnished;

excluding from any such list names and addresses received by the Trustee in its capacity as Security Registrar.

SECTION 1.64 Preservation of Information; Communications to Holders. (a) The Trustee shall preserve, in as current a form as is reasonably practicable, the names and addresses of Holders contained in the most recent list furnished to the Trustee as provided in Section 7.01 and the names and addresses of Holders received by the Trustee in its capacity as Security Registrar. The Trustee may destroy any list furnished to it as provided in

Section 7.01 upon receipt of a new list so furnished.

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

(c) Every Holder of Securities, by receiving and holding the same, agrees with the Company and the Trustee that neither the Company nor the Trustee nor any agent of either of them shall be held accountable by reason of any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act.

SECTION 1.65 Reports by Trustee. (a) Within 60 days after March 15 of each year, commencing March 15, 2000, the Trustee shall transmit by first-class mail to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act in the manner provided pursuant thereto.

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

**SECTION 1.66 Reports by Company.** The Company shall file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act at the times and in the manner provided pursuant to such Trust Indenture Act; provided, that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Exchange Act shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission.

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

**SECTION 1.67 Tax Reporting.** The Company shall provide to the Trustee on a timely basis such information as the Trustee requires to enable the Trustee to prepare and file any form required to be submitted by the Company with the Internal Revenue Service and the Holders relating to original issue discount, including, without limitation, Form 1099-OID or any successor form.

## **ARTICLE VIII**

### **Consolidation, Merger, Conveyance, Transfer or Lease**

**SECTION 1.68 Company May Consolidate, Etc., Only on Certain Terms.** The Company shall not consolidate with or merge with or into any other Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person (other than a wholly owned Subsidiary of the Company), and no Person shall consolidate with or merge with or into the Company or convey, transfer or lease its properties and assets substantially as an entirety to the Company, unless:

(1) in case the Company shall consolidate with or merge with or into another Person or convey, transfer or lease its properties and assets substantially as an entirety to any Person, the Person formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance,

transfer or lease, such properties and assets substantially as an entirety shall be a corporation, limited liability company, partnership or trust, shall be organized and validly existing under the laws of the United States of America, any State thereof or the District of Columbia and shall expressly assume, by an indenture supplemental hereto, executed and delivered to the Trustee, in form reasonably satisfactory to the Trustee, the due and punctual payment of the principal of and interest (including any Additional Payments) on all the Securities and the performance or observance of every covenant of this Indenture on the part of the Company to be performed or observed and shall have provided for conversion rights in accordance with Article XIII;

(2) immediately after giving effect to such transaction, no Event of Default, and no event which, after notice or lapse of time or both, would become an Event of Default, shall have happened and be continuing;

(3) if at the time any Preferred Securities are outstanding, such consolidation or merger or conveyance, transfer or lease of assets of the Company is permitted under, and does not give rise to any breach or violation of, the Declaration or the Guarantee; and

(4) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, transfer or lease and, if a supplemental indenture is required in connection with such transaction, such supplemental indenture, comply with this Article and with Article IX and that all conditions precedent herein provided for relating to such transaction have been complied with.

**SECTION 1.69 Successor Substituted.** Upon any consolidation of the Company with, or merger of the Company into, any other Person or any conveyance, transfer or lease of all or substantially all the properties and assets of the Company on a consolidated basis in accordance with Section 8.01, the successor Person formed by such consolidation or into which the Company is merged or to which such conveyance, transfer or lease is made shall succeed to, and be substituted for, and may exercise every right and power of, the Company under this Indenture with the same effect as if such successor Person had been named as the Company herein, and thereafter, except in the case of a lease, the predecessor Person shall be relieved of all obligations and covenants under this Indenture and the Securities.

## **ARTICLE IX**

## **Supplemental Indentures**

SECTION 1.70 Supplemental Indentures Without Consent of Holders. Without the consent of any Holders, the Company, when authorized by a Board Resolution, and the Trustee, at any time and from time to time, may enter into one or more indentures supplemental hereto, in form satisfactory to the Trustee, for any of the following purposes:

- (1) to evidence the succession of another Person to the Company and the assumption by any such successor of the covenants of the Company herein and in the Securities; or
- (2) to add to the covenants of the Company for the benefit of the Holders, or to surrender any right or power herein conferred upon the Company; or
- (3) to make provision with respect to the conversion rights of Holders pursuant to the requirements of Article XIII; or
- (4) to cure any ambiguity, to correct or supplement any provision herein which may be inconsistent with any other provision herein, or to make any other provisions with respect to matters or questions arising under this Indenture which shall not be inconsistent with the provisions of this Indenture; provided, that such action pursuant to this clause (4) shall not materially adversely affect the interests of the Holders of the Securities or, so long as any of the Preferred Securities shall remain outstanding, the Holders of the Preferred Securities; or
- (5) to comply with the requirements of the Commission in order to effect or maintain the qualification of this Indenture under the Trust Indenture Act; or
- (6) to make provision for transfer procedures, certification, book-entry provisions, the form of restricted securities legends, if any, to be placed on Securities, and all other matters required pursuant to Section 3.06(b) or otherwise necessary, desirable or appropriate in connection with the issuance of Securities to Holders of Preferred Securities in the event of a distribution of Securities by the Trust if a Tax Event or Investment Company Event occurs and is continuing.

**SECTION 1.71 Supplemental Indentures with Consent of Holders.** With the consent of the Holders of not less than a majority in principal amount of the Outstanding Securities, by Act of said Holders delivered to the Company and the Trustee, the Company, when authorized by a Board Resolution, and the Trustee may enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of modifying in any manner the rights of the Holders under this Indenture; provided, however, that no such supplemental indenture shall, without the consent of the Holder of each Outstanding Security affected thereby,

(1) extend the Stated Maturity of the principal of, or any installment of interest (including any Additional Payments) on, any Security, or reduce the principal amount thereof, or reduce the rate or extend the time for payment of interest thereon, or reduce any premium payable upon the redemption thereof, or change the place of payment where, or the coin or currency in which, any Security or interest or any Additional Payments thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity thereof (or, in the case of redemption, on or after the Redemption Date), or adversely affect the right to convert any Security as provided in Article XIII (except as permitted by Section 9.01(3)), or modify the provisions of this Indenture with respect to the subordination of the Securities in a manner adverse to the Holders,

(2) change the Reset Date,

(3) reduce the percentage in principal amount of the Outstanding Securities, the consent of whose Holders is required for any such supplemental indenture, or the consent of whose Holders is required for any waiver of compliance with certain provisions of this Indenture or certain defaults hereunder and their consequences provided for in this Indenture, or

(4) modify any of the provisions of this Section or Section 5.13, except to increase any such percentage or to provide that certain other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Security affected thereby.

Notwithstanding anything to the contrary in this Indenture or the Declaration, if the Property Trustee is the sole holder of the Securities, so long as any of the Preferred Securities remains outstanding, no amendment shall be made that adversely affects the Holders of such Preferred Securities, and no termination of this Indenture shall occur, and no waiver of any Event of Default or compliance with any covenant under this Indenture shall be effective, without the prior consent of the Holders of the percentage of

the aggregate principal amount of such Preferred Securities then outstanding which is at least equal to the percentage of aggregate stated liquidation amount of Outstanding Securities as shall be required under this Indenture to effect any such amendment, termination or waiver.

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

The Company may, but shall not be obligated to, fix a record date for the purpose of determining the Persons entitled to consent to any indenture supplemental hereto. If a record date is fixed, the Holders on such record date, or their duly designated proxies, and only such Persons, shall be entitled to consent to such supplemental indenture, whether or not such Holders remain Holders after such record date; provided, that unless such consent shall have become effective by virtue of the requisite percentage having been obtained prior to the date which is 90 days after such record date, any such consent previously given shall automatically and without further action by any Holder be canceled and of no further effect.

**SECTION 1.72 Execution of Supplemental Indentures.** In executing, or accepting the additional trusts created by, any supplemental indenture permitted by this Article or the modifications thereby of the trusts created by this Indenture, the Trustee shall be entitled to receive, and (subject to Section 6.01) shall be fully protected in relying upon, an Opinion of Counsel stating that the execution of such supplemental indenture is authorized or permitted by this Indenture. The Trustee may, but shall not be obligated to, enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

**SECTION 1.73 Effect of Supplemental Indentures.** Upon the execution of any supplemental indenture under this Article, this Indenture shall be modified in accordance therewith, and such supplemental indenture shall form a part of this Indenture for all purposes; and every Holder of Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby. No such supplemental indenture shall directly or indirectly modify the provisions of Article XII in any manner which might terminate or impair the rights of the Senior Debt pursuant to such subordination provisions.

**SECTION 1.74 Conformity with Trust Indenture Act.** Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act.

**SECTION 1.75 Reference in Securities to Supplemental Indentures.** Securities authenticated and delivered after the execution of any supplemental indenture pursuant to this Article may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company shall so determine, new Securities so modified as to conform, in the opinion of the Trustee and the Company, to any such supplemental indenture may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Securities.

## **ARTICLE X**

### **Covenants; Representations and Warranties**

**SECTION 1.76 Payment of Principal and Interest.** The Company will duly and punctually pay the principal of, interest and Additional Payments, if any, on the Securities in accordance with the terms of the Securities and this Indenture.

**SECTION 1.77 Maintenance of Office or Agency.** The Company will maintain in the United States an office or agency where Securities may be presented or surrendered for payment, where Securities may be surrendered for registration of transfer, exchange or conversion and where notices and demands to or upon the Company in respect of the Securities and this Indenture may be served. The Company will give prompt written notice to the Trustee of the location, and any change in the location, of such office or agency. If at any time the Company shall fail to maintain any such required office or agency or shall fail to furnish the Trustee with the address thereof, such presentations, surrenders, notices and demands may be made or served at the Corporate Trust Office of the Trustee, and the Company hereby appoints the Trustee as its agent to receive all such presentations, surrenders, notices and demands.

The Company may also from time to time designate one or more other offices or agencies (in the United States) where the Securities may be presented or surrendered for any or all such purposes and may from time to time rescind such designations; provided, however, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency in the United States for such purposes. The Company will give prompt written notice to the Trustee of any such designation or rescission and of any change in the location of any such other office or agency.

**SECTION 1.78 Money for Security Payments to Be Held in Trust.** If the Company shall at any time act as its own Paying Agent, it will, on or before each due date of the principal of, interest or Additional Payments, if any, on any of the

Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal, interest or Additional Payments, if any, so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided and will promptly notify the Trustee of its action or failure so to act.

Whenever the Company shall have one or more Paying Agents, it will, prior to each due date of the principal of, interest or Additional Payments, if any, on any Securities, deposit with a Paying Agent a sum sufficient to pay the principal, interest or Additional Payments, if any, so becoming due, such sum to be held as provided by the Trust Indenture Act, and (unless such Paying Agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

The Company will cause each Paying Agent other than the Trustee to execute and deliver to the Trustee an instrument in which such Paying Agent shall agree with the Trustee, subject to the provisions of this Section, that such Paying Agent will (i) comply with the provisions of the Trust Indenture Act applicable to it as a Paying Agent and (ii) during the continuance of any default by the Company (or any other obligor upon the Securities) in the making of any payment in respect of the Securities, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such Paying Agent as such.

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

Any money deposited with the Trustee or any Paying Agent, or then held by the Company, in trust for the payment of the principal of, interest or Additional Payments, if any, on any Security and remaining unclaimed for two years after such principal, interest or Additional Payments, if any, has become due and payable shall be paid to the Company on Company Request, or (if then held by the Company) shall be discharged from such trust; and the Holder of any such Security shall, subject to relevant abandoned and unclaimed property laws, thereafter, as an unsecured general creditor, look only to the Company for payment thereof, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease.

SECTION 1.79 Statement by Officers as to Default. The Company will deliver to the Trustee, within 120 days after the end of each fiscal year of the

Company ending after the date hereof, an Officers' Certificate, stating whether or not to the best knowledge of the signers thereof the Company is in default in the performance and observance of any of the material terms, provisions and conditions of this Indenture (without regard to any period of grace or requirement of notice provided hereunder) and, if the Company shall be in default, specifying all such defaults and the nature and status thereof of which they may have knowledge.

SECTION 1.80 Limitation on Dividends; Transactions with Affiliates; Covenants as to the Trust. (a) If at such time (x) there shall have occurred an Event of Default, (y) the Company shall be in default with respect to its payment of any obligations under the Guarantee or (z) the Company shall have given notice of its election to begin a Deferral Period as provided herein and shall not have rescinded such notice, or such Deferral Period, or any extension thereof, shall be continuing, the Company covenants that the Company shall not (i) declare or pay any dividends or distributions on, or redeem, purchase, acquire or make a liquidation payment with respect to, any of the Company's capital stock (which includes common and preferred stock) other than stock dividends or distributions which consist of stock of the same class as that on which the dividend or distribution is being paid, (ii) make any payment of principal, interest or premium, if any, on or repay or repurchase or redeem any debt securities of the Company that rank pari passu with or junior in interest to the Securities or (iii) make any guarantee payments with respect to any guarantee by the Company of the debt securities of any Subsidiary of the Company if such guarantee ranks pari passu with or junior in interest to the Securities (in each case, other than (A) dividends or distributions in Common Stock, (B) any declaration of a dividend in connection with the implementation of a stockholders' rights plan, or the issuance of stock under any such plan in the future, or the redemption or repurchase of any such rights pursuant thereto,

(C) payments under the Guarantee or the Common Securities Guarantee, (D) purchases or acquisitions of shares of Common Stock in connection with the satisfaction by the Company of its obligations under any employee benefit plan or any other contractual obligation of the Company (other than a contractual obligation ranking pari passu with or junior in interest to the Securities), (E) the payment of fractional shares resulting from a result of a reclassification of the Company's capital stock or the exchange or conversion of one class or series of the Company's capital stock for another class or series of the Company's capital stock or (F) the purchase of fractional interests in shares of the Company's capital stock pursuant to the conversion or exchange provisions of such capital stock or the security being converted or exchanged).

(b) The Company also covenants and agrees (i) that it shall directly or indirectly maintain 100% ownership of the Common Securities of the Trust; provided, however, that any permitted successor of the Company hereunder may succeed to the Company's ownership of such Common Securities and (ii) that it shall use its reasonable efforts, consistent with the terms and provisions of the Declaration, to cause the Trust

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

**SECTION 1.81 Payment of Expenses of the Trust.** In connection with the offering, sale and issuance of the Securities to the Property Trustee in connection with the sale of the Trust Securities by the Trust, the Company shall:

(a) pay for all costs, fees and expenses relating to the offering, sale and issuance of the Securities, including commissions to the Initial Purchasers payable pursuant to the Purchase Agreement and compensation of the Trustee in accordance with the provisions of Section 6.07;

(b) be responsible for and pay for all debts and obligations (other than with respect to the Trust Securities) of the Trust, pay for all costs and expenses of the Trust (including, but not limited to, costs and expenses relating to the organization of the Trust, the offering, sale and issuance of the Trust Securities (including commissions to the initial purchasers in connection therewith), the fees and expenses of the Property Trustee and the Delaware Trustee, the costs and expenses relating to the operation of the Trust, including, without limitation, costs and expenses of accountants, attorneys, statistical or bookkeeping services, expenses for printing and engraving and computing or accounting equipment, paying agent(s), registrar(s), transfer agent(s), duplicating, travel and telephone and other telecommunications expenses and costs and expenses incurred in connection with the acquisition, financing, and disposition of Trust assets); and

(c) pay any and all taxes (other than United States withholding taxes attributable to the Trust or its assets) and all liabilities, costs and expenses with respect to such taxes of the Trust.

**SECTION 1.82 Registration Rights.** The Holders of the Preferred Securities, the Securities and the Guarantee and the shares of Common Stock issuable upon conversion of the Securities (collectively, the "Registrable Securities") are entitled to the benefits of a Registration Rights Agreement, dated as of January 31, 2000, among the Company, the Trust and the Initial Purchasers (the "Registration Rights Agreement"), including, without limitation, the receipt of Additional Interest upon a Registration Default.

## ARTICLE XI

### **Redemption of Securities**

SECTION 1.83 Optional Redemption. (a) The Company shall have the right to redeem the Securities (an "Optional Redemption") (i) in whole or in part, at any time or from time to time, prior to the Reset Date but on or after February 5, 2003 until (but excluding) the Tender Notification Date, at a Redemption Price (the "Initial Redemption Price") equal to the prices per \$50 principal amount of Securities set forth in the following table, plus accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date, if redeemed during the 12-month period ending on February 5:

Year	Price Per \$50 Principal Amount
2004	\$50.6875
2005	\$50.0000;

(ii) after the Reset Date (except in the event of a Failed Final Remarketing), in accordance with the Term Call Protections, if any, established in the Remarketing; and (iii) in whole or in part, at any time on or after the third anniversary of the Reset Date following a Failed Final Remarketing at a redemption price equal to 100% of the then outstanding aggregate principal amount of the Securities to be redeemed, plus accrued and unpaid interest thereon (any Redemption Price so established in the Remarketing or as a result of a Failed Final Remarketing, the "Term Redemption Price", and, together with the Initial Redemption Price, an "Optional Redemption Price"); provided, however, that the company shall not be permitted to redeem any Securities pursuant to this Section 11.01(a) during any Deferral Period.

(b) If the Company desires to consummate an Optional Redemption, it must cause to be sent, at its own expense, notice of such intent (an "Optional Redemption Notice"), via first-class mail, postage prepaid, to each Holder of Securities (and, if the Preferred Securities are still outstanding, to each Holder of the corresponding Preferred Securities) to be redeemed, at such Holder's address appearing in the Security Register and the List of Holders, if applicable, which Optional Redemption Notice shall comply with Section 11.06 hereof. Holders receiving an Optional Redemption Notice have the right, upon notification of the Trustee and the Conversion Agent prior to the Optional

Redemption Date, to convert their Securities called for redemption into Company Common Stock at the Applicable Conversion Ratio on or prior to the Optional Redemption Date in compliance with Article XIII hereof.

(c) In the case of any Optional Redemption, the Company must notify the Trustee and the Property Trustee in writing of the Optional Redemption Date, the principal amount of Securities to be redeemed and provide a copy of the Optional Redemption Notice at least 60 days prior to sending the Optional Redemption Notice, or such shorter period as agreed to by the Trustee and Property Trustee in writing.

#### SECTION 1.84 [Reserved]

#### SECTION 1.85 Tax Event Redemption. (a) If a Tax Event has occurred and is continuing and:

(1) the Company has received a Redemption Tax Opinion; or

(2) the Issuer Trustees shall have been informed by nationally recognized independent tax counsel (reasonably acceptable to the Issuer Trustees) experienced in such matters that a No Recognition Opinion cannot be delivered,

then the Company shall have the right upon not less than 30 days nor more than 60 days notice to the Holders of the Securities and within 90 days following the occurrence and continuation of a Tax Event to redeem the Securities in whole, but not in part, for cash at \$50 per \$50 principal amount of the Securities plus accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date, within 90 days following the occurrence of such Tax Event (the "90 Day Period"); provided, however, that if, at the time there is available to the Company or the Trust the opportunity to eliminate, within the 90 Day Period, the Tax Event by taking some ministerial action, including, but not limited to, filing a form or making an election, or pursuing some other similar reasonable measure which, in the sole judgment of the Company, will have no adverse effect on the Company, the Trust or the Holders of the Preferred Securities and will involve no material cost, then the Company or the Trust shall pursue such ministerial action or other measure in lieu of redemption; and provided further that the Company shall have no right to redeem the Securities while the Trust is pursuing any ministerial action or other similar measure pursuant to its obligations under the Declaration.

(b) In the event that the Company redeems the Securities pursuant to Section 11.03(a), Holders shall have the right upon notification of the Trustee and the Conversion Agent, to convert their Securities or Preferred Securities, if applicable, into Common Stock at the Applicable Conversion Ratio prior to 5:00 p.m., New York City time, on the applicable Redemption Date.

(c) If the Company opts not to redeem the Securities pursuant to this Section 11.03, the Company shall be required to pay Additional Amounts in respect of the Securities pursuant to Section 3.01 for so long as (i) a Tax Event, or such other event pursuant to such Additional Amounts are payable, has occurred and is continuing and (ii) the Property Trustee is the sole Holder of the Securities.

**SECTION 1.86** Redemption at Stated Maturity. The Company shall repay all of the Outstanding Securities, if any, on February 1, 2030, at a price equal to the aggregate principal amount thereof, plus any accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date.

**SECTION 1.87** Selection by Trustee of Securities to Be Redeemed. If less than all the Securities are to be redeemed (unless such redemption affects only a single Security), the particular Securities to be redeemed shall be selected not more than 60 days prior to the Redemption Date by the Trustee pro rata, from the Outstanding Securities not previously called for redemption. Such selection method may provide for the selection for redemption of portions (equal to \$50 or any integral multiple thereof) of the principal amount of the Securities.

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

The provisions of the two preceding paragraphs shall not apply with respect to any redemption affecting only a single Security, whether such Security is to be redeemed in whole or in part. In the case of any such redemption in part, the unredeemed portion of the principal amount of the Security shall be in an authorized denomination (which shall not be less than the minimum authorized denomination) for such Security.

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

**SECTION 1.88** Notice of Redemption. Notice of redemption (other than with respect to a redemption which is an Optional Redemption) shall be given by first-class mail, postage prepaid, mailed not less than 30 nor more than 60 days prior to the Redemption Date, to each Holder of Securities to be redeemed, at such Holder's address appearing in the Security Register.

All notices of redemption (including, without limitation, Optional Redemption Notices) given pursuant to this Article XI shall identify the Securities to be redeemed (including, if relevant, CUSIP number) and shall state:

- (1) the Redemption Date,
- (2) the Redemption Price,
- (3) that on the Redemption Date the Redemption Price will become due and payable upon each such Security to be redeemed and that interest thereon will cease to accrue on and after said date,
- (4) the place or places where such Securities are to be surrendered for payment of the Redemption Price, and
- (5) the date on which the right to convert the Securities to be redeemed will terminate and the places where such Securities may be surrendered for conversion.

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

**SECTION 1.89 Deposit of Redemption Price.** Prior to 10:00 a.m. New York City time on any Redemption Date, the Company shall deposit with the Trustee or with a Paying Agent (or, if the Company is acting as its own Paying Agent, segregate and hold in trust as provided in Section 10.03) an amount of money sufficient to pay the Redemption Price of, and (except if the Redemption Date shall be an Interest Payment Date) accrued interest (together with Additional Payments, if any) on, all the Securities which are to be redeemed on that date.

If any Security called for redemption is converted, any money deposited with the Trustee or with any Paying Agent or so segregated and held in trust for the redemption of such Security shall (subject to any right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.08) be paid to the Company upon Company Request or, if then held by the Company, shall be discharged from such trust.

**SECTION 1.90 Securities Payable on Redemption Date.** Notice of redemption having been given as aforesaid, the Securities so to be redeemed shall, on the Redemption Date, become due and payable at the Redemption Price therein specified, and from and after such date (unless the Company shall default in the payment of the

Redemption Price and accrued interest) such Securities shall cease to bear interest. Upon surrender of any such Security for redemption in accordance with said notice, such Security shall be paid by the Company at the Redemption Price, together with accrued interest (including Additional Payments, if any) to the Redemption Date; provided, however, that installments of interest whose Stated Maturity is on or prior to the Redemption Date shall be payable to the Holders of such Securities, or one or more Predecessor Securities, registered as such at the close of business on the relevant Record Dates according to the terms and the provisions of Section 3.08.

If any Security called for redemption shall not be so paid upon surrender thereof for redemption, the principal shall, until paid, bear interest from the Redemption Date at the rate borne by the Security.

SECTION 1.91 Securities Redeemed in Part. (a) In the event of any redemption in part, the Company shall not be required to (i) issue, register the transfer of or exchange any Security during a period beginning at the opening of business 15 days before the date of mailing of a notice of redemption of Securities selected for redemption and ending at the close of business on the day of such mailing and (ii) register the transfer of or exchange any Securities so selected for redemption, in whole or in part, except for the unredeemed portion of any Securities being redeemed in part.

(b) If a partial redemption of the Securities would result in the delisting of the Preferred Securities issued by the Trust from any national securities exchange or other organization on which the Preferred Securities are listed, the Company shall not be permitted to effect such partial redemption and may only redeem the Securities in whole.

(c) Any Security which is to be redeemed only in part shall be surrendered at a place of payment therefor (with, if the Company or the Trustee so requires, due endorsement by, or a written instrument of transfer in form satisfactory to the Company and the Trustee duly executed by, the Holder thereof or his attorney duly authorized in writing), and the Company shall execute, and the Trustee shall authenticate and make available for delivery to the Holder of such Security without service charge, a new Security or Securities, of any authorized denomination as requested by such Holder, in aggregate principal amount equal to and in exchange for the unredeemed portion of the principal of the Security so surrendered. If a Global Security is surrendered, such new Security will (subject to Section 3.06) also be a new Global Security.

## **ARTICLE XII**

### **Subordination of Securities**

**SECTION 1.92 Agreement to Subordinate.** The Company covenants and agrees, and each Holder of Securities by such Holder's acceptance thereof likewise covenants and agrees, that all Securities shall be issued subject to the provisions of this Article XII; and each Holder of a Security, whether upon original issue or upon transfer or assignment thereof, accepts and agrees to be bound by such provisions. The payment by the Company of the principal of, premium, if any, interest (including Additional Payments, if any) and other Obligations with respect to all Securities issued hereunder shall, to the extent and in the manner hereinafter set forth, be subordinated and junior in right of payment to the prior payment in full in cash of principal of (and premium, if any), interest and all other Obligations with respect to all Senior Debt, whether outstanding at the date of this Indenture or thereafter incurred; provided, however, that no provision of this Article XII shall prevent the occurrence of any default or Event of Default hereunder.

**SECTION 1.93 Default on Senior Debt.** In the event and during the continuation of any default by the Company in the payment of principal, premium, if any, interest on or any other Obligation relating to, any Senior Debt when the same becomes due and payable (a "payment default"), whether at maturity or at a date fixed for prepayment or by declaration of acceleration or otherwise, and such default continues beyond the period of grace, if any, specified in the instrument evidencing such Senior Debt, then unless and until such default shall have been cured or waived or shall have ceased to exist or all Senior Debt and all Obligations relating thereto have been paid in full in cash, and in the event that the maturity of any Senior Debt has been accelerated because of a default, then no direct or indirect payment or distribution (in cash, property, securities, by set-off or otherwise) shall be made or agreed to be made with respect to the principal of (including redemption payments), premium, if any, or interest on, or any other Obligation relating to, the Securities or in respect of any redemption, repayment, retirement, purchase or other acquisition of any of the Securities.

In the event that, notwithstanding the foregoing, any payment shall be received by the Trustee when such payment is prohibited by the preceding paragraph of this Section 12.02, such payment shall be held in trust for the benefit of, and shall be paid over or delivered to the holders of Senior Debt, or their respective representatives, or to the trustee or trustees under any indenture pursuant to which any of such Senior Debt may have been issued, as their respective interests may appear, but only to the extent that the holders of the Senior Debt (or their representative or representatives or a trustee) notify the Trustee in writing within 180 days of such payment of the amounts then due and

owing to the holders of such Senior Debt and only the amounts specified in such notice to the Trustee shall be paid to the holders of such Senior Debt.

**SECTION 1.94 Liquidation; Dissolution; Bankruptcy.** Upon any direct or indirect payment by or on behalf of the Company or direct or indirect distribution of assets of the Company of any kind or character, whether in cash, property or securities, by set-off or otherwise, to creditors upon any dissolution or winding up or liquidation or reorganization of the Company or assignment for the benefit of creditors or marshaling of assets, whether voluntary or involuntary, or in bankruptcy, insolvency, receivership or other proceedings, all amounts (including principal, premium, if any, and interest) due or to become due upon all Senior Debt shall first be paid in full in cash, or such payment thereof provided for in money in accordance with its terms, before any payment or distribution is made on account of the principal (and premium, if any), interest or any other Obligation relating to the Securities; and upon any such dissolution or winding up or liquidation or reorganization, any direct or indirect payment by the Company, or direct or indirect payment or distribution (in cash, property, securities, by set-off or otherwise) to which the Holders of the Securities or the Trustee would be entitled, except for the provisions of this Article XII, shall be paid by the Company or by any receiver, trustee in bankruptcy, liquidating trustee, agent or other Person making such payment or distribution, or by the Holders of the Securities or by the Trustee under this Indenture if received by them or it, directly to the holders of Senior Debt (pro rata to such holders on the basis of the respective amounts of Senior Debt held by such holders, as calculated by the Company) or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt may have been issued, as their respective interests may appear, to the extent necessary to pay such Senior Debt in full, in cash, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt, before any such payment or distribution is made to the Holders of Securities or to the Trustee.

In the event that, notwithstanding the foregoing, any payment or distribution of assets of the Company of any kind or character, whether in cash, property or securities, by set-off or otherwise, prohibited by the foregoing, shall be received by the Trustee or the Holders of the Securities before all Senior Debt is paid in full in cash, or provision is made for such payment in cash in accordance with its terms, such payment or distribution shall be held in trust for the benefit of and shall be paid over or delivered to the holders of Senior Debt or their representative or representatives, or to the trustee or trustees under any indenture pursuant to which any instruments evidencing such Senior Debt may have been issued, and their respective interests may appear, as calculated by the Company, for application to the payment of all Senior Debt remaining unpaid to the extent necessary to pay such Senior Debt in full in cash in accordance with its terms, after giving effect to any concurrent payment or distribution to or for the holders of such Senior Debt.

For purposes of this Article XII, the words, "cash, property or securities" shall not be deemed to include shares of stock of the Company as reorganized or readjusted, or securities of the Company or any other corporation provided for by a plan of reorganization or readjustment, the payment of which is subordinated at least to the extent provided in this Article XII with respect to the Securities to the payment of all Senior Debt which may at the time be outstanding; provided, that (i) such Senior Debt is assumed by the new corporation, if any, resulting from any such reorganization or readjustment, and

(ii) the rights of the holders of such Senior Debt are not, without the consent of such holders, altered by such reorganization or readjustment. The consolidation of the Company with, or the merger of the Company with or into, another Person or the liquidation or dissolution of the Company following the conveyance, transfer or lease of its properties and assets substantially as an entirety to another Person upon the terms and conditions provided for in Article VIII hereof shall not be deemed a dissolution, winding up, liquidation or reorganization for the purposes of this Section 12.03 if such other Person shall, as a part of such consolidation, merger, conveyance, transfer or lease, comply with the conditions stated in Article VIII hereof. Nothing in Section 12.02 or in this Section 12.03 shall apply to claims of, or payments to, the Trustee under or pursuant to Section 6.07 hereof.

**SECTION 1.95 Subrogation.** Subject to the payment in full in cash of all Senior Debt, the rights of the Holders of the Securities shall be subrogated to the rights of the holders of such Senior Debt to receive payments or distributions of cash, property or securities of the Company, as the case may be, applicable to such Senior Debt until the principal of (and premium, if any) and interest on the Securities shall be paid in full; and, for the purposes of such subrogation, no payments or distributions to the holders of such Senior Debt of any cash, property or securities to which the Holders of the Securities or the Trustee would be entitled except for the provisions of this Article XII, and no payment over pursuant to the provisions of this Article XII, to or for the benefit of the holders of such Senior Debt by Holders of the Securities or the Trustee, shall, as between the Company, its creditors other than holders of Senior Debt, and the Holders of the Securities, be deemed to be a payment by the Company to or on account of such Senior Debt. It is understood that the provisions of this Article XII are and are intended solely for the purposes of defining the relative rights of the Holders of the Securities, on the one hand, and the holders of such Senior Debt on the other hand.

Nothing contained in this Article XII or elsewhere in this Indenture or in the Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Debt, and the Holders of the Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Securities the principal of (and premium, if any) and interest (including Additional Payments, if any) on the Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the

Securities and creditors of the Company, as the case may be, other than the holders of Senior Debt, nor shall anything herein or therein prevent the Trustee or the Holder of any Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article XII of the holders of such Senior Debt in respect of cash, property or securities of the Company, as the case may be, received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article XII, the Trustee, subject to the provisions of Section 6.03, and the Holders of the Securities, shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which such dissolution, winding up, liquidation or reorganization proceedings are pending, or a certificate of the receiver, trustee in bankruptcy, liquidation trustee, agent or other Person making such payment or distribution, delivered to the Trustee or to the Holders of the Securities, for the purposes of ascertaining the Persons entitled to participate in such distribution, the holders of the Senior Debt and other indebtedness of the Company, as the case may be, the amount thereof or payable thereon, the amount or amounts paid or distributed thereon and all other facts pertinent thereto or to this Article XII; provided that such court, trustee, receiver, agent or other Person has been apprised of, or the order, decree or certificate makes reference to, the provisions of this Article.

**SECTION 1.96 Trustee to Effectuate Subordination.** Each Holder of Securities by such Holder's acceptance thereof authorizes and directs the Trustee on such Holder's behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article XII and appoints the Trustee as such Holder's attorney-in-fact for any and all such purposes.

**SECTION 1.97 Notice by the Company.** The Company shall give prompt written notice to a Responsible Officer of the Trustee of any fact known to the Company which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article

XII. Notwithstanding the provisions of this Article XII or any other provision of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of monies to or by the Trustee in respect of the Securities pursuant to the provisions of this Article XII, unless and until a Responsible Officer of the Trustee shall have received written notice thereof at the Corporate Trust Office of the Trustee from the Company or a holder or holders of Senior Debt or from any trustee therefor; and before the receipt of any such written notice, the Trustee, subject to the provisions of Section 6.03 hereof, shall be entitled in all respects to assume that no such facts exist; provided, however, that if the Trustee shall not have received the notice provided for in this Section 12.06 at least two Business Days prior to the date upon which by the terms hereof any money may become payable for any purpose

(including, without limitation, the payment of the principal of (and premium, if any) or interest on any Security), then, anything herein contained to the contrary notwithstanding, the Trustee shall have full power and authority to receive such money and to apply the same to the purposes for which they were received, and shall not be affected by any notice to the contrary which may be received by it within two Business Days prior to such date.

The Trustee, subject to the provisions of Section 6.03, shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Debt (or a trustee on behalf of such holder) to establish that such notice has been given by a holder of such Senior Debt or a trustee on behalf of any such holder or holders. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Debt to participate in any payment or distribution pursuant to this Article XII, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Debt held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under this Article XII, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment.

**SECTION 1.98 Rights of the Trustee; Holders of Senior Debt.** The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article XII in respect of any Senior Debt at any time held by it, to the same extent as any other holder of Senior Debt, and nothing in this Indenture shall deprive the Trustee of any of its rights as such holder.

With respect to the holders of Senior Debt of the Company, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are set forth in this Article XII, and no implied covenants or obligations with respect to the holders of such Senior Debt shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of such Senior Debt and, subject to the provisions of Section 6.03, the Trustee shall not be liable to any holder of such Senior Debt if it shall pay over or deliver to Holders of Securities, the Company or any other Person money or assets to which any holder of such Senior Debt shall be entitled by virtue of this Article XII or otherwise.

**SECTION 1.99 Subordination May Not Be Impaired.** (a) No right of any present or future holder of any Senior Debt to enforce subordination as herein provided shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any act or failure to act, in good faith, by any such holder, or by any noncompliance by the Company with the terms, provisions and

covenants of this Indenture, regardless of any knowledge thereof which any such holder may have or otherwise be charged with.

(b) Without in any way limiting the generality of the foregoing paragraph, the holders of Senior Debt may, at any time and from time to time, without the consent of or notice to the Trustee or the Holders of the Securities, without incurring responsibility to the holders of the Securities and without impairing or releasing the subordination provided in this Article XII or the obligations hereunder of the Holders of the Securities to the holders of Senior Debt, do any one or more of the following: (i) change the manner, place or terms of payment or extend the time of payment of, or renew or alter, such Senior Debt, or otherwise amend or supplement in any manner such Senior Debt or any instrument evidencing the same or any agreement under which such Senior Debt is outstanding; (ii) sell, exchange, release or otherwise deal with any property pledged, mortgaged or otherwise securing such Senior Debt; (iii) release any Person liable in any manner for the collection of such Senior Debt; and (iv) exercise or refrain from exercising any rights against the Company and any other Person.

(c) The subordination provisions of this Article XII shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Senior Debt is, pursuant to applicable law, avoided, recovered, or rescinded or must otherwise be restored or returned by any holder of Senior Debt, whether as a "voidable preference," "fraudulent conveyance," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made.

(d) If, upon any proceeding referred to in Section 12.03, the Trustee does not file a claim in such proceeding prior to fifteen Business Days before the expiration of the time to file such claim, the holders of Designated Senior Debt or their agent may file such claim on behalf of the Holders of the Securities.

(e) The subordination provisions contained herein are solely for the benefit of the holders from time to time of Senior Debt and their representatives, assignees and beneficiaries and may not be rescinded, canceled, amended or modified in any way other than, as to any holder of Senior Debt, pursuant to an amendment or modification that is permitted by the documentation relating to the Senior Debt applicable to such holder.

## **ARTICLE XIII**

### **Conversion of Securities**

**SECTION 1.100 Conversion Rights.** Subject to and upon compliance with the provisions of this Article, the Securities are convertible, at the option of the Holder, at any time prior to 5:00 p.m. New York City time, on or prior to the Tender Notification Date and, in the event of either a Convertible Remarketing which does not fail or a Failed Final Remarketing, on and after the Reset Date through February 1, 2030 (except that Securities called for redemption by the Company shall be convertible at any time prior to 5:00 p.m. New York City time, on any Redemption Date), into fully paid and nonassessable shares of Common Stock of the Company. On or prior to the Tender Notification Date, each Security is convertible at the option of the Holder into 0.4881 shares of Common Stock for each \$50 in aggregate principal amount of Securities (the "Initial Conversion Ratio") (equal to a conversion price of \$102.4375 principal amount of Securities per share of Common Stock (the "Initial Conversion Price")). On and after the Reset Date, the Securities may, at the option of the Company and subject to the results of the Remarketing, become nonconvertible or convertible into a different number of shares of Common Stock, as determined by the Remarketing Agent in accordance with the terms of the Remarketing Agreement. The conversion ratio and the equivalent conversion price in effect at any given time are known as the "Applicable Conversion Ratio" and the "Applicable Conversion Price", respectively, and are subject to adjustment as described in this Article XIII. A Holder of Securities may convert any portion of the principal amount of the Securities into that number of fully paid and nonassessable shares of Common Stock (calculated as to each conversion to the nearest 1/100th of a share) obtained by dividing the principal amount of the Securities to be converted by the Applicable Conversion Ratio. In case a Security or portion thereof is called for redemption, such conversion right in respect of the Security or portion so called shall expire at the close of business on the corresponding Redemption Date, unless the Company defaults in making the payment due upon redemption.

**SECTION 1.101 Conversion Procedures.** (a) In order to convert all or a portion of the Securities, the Holder thereof shall deliver to the Conversion Agent an irrevocable Notice of Conversion setting forth the principal amount of Securities to be converted, together with the name or names, if other than the Holder, in which the shares of Common Stock should be issued upon conversion and, if such Securities are definitive Securities, surrender to the Conversion Agent the Securities to be converted, duly endorsed or assigned to the Company or in blank. In addition, a Holder of Preferred Securities may exercise its right under the Declaration to convert such Preferred Securities into Common Stock by delivering to the Conversion Agent an irrevocable Notice of Conversion setting forth the information called for by the preceding sentence and directing the Conversion Agent (i) to exchange such Preferred Security for a portion of the

Securities held by the Trust (at an exchange rate of \$50 principal amount of Securities for each Preferred Security) and (ii) to immediately convert such Securities, on behalf of such Holder, into Common Stock of the Company pursuant to this Article XIII and, if such Preferred Securities are in definitive form, surrendering such Preferred Securities, duly endorsed or assigned to the Company or in blank. So long as any Preferred Securities are outstanding, the Trust shall not convert any Securities except pursuant to a Notice of Conversion duly executed and delivered to the Conversion Agent by a Holder of Preferred Securities.

If a Notice of Conversion is delivered on or after the Regular Record Date and prior to the subsequent Interest Payment Date, the Holder will be entitled to receive the interest payable on the subsequent Interest Payment Date on the portion of Securities to be converted notwithstanding the conversion thereof prior to such Interest Payment Date. Except as otherwise provided in the immediately preceding sentence, in the case of any Security which is converted, interest whose Stated Maturity is after the date of conversion of such Security shall not be payable, and the Company shall not make nor be required to make any other payment, adjustment or allowance with respect to accrued but unpaid interest on the Securities being converted, which shall be deemed to be paid in full. Each conversion shall be deemed to have been effected immediately prior to the close of business on the day on which the Notice of Conversion was received (the "Conversion Date") by the Conversion Agent from the Holder or from a Holder of the Preferred Securities effecting a conversion thereof pursuant to its conversion rights under the Declaration, as the case may be. The Person or Persons entitled to receive the Common Stock issuable upon such conversion shall be treated for all purposes as the record holder or holders of such Common Stock as of the Conversion Date. As promptly as practicable on or after the Conversion Date, the Company shall issue and deliver at the office of the Conversion Agent, unless otherwise directed by the Holder in the Notice of Conversion, a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same. The Conversion Agent shall deliver such certificate or certificates to such Person or Persons.

(b) Subject to the right of the Holder of such Security or any Predecessor Security to receive interest as provided in the last paragraph of Section 3.08 and the second paragraph of clause (a) of Section 13.02, the Company's delivery upon conversion of the whole number of shares of Common Stock into which the Securities are convertible (together with the cash payment, if any, in lieu of fractional shares) shall be deemed to satisfy the Company's obligation to pay the principal amount at Maturity of the portion of Securities so converted and any unpaid interest (including Additional Payments) accrued on such Securities at the time of such conversion.

(c) No fractional shares of Common Stock will be issued as a result of conversion, but in lieu thereof, the Company shall pay to the Conversion Agent a cash adjustment in an amount equal to the same fraction of the Closing Price of such fractional interest on the date on which the Securities or Preferred Securities, as the case may be, were duly surrendered to the Conversion Agent for conversion, or, if such day is not a Trading Day, on the next Trading Day, and the Conversion Agent in turn will make such payment, if any, to the Holder of the Securities or the Holder of the Preferred Securities so converted.

(d) In the event of the conversion of any Security in part only, a new Security or Securities for the unconverted portion thereof will be issued in the name of the Holder thereof upon the cancellation thereof in accordance with Section 3.06.

(e) In effecting the conversion transactions described in this Section, the Conversion Agent is acting as agent of the Holders of Preferred Securities (in the exchange of Preferred Securities for Securities) and as agent of the Holders of Securities (in the conversion of Securities into Common Stock), as the case may be, directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (x) if the Trust exists, (i) to exchange Securities held by or on behalf of the Trust from time to time for Preferred Securities in connection with the conversion of such Preferred Securities in accordance with this Article XIII and (ii) to convert all or a portion of the Securities into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Article XIII and to deliver to the Trust a new Security or Securities for any resulting unconverted principal amount and (y) if the Trust no longer exists (i) to exchange Securities held by the Holders in connection with the conversion of such Securities in accordance with this Article XIII and (ii) to convert all or a portion of the Securities into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Article XIII and to deliver to such Holders a new Security or Securities for any resulting unconverted principal amount.

(f) All shares of Common Stock delivered upon any conversion of Restricted Securities shall bear a restrictive legend substantially in the form of the legend required to be set forth on such Securities and shall be subject to the restrictions on transfer provided in such legend and in Section 3.06(b) hereof. Neither the Trustee nor the Conversion Agent shall have any responsibility for the inclusion or content of any such restrictive legend on such Common Stock; provided, however, that the Trustee or the Conversion Agent shall have provided to the Company or to the Company's transfer agent for such Common Stock, prior to or concurrently with a request to the Company to deliver to such Conversion Agent certificates for such Common Stock, written notice that the Securities delivered for conversion are Restricted Securities.

**SECTION 1.102 Conversion Price Adjustments.** The Applicable Conversion Price shall be subject to adjustment (without duplication) from time to time as follows:

- (i) In case the Company shall pay a dividend or make a distribution on the Common Stock exclusively in Common Stock, the Applicable Conversion Price in effect at the opening of business on the day following the date fixed for the determination of stockholders entitled to receive such dividend or other distribution shall be reduced by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. For the purposes of this subparagraph (i), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company. In the event that such dividend or distribution is not so paid or made, the Applicable Conversion Price shall again be adjusted to be the Applicable Conversion Price which would then be in effect if such dividend or distribution had not occurred.
- (ii) In case the Company shall pay or make a dividend or other distribution on its Common Stock consisting exclusively of, or shall otherwise issue to all holders of its Common Stock, rights or warrants, in each case entitling the holders thereof to subscribe for or purchase shares of Common Stock at a price per share less than the current market price per share (determined as provided in subparagraph (vii)) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such rights or warrants, the Applicable Conversion Price in effect at the opening of business on the day following the date fixed for such determination shall be reduced by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock which the aggregate of the offering price of the total number of shares of Common Stock so offered for subscription or purchase would purchase at such current market price and the denominator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination plus the number of shares of Common Stock so offered for subscription or purchase, such reduction to become effective immediately after the opening of business on the day following the date fixed for such determination. To the extent that rights are not so issued or shares of Common Stock are not so delivered after the expiration of such rights or warrants, the Applicable Conversion Price shall be readjusted to the Applicable

Conversion Price which would then be in effect if such date fixed for the determination of stockholders entitled to receive such rights or warrants had not been fixed. For the purposes of this subparagraph

(ii), the number of shares of Common Stock at any time outstanding shall not include shares held in the treasury of the Company.

(iii) In case outstanding shares of Common Stock shall be subdivided into a greater number of shares of Common Stock, the Applicable Conversion Price in effect at the opening of business on the day following the day upon which such subdivision becomes effective shall be proportionately reduced and, conversely, in case outstanding shares of Common Stock shall each be combined into a smaller number of shares of Common Stock, the Applicable Conversion Price in effect at the opening of business on the day following the day upon which such combination becomes effective shall be proportionately increased, such reduction or increase, as the case may be, to become effective immediately after the opening of business on the day following the day upon which such subdivision or combination becomes effective.

(iv) Subject to the last sentence of this subparagraph (iv), in case the Company shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, shares of any class or series of capital stock, cash or assets (including securities, but excluding any rights or warrants referred to in subparagraph (ii) of this Section 13.03, any dividend or distribution paid exclusively in cash and any dividend or distribution referred to in subparagraph (i) of this Section 13.03), the Applicable Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Applicable Conversion Price in effect immediately prior to the effectiveness of the Applicable Conversion Price reduction contemplated by this subparagraph (iv) by a fraction of which the numerator shall be the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Common Stock on the date fixed for the determination of stockholders entitled to receive such distribution (the "Reference Date") less the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors), on the Reference Date, of the portion of the evidences of indebtedness, shares of capital stock, cash and assets so distributed applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such reduction to become effective immediately prior to the opening of business on the day following the Reference Date. In the event that such dividend or distribution is not so paid or made, the Applicable Conversion Price shall again be adjusted to be the Applicable Conversion Price which would then be in effect if such dividend or distribution had not occurred. For purposes of this subparagraph (iv), any

dividend or distribution that includes shares of Common Stock or rights or warrants to subscribe for or purchase shares of Common Stock shall be deemed instead to be (1) a dividend or distribution of the evidences of indebtedness, shares of capital stock, cash or assets other than such shares of Common Stock or such rights or warrants (making any Applicable Conversion Price reduction required by this subparagraph (iv)) immediately followed by (2) a dividend or distribution of such shares of Common Stock or such rights or warrants (making any further Applicable Conversion Price reduction required by subparagraph (i) or (ii) of this Section 13.03), except any shares of Common Stock included in such dividend or distribution shall not be deemed "outstanding at the close of business on the date fixed for such determination" within the meaning of subparagraph (i) of this Section 13.03.

(v) In case the Company shall pay or make a dividend or other distribution on its Common Stock exclusively in cash (excluding (x) cash dividends that do not exceed the per share amount of the smallest of the immediately four preceding quarterly cash dividends (as adjusted to appropriately reflect any of the events referred to in subparagraphs

(i), (ii), (iii), (iv), (v) and (vi)), and (y) cash dividends, the per share amount of which, together with the aggregate per share amount of any other cash dividends paid within the 12 months preceding the date of payment of such cash dividends, does not exceed 12.5% of the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Common Stock on the Trading Day next preceding the date of declaration of such dividend, the Applicable Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Applicable Conversion Price in effect immediately prior to the effectiveness of the Applicable Conversion Price reduction contemplated by this subparagraph (v) by a fraction of which the numerator shall be the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Common Stock on the date fixed for the payment of such distribution less the amount of cash so distributed and not excluded as provided applicable to one share of Common Stock and the denominator shall be such current market price per share of the Common Stock, such reduction to become effective immediately prior to the opening of business on the day following the date fixed for the payment of such distribution; provided, however, that in the event the portion of the cash so distributed applicable to one share of Common Stock is equal to or greater than the current market price per share (as defined in subparagraph (vii) of this Section 13.03) of the Common Stock on the record date mentioned above, in lieu of the foregoing adjustment, adequate provision shall be made so that each Holder of Securities shall have the right to receive upon conversion the amount of cash such Holder would have received had such Holder converted each Security immediately prior to the record date for the distribution of the cash. In the event

that such dividend or distribution is not so paid or made, the Applicable Conversion Price shall again be adjusted to be the Applicable Conversion Price which would then be in effect if such record date had not been fixed.

(vi) In case a tender or exchange offer (other than an odd-lot offer) made by the Company or any Subsidiary of the Company for all or any portion of the Company's Common Stock shall expire and such tender or exchange offer shall involve the payment by the Company or such Subsidiary of consideration per share of Common Stock having a fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) at the last time (the "Expiration Time") tenders or exchanges may be made pursuant to such tender or exchange offer (as it shall have been amended) that exceeds 110% of the current market price per share (determined as provided in subparagraph (vii) of this

Section 13.03) of the Common Stock on the Trading Day next succeeding the Expiration Time, the Applicable Conversion Price shall be reduced so that the same shall equal the price determined by multiplying the Applicable Conversion Price in effect immediately prior to the effectiveness of the Applicable Conversion Price reduction contemplated by this subparagraph (vi) by a fraction of which the numerator shall be the number of shares of Common Stock outstanding (including any tendered or exchanged shares) at the Expiration Time multiplied by the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Common Stock on the Trading Day next succeeding the Expiration Time and the denominator shall be the sum of

(x) the fair market value (determined as aforesaid) of the aggregate consideration payable to stockholders based on the acceptance (up to any maximum specified in the terms of the tender or exchange offer) of all shares validly tendered or exchanged and not withdrawn as of the Expiration Time (the shares deemed so accepted, up to any such maximum, being referred to as the "Purchased Shares") and (y) the product of the number of shares of Common Stock outstanding (less any Purchased Shares) at the Expiration Time and the current market price per share (determined as provided in subparagraph (vii) of this Section 13.03) of the Common Stock on the Trading Day next succeeding the Expiration Time, such reduction to become effective immediately prior to the opening of business on the day following the Expiration Time.

(vii) For the purpose of any computation under subparagraphs

(ii), (iv), (v) and (vi) of this Section 13.03, the current market price per share of Common Stock on any date in question shall be deemed to be the average of the daily Closing Prices for the ten consecutive Trading Days prior to the earlier of the day in question and, if applicable, the day before the "ex" date (as hereinafter defined) with respect to the issuance or distribution requiring such computation; provided,

however, that if the day in question or the "ex" date for any event (other than the issuance or distribution requiring such computation) that requires an adjustment to the Applicable Conversion Price pursuant to Section 13.03 (ii), (iv), (v) or (vi) occurs during such 10 consecutive Trading Days, the Closing Price for each Trading Day prior to such date for such other event shall be adjusted by multiplying such Closing Price by the same fraction by which the Applicable Conversion Price is so required to be adjusted as a result of such other event. For purposes of this subparagraph (vii), the term "ex" date (I) when used with respect to any issuance or distribution, means the first date on which the Common Stock trades regular way on the relevant exchange or in the relevant market from which the Closing Price was obtained without the right to receive such issuance or distribution,

(II) when used with respect to any subdivision or combination of shares of Common Stock, means the first date on which the Common Stock trades regular way on such exchange or in such market after the time at which such subdivision or combination becomes effective and (III) when used with respect to any tender or exchange offer means the first date on which the Common Stock trades regular way on such exchange or in such market after the Expiration Time of such offer. Notwithstanding the foregoing, whenever successive adjustments to the Applicable Conversion Price are called for pursuant to this Section 13.03, such adjustments shall be made to the current market price as may be necessary or appropriate to effectuate the intent of this Section 13.03 and to avoid unjust or inequitable results, as determined in good faith by the Board of Directors.

(viii) The Company may make such reductions in the Applicable Conversion Price, in addition to those required by subparagraphs (i), (ii), (iii), (iv), (v) and (vi), as its Board of Directors considers to be advisable to avoid or diminish any income tax to holders of Common Stock or rights to purchase Common Stock resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(ix) No adjustment of the Applicable Conversion Price shall be made upon the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Common Stock or options or rights to purchase such shares pursuant to any present or future employee, director or consultant benefit plan or program of the Company or pursuant to any option, warrant, right, or exercisable, exchangeable or convertible security outstanding as of the date the Securities were first issued. There shall also be no adjustment of the Applicable Conversion Price in case of the issuance of any Common Stock (or securities convertible into or exchangeable for Common Stock), except as specifically described above. Furthermore, no adjustment in the Applicable Conversion Price shall be required unless such

adjustment would require an increase or decrease of at least 1% in the Applicable Conversion Price; provided, however, that any adjustments which by reason of this subparagraph (ix) are not required to be made shall be carried forward and taken into account in determining whether any subsequent adjustment shall be required.

**SECTION 1.103 Reclassification, Consolidation, Merger or Sale of Assets.** In the event that the Company shall be a party to any transaction (including without limitation (a) any recapitalization or reclassification of the Common Stock (other than a change in par value, or from par value to no par value, or from no par value to par value, or as a result of a subdivision or combination of the Common Stock), (b) any consolidation of the Company with, or merger of the Company into, any other Person, any merger of another Person into the Company (other than a merger which does not result in a reclassification, conversion, exchange or cancellation of outstanding shares of Common Stock of the Company), (c) any sale or transfer of all or substantially all of the assets of the Company or (d) any compulsory share exchange) (each of the events in the preceding clauses (a) through (d) being referred to as a "Company Transaction"), in each case, as a result of which shares of Common Stock shall be converted into the right to receive other securities, cash or other property, then lawful provision shall be made as part of the terms of such Company Transaction whereby the Holder of each Security then outstanding shall have the right thereafter to convert such Security only into (i) in the case of any such transaction other than a Common Stock Fundamental Change, the kind and amount of securities, cash and other property receivable upon consummation of such Company Transaction by a holder of the number of shares of Common Stock of the Company into which such Security could have been converted immediately prior to such Company Transaction, after giving effect to any adjustment in the Applicable Conversion Price required by the provision of Section 13.07(a)(i), and (ii) in the case of a Company Transaction involving a Common Stock Fundamental Change, common stock of the kind received by holders of Common Stock as a result of such Common Stock Fundamental Change in an amount determined pursuant to the provisions of Section 13.07(a)(ii). Holders of the Securities shall have no voting rights with respect to any Company Transaction described in this Section 13.04.

The Company or the Person formed by such consolidation or resulting from such merger or which acquired such assets or which acquires the Company's shares, as the case may be, shall make provision in its certificate or articles of incorporation or other constituent document to establish such right. Such certificate or articles of incorporation or other constituent document shall provide for adjustments which, for events subsequent to the effective date of such certificate or articles of incorporation or other constituent document, shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article XIII. The above provisions shall similarly apply to successive transactions of the foregoing type.

SECTION 1.104 Notice of Adjustments of Conversion Price. Whenever the Applicable Conversion Price is adjusted as herein provided:

- (a) the Company shall compute the adjusted Applicable Conversion Price and shall prepare a certificate signed by the Chief Financial Officer or the Treasurer of the Company setting forth the adjusted Applicable Conversion Price and showing in reasonable detail the facts upon which such adjustment is based, and such certificate shall forthwith be filed with the Trustee, the Conversion Agent and the transfer agent for the Preferred Securities and the Securities; and
- (b) a notice stating the Applicable Conversion Price has been adjusted and setting forth the adjusted Applicable Conversion Price shall as soon as practicable be mailed by the Company to all record Holders of Preferred Securities and the Securities at their last addresses as they appear upon the stock transfer books of the Company and the books and records of the Trust, respectively.

SECTION 1.105 Prior Notice of Certain Events. In case:

- (i) the Company shall (1) declare any dividend (or any other distribution) on its Common Stock, other than (A) a dividend payable in shares of Common Stock or (B) a dividend payable in cash that would not require an adjustment pursuant to Section 13.03(iv) or (v) or (2) authorize a tender or exchange offer that would require an adjustment pursuant to Section 13.03(vi);
- (ii) the Company shall authorize the granting to all holders of Common Stock of rights or warrants to subscribe for or purchase any shares of stock of any class or series or of any other rights or warrants;
- (iii) of any reclassification of Common Stock (other than a subdivision or combination of the outstanding Common Stock, or a change in par value, or from par value to no par value, or from no par value to par value), or of any consolidation or merger to which the Company is a party and for which approval of any stockholders of the Company shall be required, or of the sale or transfer of all or substantially all of the assets of the Company or of any compulsory share exchange whereby the Common Stock is converted into other securities, cash or other property; or
- (iv) of the voluntary or involuntary dissolution, liquidation or winding up of the Company;

then the Company shall (a) if any Preferred Securities are outstanding, cause to be filed with the transfer agent for the Preferred Securities, and shall cause to be mailed to the Holders of record of the Preferred Securities, at their last addresses as they shall appear upon the books and records of the Trust or (b) if no Preferred Securities are outstanding, shall cause to be mailed to all Holders at their last addresses as they shall appear in the Security Register, at least fifteen days prior to the applicable record or effective date hereinafter specified, a notice stating (x) the date on which a record (if any) is to be taken for the purpose of such dividend, distribution, rights or warrants or, if a record is not to be taken, the date as of which the holders of Common Stock of record to be entitled to such dividend, distribution, rights or warrants are to be determined or (y) the date on which such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up is expected to become effective, and the date as of which it is expected that holders of Common Stock of record shall be entitled to exchange their shares of Common Stock for securities, cash or other property deliverable upon such reclassification, consolidation, merger, sale, transfer, share exchange, dissolution, liquidation or winding up (but no failure to mail such notice or any defect therein or in the mailing thereof shall affect the validity of the corporate action required to be specified in such notice).

**SECTION 1.106 Adjustments in Case of Fundamental Changes.** (a) Notwithstanding any other provision in this Article XIII to the contrary, in the case of any Company Transaction involving a Fundamental Change, then the Applicable Conversion Price will be adjusted immediately after such Fundamental Change as follows:

(i) in the case of a Non-Stock Fundamental Change, the Applicable Conversion Price of the Securities shall thereupon become the lower of (A) the Applicable Conversion Price immediately prior to such Non-Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to this Article XIII, and (B) the result obtained by multiplying the greater of the Relevant Price or the then applicable Reference Market Price by a fraction of which the numerator shall be \$50 and the denominator shall be the then-current Optional Redemption Price or, on or prior to the Reset Date and at any time after the Reset Date at which the Securities are not redeemable at the option of the Company, an amount per Security determined by the Company in its sole discretion, after consultation with an investment banking firm, to be the equivalent of the hypothetical Redemption Price that would have been applicable if the Securities had been redeemable during such period (such fraction shall hereinafter be referred to as the "Optional Redemption Ratio") (such product shall hereinafter be referred to as the "Adjusted Relevant Price" or the "Adjusted Reference Market Price", as the case may be); and

(ii) in the case of a Common Stock Fundamental Change, the Applicable Conversion Price of the Securities in effect immediately prior to such Common Stock Fundamental Change, but after giving effect to any other prior adjustments effected pursuant to this Article XIII, shall thereupon be adjusted by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be the Purchaser Stock Price and the denominator shall be the Relevant Price; provided, however, that in the event of a Common Stock Fundamental Change in which (A) 100% of the value of the consideration received by a holder of Common Stock is common stock of the successor, acquiror or other third party (and cash, if any, is paid only with respect to any fractional interests in such common stock resulting from such Common Stock Fundamental Change) and (B) all of the Common Stock shall have been exchanged for, converted into or acquired for common stock (and cash with respect to fractional interests) of the successor, acquiror or other third party, the Applicable Conversion Price of the Securities in effect immediately prior to such Common Stock Fundamental Change shall thereupon be adjusted by multiplying such Applicable Conversion Price by a fraction of which the numerator shall be one and the denominator shall be the number of shares of common stock of the successor, acquiror, or other third party received by a stockholder for one share of Common Stock as a result of such Common Stock Fundamental Change.

(b) Definitions. The following definitions shall apply to terms used in this Article XIII:

(1) "Closing Price" of any security on any day shall mean on any day the last reported sale price of such security on such day, or in case no sale takes place on such day, the average of the closing bid and asked prices in each case on the principal national securities exchange on which such securities are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the NNM or, if such securities are not listed or admitted to trading on any national securities exchange or quoted on the NNM, the average of the closing bid and asked prices in the over-the-counter market as furnished by any New York Stock Exchange member firm selected by the Company for such purpose.

(2) "Common Stock Fundamental Change" shall mean any Fundamental

Change in which more than 50% of the value (as determined in good faith by the Board of Directors) of the consideration received by holders of Common Stock consists of common stock that for each of the ten consecutive Trading Days immediately prior to and including the Entitlement Date has been admitted for listing or admitted for listing subject to notice of issuance on a national securities

exchange or quoted on the NNM, provided, however, that a Fundamental Change shall not be a Common Stock Fundamental Change unless either:

- (A) the Company continues to exist after the occurrence of the Fundamental Change and the Outstanding Preferred Securities continue to remain Outstanding without having been converted into another security; or
  - (B) not later than the occurrence of the Fundamental Change, the Outstanding Securities are converted into or exchanged for debentures of a corporation succeeding to the business of the Company, which debentures have terms substantially similar to the Securities.
- (3) "Entitlement Date" shall mean the record date for determination of the holders of Common Stock entitled to receive securities, cash or other property in connection with a Non-Stock Fundamental Change or a Common Stock Fundamental Change or, if there is no such record date, the date upon which holders of Common Stock shall have the right to receive such securities, cash or other property.
- (4) "Fundamental Change" shall mean the occurrence of any transaction or event in connection with a Company Transaction pursuant to which all or substantially all of the Common Stock shall be exchanged for, converted into, acquired for or constitute solely the right to receive securities, cash or other property (whether by means of an exchange offer, liquidation, tender offer, consolidation, merger, combination, reclassification, recapitalization or otherwise); provided, however, in the case of a Company Transaction involving more than one such transaction or event, for purposes of adjustment of the Applicable Conversion Price, such Fundamental Change shall be deemed to have occurred when substantially all of the Common Stock of the Company shall be exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash or other property, but the adjustment shall be based upon the highest weighted average of consideration per share that a holder of Common Stock could have received in such transactions or events as a result of which more than 50% of the Common Stock of the Company shall have been exchanged for, converted into, or acquired for or constitute solely the right to receive securities, cash or other property.
- (5) "Non-Stock Fundamental Change" shall mean any Fundamental Change other than a Common Stock Fundamental Change.

(6) "Purchaser Stock Price" shall mean, with respect to any Common Stock Fundamental Change, the average of the daily Closing Prices of the common stock received in such Common Stock Fundamental Change for the ten consecutive Trading Days prior to and including the Entitlement Date, as adjusted in good faith by the Board of Directors to appropriately reflect any of the events referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of Section 13.03.

(7) "Reference Market Price" shall initially mean on the date of original issuance of the Securities, \$53.8125 (which is an amount derived from the product of 66% times the last reported sale price for the Common Stock on the New York Stock Exchange Composite Tape on January 25, 2000, rounded to the nearest one-sixteenth) and, in the event of any adjustment to the Applicable Conversion Price from such date to (but excluding) the Reset Date, other than as a result of a Non-Stock Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the Applicable Conversion Price after giving effect to any such adjustment shall always be the same as the ratio of \$53.8125 to the Initial Conversion Price. If the Securities are convertible into Common Stock on and after the Reset Date, the Reference Market Price on such date will be an amount equal to the product of 66% times the Closing Price of the Common Stock on the Reset Date (such product rounded to the nearest one-sixteenth) and, in the event of any adjustment to the Applicable Conversion Price from the Reset Date and thereafter, other than as a result of a Non-Stock Fundamental Change, the Reference Market Price shall also be adjusted so that the ratio of the Reference Market Price to the Applicable Conversion Price after giving effect to any such adjustment shall always be the same as the ratio of the Closing Price of the Common Stock on the Reset Date to the Term Conversion Price.

(8) "Relevant Price" shall mean (i) in the event of a Non-Stock Fundamental Change in which the holders of the Common Stock receive only cash, the amount of cash received by a stockholder for one share of Common Stock and (ii) in the event of any other Non-Stock Fundamental Change or any Common Stock Fundamental Change, the average of the daily Closing Prices of the Common Stock for the ten consecutive Trading Days prior to and including the Entitlement Date, in each case, as adjusted in good faith by the Company to appropriately reflect any of the events referred to in subparagraphs (i), (ii), (iii), (iv), (v) and (vi) of Section 13.03.

(9) "Trading Day" shall mean a day on which securities are traded on the national securities exchange or quotation system used to determine the Closing Price.

**SECTION 1.107 Dividend or Interest Reinvestment Plans.** (a) Notwithstanding the foregoing provisions, the issuance of any shares of Common Stock pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on securities of the Company and the investment of additional optional amounts in shares of Common Stock under any such plan, and the issuance of any shares of Common Stock or options or rights to purchase such shares pursuant to any employee benefit plan or program of the Company or pursuant to any option, warrant, right or exercisable, exchangeable or convertible security outstanding as of the date the Securities were first issued, shall not be deemed to constitute an issuance of Common Stock or exercisable, exchangeable or convertible securities by the Company to which any of the adjustment provisions described above applies.

(b) There shall also be no adjustment of the Applicable Conversion Price in case of the issuance of any stock (or securities convertible into or exchangeable for stock) of the Company except as specifically described in this Article XIII.

**SECTION 1.108 Certain Additional Rights.** Notwithstanding any other provision of this Article XIII to the contrary, rights, warrants, evidences of indebtedness, other securities, cash or other assets (including, without limitation, any rights distributed pursuant to any stockholder rights plan) shall be deemed not to have been distributed for purposes of this Article XIII if the Company makes proper provision so that each Holder who converts a Security (or any portion thereof) after the date fixed for determination of stockholders entitled to receive such distribution shall be entitled to receive upon such conversion, in addition to the shares of Common Stock issuable upon such conversion, the amount and kind of such distributions that such Holder would have been entitled to receive if such Holder had, immediately prior to such determination date, converted such Security into Common Stock.

**SECTION 1.109 Restrictions on Common Stock Issuable Upon Conversion.** (a) Shares of Common Stock to be issued upon conversion of a Security in respect of Restricted Preferred Securities (as defined in the Declaration) shall bear such restrictive legends as the Company may provide in accordance with applicable law.

(b) If shares of Common Stock to be issued upon conversion of a Security in respect of Restricted Preferred Securities are to be registered in a name other than that of the Holder of such Preferred Security, then the Person in whose name such shares of Common Stock are to be registered must deliver to the Conversion Agent a certificate satisfactory to the Company and signed by such Person, as to compliance with the restrictions on transfer applicable to such Preferred Security. Neither the Trustee nor any Conversion Agent or Registrar shall be required to register in a name other than that of the Holder shares of Common Stock or such Preferred Securities issued upon conversion of any such Security in respect of such Preferred Securities not so accompanied by a properly completed certificate.

**SECTION 1.110 Trustee Not Responsible for Determining Conversion Price or Adjustments.** Neither the Trustee nor any Conversion Agent shall at any time be under any duty or responsibility to any Holder of any Security to determine whether any facts exist which may require any adjustment of the Applicable Conversion Price, or with respect to the nature or extent of any such adjustment when made, or with respect to the method employed, or herein or in any supplemental indenture provided to be employed, in making the same. Neither the Trustee nor any Conversion Agent shall be accountable with respect to the validity or value (or the kind or amount) of any shares of Common Stock or of any securities or property, which may at any time be issued or delivered upon the conversion of any Security; and neither the Trustee nor any Conversion Agent makes any representation with respect thereto. Neither the Trustee nor any Conversion Agent shall be responsible for any failure of the Company to make any cash payment or to issue, transfer or deliver any shares of Common Stock or stock certificates or other securities or property upon the surrender of any Security for the purpose of conversion, or, except as expressly herein provided, to comply with any of the covenants of the Company contained in Article X or this Article XIII.

[Signature page follows.]

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

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

**CALPINE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**THE BANK OF NEW YORK, as Trustee**

By: \_\_\_\_\_  
Name:  
Title:

## **EXHIBIT A**

### **FORM OF SECURITY**

#### **[FORM OF FACE OF SECURITY]**

[Include if a Global Security: THIS SECURITY IS A GLOBAL SECURITY WITHIN THE MEANING OF THE INDENTURE HEREINAFTER REFERRED TO AND IS REGISTERED IN THE NAME OF THE DEPOSITORY TRUST COMPANY (THE "DEPOSITORY") OR A NOMINEE OF THE DEPOSITORY. THIS SECURITY IS EXCHANGEABLE FOR A SECURITY REGISTERED IN THE NAME OF A PERSON OTHER THAN THE DEPOSITORY OR ITS NOMINEE ONLY IN THE LIMITED CIRCUMSTANCES DESCRIBED IN THE INDENTURE, AND NO TRANSFER OF THIS SECURITY (OTHER THAN A TRANSFER OF THIS SECURITY AS A WHOLE BY THE DEPOSITORY TO A NOMINEE OF THE DEPOSITORY OR BY A NOMINEE OF THE DEPOSITORY TO THE DEPOSITORY OR ANOTHER NOMINEE OF THE DEPOSITORY) MAY BE REGISTERED EXCEPT IN LIMITED CIRCUMSTANCES.

UNLESS THIS SECURITY IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY (55 WATER STREET, NEW YORK) TO CALPINE CORPORATION OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY AND ANY PAYMENT HEREON IS MADE TO CEDE & CO., ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY A PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[Include Restricted Securities Legend if required under Section 2.02: THIS SECURITY (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND THIS SECURITY AND ANY COMMON STOCK OF THE COMPANY ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF THIS SECURITY IS HEREBY NOTIFIED THAT THE SELLER OF THIS SECURITY 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 SECURITY AGREES FOR THE BENEFIT OF THE ISSUER AND THE COMPANY THAT (A) THIS SECURITY AND ANY CLASS A COMMON STOCK OF THE COMPANY ISSUABLE UPON CONVERSION THEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (i) 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) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iii) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iii) 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 SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.]

**CALPINE CORPORATION**

Convertible Subordinated  
Debenture Due 2030

No. \$[\_\_\_\_\_  
[CUSIP No. \_\_\_\_]

CALPINE CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (herein called "the Company", which term includes any successor corporation under the Indenture hereinafter referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, the principal sum [indicated on Schedule A hereof](1) [of [Amount]](2) (\$[\_\_\_\_]) on February 1, 2030.

- 
- (1) Applicable to Global Securities only.  
(2) Applicable to certificated Securities only.

Interest Payment Dates: February 1, May 1, August 1 and November 1,  
commencing May 1, 2000

Regular Record Dates: The close of business on the fifteenth day of each  
January, May, August and November immediately  
preceding the applicable Interest Payment Date

Reference is hereby made to the further provisions of this Security 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 Trustee referred to on the reverse hereof by manual signature, this Security shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose.

IN WITNESS WHEREOF, the Company has caused this instrument to be signed manually or by facsimile by its duly authorized officers.

Dated: January 31, 2000,

**CALPINE CORPORATION**

By: \_\_\_\_\_  
Name:  
Title:

**TRUSTEE'S CERTIFICATE  
OF AUTHENTICATION**

This is one of the Securities referred to in the within-mentioned Indenture.

Dated: January 31, 2000

THE BANK OF NEW YORK,  
as Trustee

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

**[FORM OF REVERSE OF SECURITY]**

**CALPINE CORPORATION**

Convertible Subordinated  
Debenture Due 2030(3)

1. Interest. CALPINE CORPORATION, a Delaware corporation (the "Company"), is the issuer of this Convertible Subordinated Debenture Due 2030 (the "Security") limited in aggregate principal amount to \$309,278,400 (or up to \$371,134,100 to the extent the option granted by the Trust is exercised in full), issued under the Indenture hereinafter referred to. The Company promises to pay interest on the Securities in cash from January 31, 2000 or from the most recent interest payment date to which interest has been paid or duly provided for, quarterly (subject to deferral for up to 20 consecutive quarters as described in Section 3 hereof) in arrears on February 1, May 1, August 1 and November 1 of each year (each such date, an "Interest Payment Date"), commencing May 1, 2000, at the Applicable Rate, plus Additional Payments, if any, until the principal hereof shall have become due and payable. If the Reset Date is prior to the Regular Record Date for the immediately following Interest Payment Date, then interest and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Interest Payment Date shall be paid on such Interest Payment Date to the person in whose name each Security is registered on the relevant Regular Record Date, subject to the right of the Company to initiate a Deferral Period. If the Reset Date is on or after the Regular Record Date for the immediately following Interest Payment Date, then

(1) interest and Additional Amounts, if any, accrued from and after the Regular Record Date to but excluding the Reset Date shall be paid on the immediately following Interest Payment Date to the person in whose name each Security is registered on the relevant Regular Record Date and (2) interest and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Interest Payment Date shall be paid on the second Interest Payment Date immediately following the Reset Date to the person in whose name each Security is registered on the relevant Regular Record Date for such second Interest Payment Date, subject in each case to the right of the Company to initiate a Deferral Period. Prior to the Reset Date, the Applicable Rate shall be 5.50% per annum. On and after the Reset Date, the Applicable Rate shall

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(3) All terms used in this Security which are defined in the Indenture or in the Declaration referred to herein shall have the meanings assigned to them in the Indenture or the Declaration, as the case may be.

be the rate established by the Remarketing Agent to be effective on the Reset Date. Upon a Registration Default, the Applicable Rate shall be adjusted as set forth in the Registration Rights Agreement.

The amount of interest payable for any period will be computed on the basis of twelve 30-day months and a 360-day year. To the extent lawful, the Company shall pay interest on overdue installments of interest (without regard to any applicable grace period) at the rate borne by the Securities, compounded quarterly. Any interest paid on this Security shall be increased to the extent necessary to pay Additional Sums as set forth in this Security.

2. Additional Amounts. The Company shall pay to Calpine Capital Trust II (and its permitted successors or assigns under the Declaration) (the "Trust") such additional amounts as may be necessary in order that the amount of dividends or other distributions then due and payable by the Trust on the Preferred Securities that at any time remain outstanding in accordance with the terms thereof shall not be reduced as a result of any additional taxes, duties and other governmental charges of whatever nature (other than withholding taxes) imposed by the United States or any other taxing authority.

3. Extension of Interest Payment Period. So long as no Event of Default has occurred and is continuing, the Company shall have the right, at any time during the term of this Security, from time to time to defer payments of interest by extending the interest payment period of such Security for up to 20 consecutive quarters (a "Deferral Period"); provided that no Deferral Period may extend beyond (i) the maturity (whether at February 1, 2030 or by declaration of acceleration, call for redemption or otherwise) or (ii) in the case of a Deferral Period that begins prior to the Reset Date, the Reset Date. To the extent permitted by applicable law, interest, the payment of which has been deferred because of the extension of the interest payment period pursuant to

Section 3.13 of the Indenture, will bear interest thereon at the Applicable Rate compounded quarterly for each quarter of the Deferral Period ("Compounded Interest"). On the applicable Payment Resumption Date, the Company shall pay all interest then accrued and unpaid on the Securities, including any Compounded Interest that shall be payable to the Holders of the Securities in whose names the Securities are registered in the Security Register on the record date fixed for such Payment Resumption Date. Before the termination of any Deferral Period, the Company may further extend such period, provided that such period together with all such further extensions thereof shall not exceed 20 consecutive quarters or extend beyond (i) the maturity (whether at February 1, 2030 or by declaration of acceleration, call for redemption or otherwise) or (ii) in the case of a Deferral Period that begins prior to the Reset Date, the Reset Date. Upon the termination of any Deferral Period and upon the payment of all Compounded Interest and Additional Sums (together, "Additional Payments"), if any, then due, the Company may commence a new Deferral

Period, subject to the foregoing requirements. No interest shall be due and payable during a Deferral Period except on the applicable Payment Resumption Date.

The Company shall give the Holder of the Security and the Trustee written notice (a "Deferral Notice") of its selection of a Deferral Period at least ten days prior to the record date for any distributions that would have been payable on the Trust Securities except for the decision to begin or extend such Deferral Period. The Company may elect to pay all interest then accrued and unpaid on the Securities, including Compounded Interest, on an Interest Payment Date prior to its most recently established Payment Resumption Date, provided that the Company gives the Holder of the Security and the Trustee a new Deferral Notice setting forth the revised Payment Resumption Date at least three Business Days prior to the Regular Record Date for such revised Payment Resumption Date.

The quarter in which any Deferral Notice is given pursuant to the second paragraph of this Section 3 shall be counted as one of the 20 quarters permitted in the maximum Deferral Period permitted under the first paragraph of this Section 3.

**4. Method of Payment.** The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in the Indenture, be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on the Regular Record Date for such interest installment, which shall be the close of business on the fifteenth day of January, April, July or October as applicable, immediately preceding each Interest Payment Date (the "Regular Record Date"), commencing January 15, 2000, or such other Person as described herein or therein. If the Reset Date is prior to the Regular Record Date for the immediately following Interest Payment Date, then interest and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Interest Payment Date shall be paid on such Interest Payment Date to the person in whose name each Security is registered on the relevant Regular Record Date, subject to the right of the Company to initiate a Deferral Period. If the Reset Date is on or after the Regular Record Date for the immediately following Interest Payment Date, then (1) interest and Additional Amounts, if any, accrued from and after the Regular Record Date to but excluding the Reset Date shall be paid on the immediately following Interest Payment Date to the person in whose name each Security is registered on the relevant Regular Record Date and (2) interest and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Interest Payment Date shall be paid on the second Interest Payment Date immediately following the Reset Date to the person in whose name each Security is registered on the relevant Regular Record Date for such second Interest Payment Date, subject in each case to the right of the Company to initiate a Deferral Period. Any such interest not so punctually paid or duly provided for shall forthwith cease to be payable to the Holder on such Regular Record Date and may

either be paid to the Person in whose name this Security (or one or more Predecessor Securities) is registered at the close of business on a Special Record Date for the payment of such Defaulted Interest to be fixed by the Trustee, notice whereof shall be given to Holders of Securities not less than ten days prior to such Special Record Date, or be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities may be listed, and upon such notice as may be required by such exchange, all as more fully provided in said Indenture; provided that any such payment will be made in such coin or currency of the United States of America which at the time is a legal tender for payment of public and private debts.

Payment of the principal of and interest on this Security will be made at the office or agency of the Company maintained for that purpose in New York, New York, in such coin or currency of the United States of America which at the time of payment is legal tender for payment of public and private debts; provided, however, that at any time that the Property Trustee is not the sole Holder of the Securities, payment of interest may, at the option of the Company, be made by check mailed to the address of the Person entitled thereto as such address shall appear in the Security Register or by wire transfer.

**5. Paying Agent and Security Registrar.** The Trustee will act as Paying Agent, Security Registrar and Conversion Agent. The Company may change any Paying Agent, Security Registrar, co-registrar or Conversion Agent without prior notice. The Company or any of its Affiliates may act in any such capacity.

**6. Indenture.** The Company issued the Securities under an indenture, dated as of January 31, 2000 (the "Indenture"), between the Company and The Bank of New York, as Trustee (herein called the "Trustee", which term includes any successor trustee under the Indenture), to which Indenture and all indentures supplemental thereto reference is hereby made for a statement of the respective rights, limitations of rights, duties and immunities thereunder of the Trustee, the Company and the Holders of the Securities, and of the terms upon which the Securities are, and are to be, authenticated and delivered. The terms of the Securities include those stated in the Indenture and those made part of the Indenture by the Trust Indenture Act of 1939 (15 U.S. Code Sections 77aaa-77bbbb) (the "Trust Indenture Act") as in effect on the date of the Indenture. The Securities are subject to, and qualified by, all such terms, certain of which are summarized hereon, and Holders are referred to the Indenture and the Trust Indenture Act for a statement of such terms. The Securities are unsecured general obligations of the Company limited to \$309,278,400 in aggregate principal amount (or up to \$371,134,100 to the extent the option granted by the Trust is exercised in full) and subordinated in right of payment to all existing and future Senior Debt of the Company. No reference herein to the Indenture and no provision of this Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of

and interest on this Security at the times, place and rate, and in the coin or currency, herein prescribed or to convert this Security as provided in the Indenture.

7. Optional Redemption. The Securities are redeemable at the Company's option at any time and from time to time (an "Optional Redemption")

(i) in whole or in part, at any time or from time to time, prior to the Reset Date but on or after February 5, 2003 until (but excluding) the Tender Notification Date, at a Redemption Price (the "Initial Redemption Price") equal to the prices per \$50 principal amount of Securities set forth in the table below, plus any accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date, if redeemed during the 12-month period ending on February 5:

Year	Price Per \$50 Principal	Amount
2004 .....	\$50.6875	
2005 .....	\$50.0000;	

(ii) after the Reset Date (except in the event of a Failed Final Remarketing), in accordance with the Term Call protections, if any, established in connection with the Remarketing and (iii) in whole or in part, at any time on or after the third anniversary of the Reset Date following a Failed Final Remarketing at a redemption price equal to 100% of the then outstanding aggregate principal amount of the Securities to be redeemed, plus accrued and unpaid interest thereon.

If the Company desires to consummate an Optional Redemption, it must cause to be sent, at its own expense, notice of such intent (an "Optional Redemption Notice"), via first-class mail, postage prepaid, to each Holder of Securities to be redeemed, at such Holder's address appearing in the Security Register. Holders receiving an Optional Redemption Notice have the right, upon notification of the Trustee and the Conversion Agent on or prior to the Optional Redemption Date, to convert their Securities called for redemption into common stock of the Company, par value \$.001 per share ("Common Stock"), at the Applicable Conversion Ratio prior to the Optional Redemption Date in compliance with Article XIII of the Indenture. "Optional Redemption Date" means the date which is not less than 20, nor more than 60, days following the date on which the Optional Redemption Notice is sent, as specified in the Optional Redemption Notice (or if such date is not a Business Day, the next succeeding Business Day).

Securities in denominations larger than \$50 may be redeemed in part but only in integral multiples of \$50. In the event of a redemption of less than all of the Securities, the Securities will be chosen for redemption by the Trustee pro rata in accordance with the Indenture. In the event of redemption of this Security in part only, a new Security or Securities for the unredeemed portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof. On and after the Redemption Date, interest ceases to accrue on the Securities or portions of them called for redemption.

8. The Remarketing. At least 30 Business Days but not more than 90 Business Days prior to February 1, 2005, the Company will cause a notice to be sent to all Holders of Securities stating whether it intends to remarket the Securities as Securities which will be convertible into Common Stock or which will be nonconvertible. All Securities will be deemed tendered for remarketing unless the Holder thereof delivers irrevocable notice to the contrary to the Tender Agent prior to 5:00 pm New York Time on the Tender Notification Date (or, if such day is not a Business Day, the next succeeding Business Day)(the "Tender Notification Date"). The Remarketing Agent will establish, pursuant to the terms of the Remarketing Agreement, the Term Provisions, including the Term Rate at which interest will accrue on the Securities, to be effective beginning on the Reset Date. A Holder of Securities that has not duly given notice that it will retain its Securities will cease to have any further rights with respect to such Securities upon the successful remarketing thereof, except the right of such Holder to receive an amount equal to (i) from the proceeds of the Remarketing, 101% of the aggregate principal amount of the Securities, plus (ii) from the Company, any accrued but unpaid interest (including Additional Payments, if any) to (but excluding) the Reset Date. In the event of a Failed Final Remarketing, the Remarketing Agent will set the Term Provisions in accordance with the Remarketing Agreement.

9. Optional Redemption Upon Tax Event. Subject to the conditions set forth in the Indenture, the Securities are subject to redemption in whole, but not in part, if a Tax Event shall occur and be continuing, at any time within 90 days following the occurrence of such Tax Event, at a Redemption Price equal to \$50 per \$50 principal amount thereof, plus accrued but unpaid interest, including Additional Payments, if any, to the Redemption Date.

In lieu of the foregoing, the Company shall also have the option of causing the Securities to remain outstanding and pay Additional Sums on the Securities.

10. Notice of Redemption in Connection with a Tax Event. In case of a redemption in connection with a Tax Event, notice of redemption will be mailed by first-class mail, postage prepaid, at least 30 days but not more than 60 days before the Redemption Date to each Holder of the Securities to be redeemed at such Holder's address appearing in the Security Register.

11. Mandatory Redemption. The Securities will mature, and the Company must redeem the securities in whole and not in part, on February 1, 2030 at a price equal to the aggregate principal amount thereof, plus accrued and unpaid interest, including Additional Payments, if any, to the Redemption Date. The failure of the Company to redeem all Outstanding Securities on February 1, 2030 shall constitute an Event of Default.

12. No Sinking Fund. There are no sinking fund payments with respect to the Securities.

13. Payment to Registered Holders; Cessation of Interest Accrual Upon Redemption.

If this Security is redeemed subsequent to a Regular Record Date with respect to any Interest Payment Date specified above and on or prior to such Interest Payment Date, then any accrued interest (and Additional Payments, if any) will be paid to the person in whose name this Security is registered at the close of business on such record date.

On or after the Redemption Date, interest will cease to accrue on the Securities, or portion thereof, called for redemption.

14. Subordination. The payment of the principal of, interest on or any other amounts due on the Securities is subordinated in right of payment to all existing and future Senior Debt (as defined below) of the Company, as described in the Indenture. Each Holder, by accepting a Security, agrees to such subordination and authorizes and directs the Trustee on its behalf to take such action as may be necessary or appropriate to effectuate the subordination so provided and appoints the Trustee as its attorney-in-fact for such purpose.

"Senior Debt" means (i) all indebtedness of the Company evidenced by securities, debentures, bonds or other similar instruments issued by the Company, (ii) all obligations to make payment pursuant to the terms of financial instruments, such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity futures contracts and commodity options contracts, and (c) similar financial instruments; except, in the case of (i) above, such indebtedness and obligations that are expressly stated to rank junior in right of payment to, or pari passu in right of payment with, the Securities, (iii) and indebtedness or obligations of others of the kind described in (i) and (ii) above for the

payment of which the Company is responsible or liable as guarantor or otherwise and (iv) deferrals, renewals or extensions of any such Senior Debt; provided, however, that Senior Debt shall not be deemed to include (a) any Debt of the Company which, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, was without recourse to the Company, (b) trade accounts payable and accrued liabilities arising in the ordinary course of business, which will not constitute Debt for purposes of the Preferred Securities, (c) any Debt of the Company to any of its subsidiaries, except to the extent incurred for the benefit of third parties, (d) Debt to any employee of the Company and (e) Debt that expressly provides that it is not senior in right of payment to the Securities.

15. Conversion. The Holder of any Security has the right, exercisable at any time prior to 5:00 p.m. New York City time, on or prior to the Tender Notification Date or, in the event of a Convertible Remarketing or a Failed Final Remarketing, from and after the Reset Date through February 1, 2030 (except that Securities called for redemption by the Company will be convertible at any time prior to 5:00 p.m., New York City time, on any Redemption Date) to convert the principal amount thereof (or any portion thereof that is an integral multiple of \$50) into shares of Common Stock. On or Prior to the Tender Notification Date, each Security is convertible, at the option of the Holder into 0.4881 shares of Common Stock for each \$50 in aggregate principal amount of Securities (equivalent to a conversion price of \$102.4375 per share of Common Stock). On and after the Reset Date, the Securities may, at the option of the Company and subject to the results of the Remarketing, become nonconvertible or convertible into a different number of shares of Common Stock. The conversion ratio and equivalent conversion price in effect at any time are known as the "Applicable Conversion Price" and the "Applicable Conversion Ratio," respectively, and are subject to adjustment under certain circumstances. If a Security is called for redemption, the conversion right will terminate at 5:00 p.m. New York City time on the corresponding Redemption Date, unless the Company defaults in making the payment due upon redemption.

To convert a Security, a Holder must (1) complete and sign a conversion notice substantially in the form attached hereto, (2) surrender the Security to a Conversion Agent, (3) furnish appropriate endorsements or transfer documents if required by the Security Registrar or Conversion Agent and (4) pay any transfer or similar tax, if required. Upon conversion, no adjustment or payment will be made for interest or dividends, but if any Holder surrenders a Security for conversion after the close of business on the Regular Record Date for the payment of an installment of interest and prior to the opening of business on the next Interest Payment Date, then, notwithstanding such conversion, the interest payable on such Interest Payment Date will be paid to the registered Holder of such Security on such Regular Record Date. In such event, such Security, when surrendered for conversion, need not be accompanied by payment of an amount equal to the interest payable on such Interest Payment Date on the portion so

converted. The number of shares issuable upon conversion of a Security is determined by dividing the principal amount of the Security converted by the Applicable Conversion Price in effect on the Conversion Date. No fractional shares will be issued upon conversion but a cash adjustment will be made for any fractional interest. The outstanding principal amount of any Security shall be reduced by the portion of the principal amount thereof converted into shares of Common Stock.

16. Registration Rights. In addition to the rights provided to Holders of Securities in the Indenture, Holders of Restricted Securities shall have all the rights set forth in the Registration Rights Agreement.

17. Registration, Transfer, Exchange and Denominations. As provided in the Indenture and subject to certain limitations therein set forth, the transfer of this Security is registrable in the Security Register, upon surrender of this Security for registration of transfer at the office or agency of the Company in New York, New York, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Security Registrar duly executed by, the Holder hereof or his attorney duly authorized in writing, and thereupon one or more new Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

The Securities are issuable only in registered form without coupons in denominations of \$50 and integral multiples thereof. No service charge shall be made for any such registration of transfer or exchange, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection therewith. Prior to due presentation of this Security for registration of transfer, the Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name this Security is registered as the owner hereof for all purposes, whether or not this Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary. In the event of redemption or conversion of this Security in part only, a new Security or Securities for the unredeemed or unconverted portion hereof will be issued in the name of the Holder hereof upon the cancellation hereof.

18. Persons Deemed Owners. Except as provided in Section 3 hereof, the registered Holder of a Security may be treated as its owner for all purposes.

19. Unclaimed Money. If money for the payment of principal or interest remains unclaimed for two years, the Trustee and the Paying Agent shall pay the money back to the Company at its written request. After that, Holders of Securities entitled to the money must look to the Company for payment unless an abandoned property law

designates another Person and all liability of the Trustee and such Paying Agent with respect to such money shall cease.

20. Events of Default and Remedies. The Securities shall have the Events of Default as set forth in Section 5.01 of the Indenture. Subject to certain limitations in the Indenture, if an Event of Default occurs and is continuing, the Trustee by notice to the Company or the Holders of at least 25% in aggregate principal amount of the Outstanding Securities by notice to the Company and the Trustee may declare all amounts payable on the Securities (including any Additional Payments) to be due and payable immediately; provided that, if the Property Trustee is the sole Holder of the Securities and if upon an Event of Default, the Trustee or the Holders of not less than 25% in aggregate principal amount of the then Outstanding Securities fail to declare the principal of all the Securities to be immediately due and payable, the Holders of at least 25% in aggregate liquidation amount of Preferred Securities then outstanding shall have such right by a notice in writing to the Company and the Trustee, and upon any such declaration such principal and all accrued interest (and Additional Payments, if any) shall become immediately due and payable. The Holders of a majority in aggregate principal amount of the Outstanding Securities may annul such declaration and waive the default by written notice to the Property Trustee, the Company and the Trustee if the default (other than the nonpayment of the principal of these Securities which has become due solely by such acceleration) has been cured and a sum sufficient to pay all matured installments of interest (and Additional Payments, if any) and principal due otherwise than by acceleration has been deposited with the Trustee. Should the Holders of the Securities of such a series fail to annul such declaration and waive such default, the Holders of a majority in aggregate liquidation amount of the Preferred Securities shall have such right. Upon the effectiveness of any such declaration such principal amount (or specified amount) of and the accrued interest (including any Additional Payments) on all the Securities of such series shall then become immediately due and payable; and provided further that the payment of principal and interest on such Securities shall remain subordinated to the extent provided in the Indenture.

In the case of an Event of Default, the Holders of a majority in principal amount of the Securities then Outstanding by written notice to the Trustee may rescind an acceleration and its consequences if the rescission would not conflict with any judgment or decree and if all existing Events of Default have been cured or waived except nonpayment of principal or interest that has become due solely because of the acceleration.

Holders may not enforce the Indenture or the Securities except as provided in the Indenture. Subject to certain limitations, Holders of a majority in principal amount of the Outstanding Securities issued under the Indenture may direct the Trustee in its exercise of any trust or power. The Company must furnish annually compliance

certificates to the Trustee. The above description of Events of Default and remedies is qualified by reference to, and subject in its entirety by, the more complete description thereof contained in the Indenture.

21. Amendments, Supplements and Waivers. The Indenture permits, subject to the rights of the Holders of Preferred Securities set forth therein and in the Declaration and with certain other exceptions as therein provided, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of a majority in aggregate principal amount of the Securities at the time Outstanding. The Indenture also contains provisions permitting the Holders of specified percentages in aggregate principal amount of the Securities at the time Outstanding, on behalf of the Holders of all the Securities, subject to the rights of the Holders of the Preferred Securities set forth therein and in the Declaration, to waive compliance by the Company with certain provisions of the Indenture and certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Security shall be conclusive and binding upon such Holder and upon all future Holders of this Security and of any Security issued upon the registration of transfer hereof or in exchange therefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Security. The above description of amendments, supplements and waivers is qualified by reference to, and subject in its entirety by the more complete description thereof contained in the Indenture.

22. Trustee Dealings with the Company. The Trustee, in its individual or any other capacity may become the owner or pledgee of the Securities and may otherwise deal with the Company or an Affiliate with the same rights it would have, as if it were not a Trustee, subject to certain limitations provided for in the Indenture and in the Trust Indenture Act. Any Agent may do the same with like rights.

23. No Recourse Against Others. A director, officer, employee or stockholder, as such, of the Company shall not have any liability for any obligations of the Company under the Securities or the Indenture or for any claim based on, in respect of or by reason of such obligations or their creation. Each Holder of the Securities by accepting a Security waives and releases all such liability. The waiver and release are part of the consideration for the issue of the Securities.

24. GOVERNING LAW. THE INTERNAL LAWS OF THE STATE OF NEW YORK SHALL GOVERN THE INDENTURE AND THE SECURITIES WITHOUT REGARD TO CONFLICT OF LAW PROVISIONS THEREOF.

25. Authentication. The Securities shall not be valid until authenticated by the manual signature of an authorized officer of the Trustee or an authenticating agent.

26. Abbreviations. Customary abbreviations may be used in the name of a Holder or an assignee, such as: TEN COM (= tenants in common), TEN ENT (= tenants by the entireties), JT TEN (= joint tenants with right of survivorship and not as tenants in common), CUST (= Custodian), and U/G/M/A (= Uniform Gifts to Minors Act).

The Company will furnish to any Holder of the Securities upon written request and without charge a copy of the Indenture. Request may be made to:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113

## **ASSIGNMENT FORM**

To assign this Security, fill in the form below:

(I) or (we) assign and transfer this Security to

(Insert assignee's social security or tax I.D. number)

(Print or type assignee's name, address and zip code)

and irrevocably appoint

agent to transfer this Security on the books of the Company. The agent may substitute another to act for him.

**Your Signature:**

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

Date:

Signature Guarantee:(4)

(4) (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition, to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

[Include the following if the Security bears a Restricted Securities Legend --

In connection with any transfer of any of the Securities evidenced by this certificate, the undersigned confirms that such Securities are being:

**CHECK ONE BOX BELOW**

- (1)  exchanged for the undersigned's own account without transfer; or
- (2)  transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (3)  transferred pursuant to another available exemption from the registration requirements of the Securities Act of 1933; or
- (4)  transferred pursuant to an effective registration statement under the Securities Act.

Unless one of the boxes is checked, the Trustee will refuse to register any of the Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; provided, however, that if box (2) or (3) is checked, the Trustee may require, prior to registering any such transfer of the Securities such legal opinions, certifications and other information as the Company has reasonably requested 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 of 1933, such as the exemption provided by Rule 144 under such Act.

**Signature**

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STAMP, all in accordance with the Securities Exchange Act of 1934, (as amended.)

Signature Guarantee:(5)

Signature must be guaranteed Signature

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**[TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.]**

The undersigned represents and warrants that it is purchasing this Security for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Company as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

Dated:

NOTICE: [To be executed by an executive officer]

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(5) (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

**[TO BE ATTACHED TO GLOBAL SECURITIES]**

**SCHEDULE A**

The initial principal amount of this Global Security shall be \$\_\_\_\_\_. The following increases or decreases in the principal amount of this Global Security have been made:



## **ELECTION TO CONVERT**

To: Calpine Corporation

The undersigned owner of this Security hereby irrevocably exercises the option to convert this Security, or the portion below designated, into Common Stock of Calpine Corporation in accordance with the terms of the Indenture referred to in this Security, and directs that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Any Holder, upon the exercise of its conversion rights in accordance with the terms of the Indenture and the Security, agrees to be bound by the terms of the Registrations Rights Agreement relating to the Common Stock issuable upon conversion of the Securities.

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

in whole \_\_\_\_\_

Portions of Security to be converted (\$50 or integral multiples thereof):

\$ \_\_\_\_\_

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**Signature (for conversion only)**

Please Print or Typewrite Name and  
Address, Including Zip Code, and  
Social Security or Other  
Identifying Number

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Signature Guarantee:(6) \_\_\_\_\_

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(6) (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities

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Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

## **EXHIBIT 4.8.4**

REMARKETING AGREEMENT, dated as of January 31, 2000 (this "Agreement"), among (i) Calpine Corporation, a Delaware corporation (the "Company"), (ii) Calpine Capital Trust II, a Delaware business trust (the "Trust"), (iii) The Bank of New York, as Tender Agent and (iv) Credit Suisse First Boston Corporation, a Massachusetts corporation (together with its successors and assigns, the "Remarketing Agent").

### **RECITALS**

WHEREAS the Trust is a statutory business trust that has been created under Delaware law and exists pursuant to the Trust Agreement (as defined below) and a certificate of trust filed with the Delaware Secretary of State; and

WHEREAS the Trust is issuing on today's date or has heretofore issued \$300,000,000 (or up to \$360,000,000 to the extent the option granted by the Trust is exercised in full) aggregate Liquidation Amount (as defined below) of Remarketable Term Income Deferrable Equity Securities (the "HIGH TIDES\_") representing preferred undivided beneficial interests in the assets of the Trust and has used the proceeds of the HIGH TIDES, together with the proceeds of \$9,278,400 (or up to \$11,134,100 to the extent the option granted by the Trust is exercised in full) aggregate Liquidation Amount of its Common Securities (as defined in the Trust Agreement) of the Trust, to purchase \$309,278,400 (or up to \$371,134,100 to the extent the option granted by the Trust is exercised in full) aggregate principal amount of Convertible Subordinated Debentures Due 2030 (the "Debentures") issued by the Company pursuant to the Indenture (as defined below);

NOW, THEREFORE, the parties hereto agree as follows:

1. Definitions. (a) The following terms shall have the meanings indicated below:

"Additional Amounts" has the meaning specified in the Indenture.

"Administrative Trustees" has the meaning specified in the definition of Trust Agreement in this Section 1.

"Broker-Dealer" has the meaning assigned to such term in Section 5.

"Broker-Dealer Agreement" means an agreement between the Remarketing Agent and a Broker-Dealer in substantially the form of Annex 1.

"Business Day" means a day other than (a) a Saturday or Sunday, (b) a day on which banking institutions in the City of New York are authorized or required by law or executive order to remain closed, or (c) a day on which the Property Trustee's or Debenture Trustee's Corporate Trust Office (as defined in the Trust Agreement with respect to the Property Trustee and in the Indenture with respect to the Debenture Trustee) is closed for business.

"Cause" means any one of the following events or circumstances shall have occurred and be continuing: (i) the bankruptcy or insolvency of the Remarketing Agent; or (ii) the Remarketing Agent shall cease to be registered as a broker-dealer under the Exchange Act.

"Closing Price" means for any security on any day the last reported sale price of the security on that day, or in case no sale takes place on that day, the average of the closing bid and asked prices in each case on the principal national securities exchange on which the securities are listed or admitted to trading or, if not listed or admitted to trading on any national securities exchange, on the National Market System of the National Association of Securities Dealers, Inc. or any successor national automated interdealer quotation system (the "NNM") or, if the securities are not listed or admitted to trading on any national securities exchange or quoted on the NNM, the average of the closing bid and asked prices of the security in the over-the-counter market as furnished by any New York Stock Exchange member firm selected by the Company for that purpose.

"Commission" means the Securities and Exchange Commission or any successor thereto.

"Common Stock" has the meaning assigned to such term in the Indenture.

"Company" has the meaning assigned to such term in the preamble to this Agreement.

"Comparable Treasury Issue" means the United States Treasury security selected by the Quotation Agent as having a maturity comparable to the Remaining Life that would be utilized, at the time of selection and in accordance with customary financial practice, in pricing new issues of corporate debt securities of comparable maturity to the Remaining Life. If no United States Treasury security has a maturity which is within a period from three months before to three months after the Reset Date, the two most closely corresponding United States Treasury securities shall be used as the Comparable Treasury

Issue, and the rate being calculated shall be interpolated or extrapolated on a straight-line basis, rounding to the nearest month using such securities.

"Comparable Treasury Price" means (A) the arithmetic mean of five Reference Treasury Dealer Quotations, after excluding the highest and lowest such Reference Treasury Dealer Quotations, or (B) if the Debenture Trustee obtains fewer than five such Reference Treasury Dealer Quotations, the arithmetic mean of all such Reference Treasury Dealer Quotations.

"Convertible Remarketing" has the meaning specified in Section 2(d).

"Debenture Trustee" means The Bank of New York, as Trustee under the Indenture (including its successors as Debenture Trustee thereunder).

"Debentures" has the meaning assigned to such term in the recitals to this Agreement.

"Declaration Trustees" means collectively, the Property Trustee, the Delaware Trustee and the Administrative Trustees.

"Delaware Trustee" has the meaning specified in the definition of "Trust Agreement" in this Section 1.

"Disclosure Documents" means the Registration Statement, or if the Registration Statement is not required to be filed with the Commission pursuant to Section 2(b), the Nonregistered Offering Documents, including any preliminary offering document or Preliminary Prospectus, as applicable, and as each may be amended or supplemented, and in each case, including any information incorporated by reference therein.

"Effective Time" means the date and time as of which the Registration Statement or its most recent post-effective amendment is declared effective by the Commission.

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, and the rules and regulations promulgated thereunder.

"Exchange Act Reports" means any annual or other reports of the Company or the Trust filed with the Commission or sent to holders of their securities, in each case pursuant to the Exchange Act.

"Failed Final Remarketing" has the meaning specified in Section 2(d).

"Failed Remarketing" means an Initial Failed Remarketing or a Final Failed Remarketing.

"Final Remarketing" has the meaning specified in Section 2(d).

"Final Remarketing Period" means the period beginning on the Business Day immediately following the Initial Remarketing Termination Date and ending on the day which is ten (10) Business Days (or such shorter period as shall be agreed to by the Remarketing Agent) after the Initial Remarketing Termination Date.

"Final Reset Date" means February 1, 2005.

"Global Security Certificate" has the meaning assigned to (i) the term "Global Preferred Securities" in the Trust Agreement if the Subject Securities are HIGH TIDES or (ii) the term "Global Security" in the Indenture if the Subject Securities are Debentures.

"HIGH TIDES" has the meaning assigned to such term in the recitals to this Agreement.

"Indenture" means the Indenture, dated as of January 31, 2000, between the Company and the Debenture Trustee, as such Indenture may from time to time be amended, modified or supplemented.

"Initial Failed Remarketing" has the meaning specified in Section 2(d).

"Initial Remarketing" has the meaning specified in Section 2(d).

"Initial Remarketing Period" means the period beginning on the first Business Day immediately following the Tender Notification Date and ending on the day which is ten (10) Business Days (or such shorter period as shall be agreed to by the Remarketing Agent) after the Tender Notification Date.

"Initial Remarketing Termination Date" means the tenth (10) Business Day following the Tender Notification Date (or such shorter period as shall be agreed to by the Remarketing Agent).

"Interest" means all quarterly payments, interest on quarterly payments not paid on the applicable Interest Payment Date and Additional Amounts, as applicable.

"Interest Payment Date" has the meaning specified in the Indenture and the Trust Agreement.

"Liquidation Amount" means, with respect to a HIGH TIDES or Common Security, its stated liquidation amount of \$50.

"Market Event" means the occurrence of (i) a change in U.S. or international financial, political or economic conditions or currency exchange rates or exchange controls as would, in the sole judgment of the Remarketing Agent, be likely to prejudice materially the success of the Remarketing, issue, sale or distribution of the Subject Securities, or (ii) (A) any change, or any development or event involving a prospective change, in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole which, in the sole judgment of the Remarketing Agent, is material and adverse and makes it impractical or inadvisable to proceed with completion of the Remarketing or the sale of and payment for the Subject Securities; (B) any downgrading in the rating of the Subject Securities or any other debt securities of the Company by any "nationally recognized statistical rating organization" (as defined for purposes of Rule 436(g) under the Securities Act), or any public announcement that any such organization has under surveillance or review its rating of the Subject Securities or any other debt securities of the Company (other than an announcement with positive implications of a possible upgrading, and no implication of a possible downgrading, of such rating); (C) any suspension or limitation of trading in securities generally on the New York Stock Exchange, or any setting of minimum prices for trading on such exchange, or any suspension of trading of any securities of the Company on any exchange or in the over-the-counter market; (D) any banking moratorium declared by U.S. Federal or New York authorities; or (E) any outbreak or escalation of major hostilities in which the United States is involved, any declaration of war by Congress or any other substantial national or international calamity or emergency if, in the sole judgment of the Remarketing Agent, the effect of any of the events specified in (B), (C), (D) or (E) makes it impractical or inadvisable to proceed with completion of the Remarketing or the sale of and payment for the Subject Securities.

"Maximum Rate" means a rate per annum equal to the Treasury Rate plus 6%.

"No Registration Opinion" means an opinion of Securities Counsel that the securities issuable in the Remarketing do not need to be registered under the Securities Act and that no other filing of any kind is required to be made with the Commission as a condition to the sale of such securities, which No Registration Opinion shall be reasonably satisfactory to the Remarketing Agent and its counsel.

"Nonconvertible Remarketing" has the meaning specified in Section 2(d).

"Nonregistered Offering Documents" has the meaning specified in Section 6(a).

"Notice of Purchasers" means a notice delivered by the Remarketing Agent on the Reset Date to (i) the Tender Agent if the Subject Securities are not evidenced by a Global Security Certificate on the Reset Date or (ii) The Depository Trust Company if the Subject Securities are evidenced by a Global Security Certificate on the Reset Date, in either case naming the parties who will purchase the Subject Securities from the Remarketing Agent.

"Offering Circular" means the Confidential Offering Circular, dated January 25, 2000, related to the initial offer and sale of the HIGH TIDES.

"Par Amount" means \$50 per Subject Security.

"Paying Agent" has the meaning specified in the Trust Agreement.

"Preliminary Prospectus" means each prospectus included in the Registration Statement, or amendment thereof, before it becomes effective under the Securities Act and any prospectus which may be filed by the Company with the Commission pursuant to Rule 424(a) (or any successor applicable rule) of the rules and regulations under the Securities Act (the "Rules and Regulations") in connection with the Registration Statement.

"Primary Treasury Dealer" has the meaning specified in the definition of Quotation Agent in this Section 1.

"Property Trustee" has the meaning specified in the definition of Trust Agreement in this Section 1.

"Prospectus" means the final prospectus which will be filed with the Commission pursuant to Rule 424(b) (or any successor applicable rule) of the Rules and Regulations and deemed to be a part of the Registration Statement at the time of its effectiveness under the Securities Act pursuant to paragraph (b) of Rule 430A (or any successor applicable rule) of the Rules and Regulations.

"Quotation Agent" means Credit Suisse First Boston Corporation and its successors; provided, however, that if Credit Suisse First Boston Corporation shall cease to be a primary United States Government securities dealer in The City of New York (a

"Primary Treasury Dealer"), the Company shall substitute therefor another Primary Treasury Dealer.

"Reference Treasury Dealer" means (i) the Quotation Agent and  
(ii) any other Primary Treasury Dealer selected by the Debenture Trustee after consultation with the Company.

"Reference Treasury Dealer Quotations" means, with respect to each Reference Treasury Dealer, the arithmetic mean, as determined by the Debenture Trustee of the bid and asked prices for the Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Debenture Trustee by such Reference Treasury Dealer at 5:00 p.m., New York City time, on the third Business Day preceding the Reset Date.

"Registration Statement" means a registration statement covering the securities to be issued in the Remarketing filed with the Commission pursuant to the Securities Act, including any amendments thereto and any document or other information incorporated by reference therein.

"Remaining Life" means the period beginning on (and including) the Reset Date and ending on February 1, 2030.

"Remarketing" has the meaning specified in Section 2(b).

"Remarketing Agent" has the meaning assigned to such term in the preamble to this Agreement and, upon the appointment of a successor Remarketing Agent in accordance with Section 10, shall mean such successor Remarketing Agent.

"Remarketing Conditions" means the following factors: (i) short-term and long-term market rates and indices of such short-term and long-term rates, (ii) market supply and demand for short-term and long-term securities, (iii) yield curves for short-term and long-term securities comparable to the Subject Securities, (iv) industry and financial conditions which may affect the Subject Securities, (v) the number of Subject Securities to be remarketed, (vi) the number of potential purchasers, (vii) the current ratings by nationally recognized statistical rating organizations of long-term subordinated debt of the Company and of other outstanding capital securities of the Company's trust subsidiaries, (viii) the number of shares of Common Stock, if any, into which the Subject Securities will be convertible and (ix) the length and type of call protections, if any.

"Remarketing Notice" has the meaning specified in Section 2(d).

"Reset Date" means any date (1) not later than the Final Reset Date, or, if such date is not a Business Day, the next succeeding Business Day and (2) not earlier than 70 Business Days prior to the Final Reset Date, as may be determined by the Remarketing Agent, in its sole discretion, for settlement of a successful Remarketing.

"Rules and Regulations" has the meaning specified in the definition of Preliminary Prospectus in this Section 1.

"Securities Act" means the Securities Act of 1933, as amended from time to time, and the rules and regulations promulgated thereunder.

"Securities Counsel" means counsel experienced in matters relating to securities law.

"Subject Securities" means (i) the HIGH TIDES if, on the Reset Date, the Debentures have not been distributed to holders of HIGH TIDES in connection with a liquidation or dissolution of the Trust or (ii) otherwise, the Debentures.

"Tender Agent" means (i) the Property Trustee if the Subject Securities are HIGH TIDES or (ii) the Debenture Trustee if the Subject Securities are Debentures.

"Tender Notification Date" means a Business Day no earlier than ten (10) Business Days following the date of the Remarketing Notice (or such shorter period as shall be agreed to by the Remarketing Agent).

"Term Call Protections" has the meaning assigned to such term in Section 2(c).

"Term Conversion Ratio" has the meaning assigned to such term in Section 2(c).

"Term Conversion Price" has the meaning assigned to such term in Section 2(c).

"Term Provisions" has the meaning specified in Section 2(c).

"Term Rate" has the meaning assigned to such term in Section 2(c).

"Treasury Rate" means (i) the yield, under the heading which represents the average for the week immediately prior to the date of calculation, appearing in the most recently published statistical release designated H.15(519) or any successor publication which is published weekly by the Federal Reserve and which establishes yields on actively

traded United States Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities," for the maturity corresponding to the Remaining Life (if no maturity is within three months before or after the Remaining Life, yields for the two published maturities most closely corresponding to the Remaining Life shall be determined and the Treasury Rate shall be interpolated or extrapolated from such yields on a straight-line basis, rounding to the nearest month) or (ii) if such release (or any successor release) is not published during the week preceding the calculation date or does not contain such yields, the rate per annum equal to the semiannual equivalent yield to maturity of the Comparable Treasury Issue, calculated using a price for the Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Comparable Treasury Price for the Reset Date. The Treasury Rate shall be calculated by the Remarketing Agent on the third Business Day preceding the Reset Date.

"Trust" has the meaning assigned to such term in the preamble to this Agreement.

"Trust Agreement" means the Amended and Restated Declaration of Trust, dated as of January 31, 2000, among the Company, as Depositor, The Bank of New York, as Property Trustee (the "Property Trustee"), The Bank of New York (Delaware), as Delaware Trustee (the "Delaware Trustee"), Peter Cartwright, Ann B. Curtis and Thomas R. Mason (the "Administrative Trustees") and the holders from time to time of undivided beneficial interests in the assets of the Trust, as such agreement may from time to time be amended, modified or supplemented.

(b) Capitalized terms used herein and not otherwise defined but defined in the Trust Agreement or Indenture shall have the meanings assigned to such terms in the Trust Agreement or the Indenture, as applicable.

2. Acceptance and Performance of Duties. The Remarketing Agent, the Company, the Trust and the Tender Agent agree as follows:

(a) The Remarketing Agent will perform the duties and obligations of Remarketing Agent for the Remarketed Securities as specified in the Trust Agreement (if the Tendered Securities are the HIGH TIDES), the Indenture (if the Tendered Securities are the Debentures) and in this Agreement in good faith and in compliance with the provisions of applicable laws.

(b) The Remarketing Agent will use its best efforts to remarket all Subject Securities tendered or deemed tendered for sale in accordance with the terms and provisions of this Agreement (the "Remarketing"); provided, however, that the Remarketing Agent will not be obligated to attempt to remarket such Subject Securities, or to determine the Term Rate pursuant to Section 2(c) below, if (A) in the Remarketing Agent's judgment

any (i) Disclosure Document provided by the Trust or the Company in connection with the Remarketing or (ii) document publicly disclosed (including in a filing pursuant to the Exchange Act) by or on behalf of the Trust or the Company, includes any untrue statement of a material fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, unless the Remarketing Agent is satisfied in its sole discretion that such statement or omission has been properly corrected, (B) unless the Company provides a No Registration Opinion to the Remarketing Agent prior to the Tender Notification Date, the Company and the Trust (if applicable) shall have failed to have the Registration Statement declared effective by the Commission on or prior to the Tender Notification Date and remain effective at least through and including the Reset Date, provided that the Registration Statement may be declared effective later than the Tender Notification Date if the Company provides an opinion of Securities Counsel to the Remarketing Agent to the effect that such Registration Statement need not become effective until the date the Initial Remarketing Period is required to commence and the Remarketing Agent consents to such delay or (C) the Company fails to comply with the requirements set forth in Section 6(c) of this Agreement. The Remarketing Agent may, but except as provided in Section 11 shall not be obligated to, purchase tendered Subject Securities for its own account.

(c) The Remarketing Agent has agreed to use its best efforts to remarket all Subject Securities tendered for Remarketing on the Tender Notification Date. The Remarketing Agent will establish, effective beginning on the Reset Date, (i) the rate (the "Term Rate") per annum at which Interest will accrue on the Subject Securities, (ii) the term conversion ratio and price, which determine the number of shares of Common Stock, if any, into which each Subject Security may be converted (respectively, the "Term Conversion Ratio" and the "Term Conversion Price") and (iii) the price, manner and time, if any, at which the Subject Securities may be redeemed (the "Term Call Protections" and together with the Term Rate, Term Conversion Ratio and Term Conversion Price, the "Term Provisions"). The Remarketing Agent will use its best efforts to establish the Term Provisions most favorable to the Company consistent with the successful remarketing of Subject Securities tendered therefor at a price equal to 101% of the aggregate Par Amount thereof; provided that each Subject Security will have the same Term Provisions; provided that the Term Provisions may not permit the Company to redeem the Subject Securities for a price less than the aggregate Par Amount thereof plus any accrued and unpaid Interest thereon; and, provided further, that if no Subject Security is tendered for remarketing on the Tender Notification Date, the Remarketing will not take place (although the Remarketing will not be deemed to have failed), and the Remarketing Agent will set the Term Provisions in a manner consistent with the Remarketing Notice that it believes, in its sole discretion, would result in a price per Subject Security equal to 101% of its Par Amount.

(d) The remarketing process will commence on the first Business Day following the Tender Notification Date and will be conducted on the following schedule and in the following manner:

At Least 30 Business Days , But Not More Than 90 Business Days Prior to the Final Reset Date:

The Trust shall cause a notice (the "Remarketing Notice") to be sent to holders of the Subject Securities stating whether it intends to remarket the Subject Securities as securities which will be convertible into Common Stock of the Company (a "Convertible Remarketing") or which will be nonconvertible (a "Nonconvertible Remarketing").

The date of the Remarketing Notice through the Tender Notification Date:

Each outstanding Subject Security shall be deemed to have been tendered for remarketing unless the holder thereof has given irrevocable notice to the contrary to the Tender Agent (which the Tender Agent will promptly remit to the Remarketing Agent). Such irrevocable notice, which may be telephonic or written, must be delivered prior to 5:00 p.m., New York City time, on the Tender Notification Date. A holder's notice of an election to retain Subject Securities must state the number of Subject Securities to be retained (which must be all of the Subject Securities represented by the applicable certificate, unless such certificate is a Global Security Certificate), the number of the certificate representing the Subject Securities not to be deemed to have been so tendered and the number of Subject Securities represented by such certificate. Any transferee of a Subject Security for which such notice has been provided shall be bound thereby. The failure by a holder of Subject Securities to give timely notice of an election to retain all (or, in the case of a Global Security Certificate, any part) of such holder's Subject Securities will constitute the irrevocable tender for sale in the Remarketing of all the Subject Securities it holds. A holder of Subject Securities which has

not duly given notice that it will not tender and retain its Subject Securities will cease to have any further rights with respect to such Subject Securities upon the successful remarketing thereof, except the right of such holder to receive an amount equal to (i) from the proceeds of the Remarketing, 101% of the aggregate liquidation amount thereof, plus (ii) from the Company, any accrued and unpaid Interest thereon to (but excluding) the Reset Date.

Beginning the First Business Day Following the Tender Notification Date:

If any Subject Securities are tendered for remarketing, the Remarketing Agent will commence a Convertible Remarketing or a Nonconvertible Remarketing, as the case may be (in either case, an "Initial Remarketing"), in accordance with the terms of this Agreement and pursuant to the instructions set forth in the Remarketing Notice. The Remarketing Agent will determine, and upon request make available to interested persons nonbinding indications of, the Term Provisions based upon then-current Remarketing Conditions. The Remarketing Agent will solicit and receive orders from prospective investors to purchase tendered Subject Securities. The Initial Remarketing shall be deemed to have failed (an "Initial Failed Remarketing") if (i) despite using its best efforts, the Remarketing Agent is unable to establish, prior to the Initial Remarketing Termination Date, a Term Rate which is less than or equal to the Maximum Rate, (ii) the Remarketing Agent is excused from Remarketing the Subject Securities because of (a) the failure by the Company or the Trust to satisfy a condition in this Agreement or (b) the occurrence of a Market Event, (iii) there is no Remarketing Agent on the first day of the Initial Remarketing Period, or (iv) prior to the Initial Remarketing Termination Date, Term

Provisions are established by the Remarketing Agent, but the Remarketing Agent is unable to consummate the sale of one or more of the Subject Securities tendered for remarketing because of the occurrence of a Market Event.

Remainder of the Initial Remarketing Period:

The Remarketing Agent will continue, if necessary, using its best efforts to remarket the Subject Securities tendered for remarketing as described above, adjusting the non-binding indications of the Term Provisions necessary to establish the Term Provisions most favorable to the Company consistent with remarketing all Subject Securities tendered therefor at 101% of the Par Amount, until the Initial Remarketing is completed or is deemed to have failed. See the definition of an Initial Failed Remarketing above. Promptly upon determination of the Term Provisions, the Remarketing Agent will communicate such Term Provisions to the Tender Agent, which will communicate such Term Provisions to the Declaration Trustees (if the Trust has not dissolved), the Trust (if the Trust has not dissolved), the Debenture Trustee, the Paying Agent, the Company and each holder (if any) which timely elected not to tender all of its Subject Securities for remarketing, by delivery of a written notice or by telephone promptly confirmed by telex or writing.

Beginning the First Business Day Following an Initial Failed Remarketing (if applicable):

If the Initial Remarketing fails because the Remarketing Agent was not able to establish a Term Rate less than or equal to the Maximum Rate prior to the Initial Remarketing Termination Date, the Remarketing Agent will commence a second remarketing (the "Final Remarketing"), which will be a Convertible Remarketing if the Initial Remarketing was a Nonconvertible Remarketing and a Nonconvertible Remarketing if the Initial Remarketing was a Convertible Remarketing. The

Remarketing Agent will determine, and upon request make available to interested persons nonbinding indications of, the Term Provisions based upon then-current Remarketing Conditions. The Remarketing Agent will solicit and receive orders from prospective investors to purchase tendered Subject Securities. The Final Remarketing will be deemed to have failed (a "Failed Final Remarketing") if (i) despite using its best efforts, the Remarketing Agent is still not able to establish a Term Rate less than or equal to the Maximum Rate prior to the expiration of the Final Remarketing Period, (ii) the Remarketing Agent is excused from Remarketing the Subject Securities because of (a) the failure by the Company or the Trust to satisfy a condition in this Agreement or (b) the occurrence of a Market Event or (iii) Term Provisions are established by the Remarketing Agent, but the Remarketing Agent is unable to consummate the sale of one or more of the Subject Securities tendered for remarketing because of the occurrence of a Market Event.

Remainder of the Final Remarketing Period (if applicable):

The Remarketing Agent will continue, if necessary, to use its best efforts to remarket the Subject Securities, as described above, adjusting the non-binding indications of the Term Provisions as necessary to establish the Term Provisions most favorable to the Company consistent with remarketing all Subject Securities tendered therefor at 101% of the Par Amount until the Final Remarketing is completed or is deemed to have failed. See the definition of a Failed Final Remarketing above. If the Remarketing Agent is able to establish a Term Rate less than or equal to the Maximum Rate during the Final Remarketing Period, it will promptly communicate such Term Provisions to the Tender Agent, which will communicate such Term Provisions to the

Declaration Trustees (if the Trust has not dissolved), the Trust (if the Trust has not dissolved), the Debenture Trustee, the Paying Agent, the Company and each holder (if any) which timely elected not to tender all of its Subject Securities for remarketing, by delivery of a written notice or by telephone promptly confirmed by telecopy or writing.

Reset Date:

New holders must deliver the purchase price for the remarketed securities in same-day funds to the Remarketing Agent and the Remarketing Agent will deliver such purchase price to the Tender Agent (in like funds). Settlement of transactions in connection with the remarketing will take place on the Reset Date, or such date as the Remarketing Agent may, in its sole discretion, determine, or as otherwise required by applicable law. Payments to tendering holders who hold Subject Securities in the form of one or more Global Security Certificates will be made in the manner provided in the Prospectus under "Description of HIGH TIDES--Form, Book-Entry Procedures and Transfer." Tendering holders who hold Subject Securities in certificated form (other than in the form of Global Security Certificates) must deliver their certificates properly endorsed for transfer to the Tender Agent by 2:30 p.m. on the Reset Date (or any succeeding date) to receive payment of the purchase price for their Subject Securities. Subject to compliance with the preceding two sentences, the Tender Agent will pay former holders the proceeds of the Remarketing of their Subject Securities by the Remarketing Agent. In the event of a Failed Final Remarketing, the Term Rate shall be a rate equal to the Treasury Rate plus 6% per annum, the Term Conversion Price will be equal to 105% of the average Closing Price of the Company's Common Stock for the five (5) consecutive trading days after

the Final Remarketing Period, and the Remarketing Agent shall set any other terms not provided for herein upon a Failed Final Remarketing. In the event of a Failed Final Remarketing, all outstanding Subject Securities will be redeemable by the Company, in whole or in part, at any time on or after the third anniversary of the Reset Date at a redemption price equal to 100% of the aggregate principal amount or liquidation amount, as the case may be, thereof, plus accrued and unpaid interest or distributions, as the case may be, thereon. On and after the Reset Date, the terms of all Subject Securities, whether or not tendered for remarketing, will be modified by the Term Provisions, as the same shall be established by the Remarketing Agent. If the Subject Securities are not held by The Depository Trust Company or its nominee in the form of one or more Global Security Certificates, certificates representing remarketed Subject Securities will be issued to the purchasers thereof, irrespective of whether the certificates formerly representing such Subject Securities have been delivered to the Tender Agent.

3. Representations, Warranties, Covenants and Agreements of the Company and the Remarketing Agent. (a) The Company and the Trust each represent, warrant, covenant and agree with the Remarketing Agent as follows:

(i) the Company and the Trust each have full power and authority to enter into this Agreement and will have full power and authority to enter into any agreements which it may enter into in connection with the Remarketing; this Agreement and the transactions contemplated hereby have been, and each other such agreement and the transactions contemplated thereby will be, duly authorized, executed and delivered by the Company and the Trust, as applicable; and this Agreement is, and each such other agreement will be at the Reset Date, a valid and binding obligation of the Company and the Trust, as applicable, enforceable against the Company and the Trust, as applicable, in accordance with its terms;

(ii) the consummation of the transactions contemplated herein do not now, and the consummation of the transactions contemplated in any other agreement entered into by the Company and the Trust, as applicable, in connection with the Remarketing will not, at the Reset Date, conflict with or constitute a breach of, or a default under, or result in the creation or imposition of any lien, charge or other encumbrance upon any property or assets of the Trust, the Company or any of the Company's subsidiaries pursuant to any contract, indenture, declaration of trust, deed of trust, mortgage, loan agreement, note, lease or other instrument or agreement to which the Trust, the Company or any of its subsidiaries is or will be a party or by which it or any of them may be bound, or to which any of the property or assets of any of them is or will be subject, nor will such actions result in any violation of the provisions of the certificate of incorporation, the by-laws or other organizational document of the Trust, the Company or any of its subsidiaries or any statute (including the Securities Act, the Exchange Act and state securities laws) or any order, rule or regulation of any court or governmental agency or body (including the Commission) which has or will have jurisdiction over the Trust, the Company or any of its subsidiaries or any of their material property or assets except for a conflict, breach, default, lien, charge or encumbrance which could not reasonably be expected to have a material adverse effect on the consummation of the transactions contemplated herein or therein;

(iii) all required consents, rulings and approvals of governmental authorities (other than "Blue Sky" authorities) required in connection with the execution and delivery by the Company and the Trust of this Agreement and any agreement entered into by the Company and the Trust in connection with the transactions contemplated by any Disclosure Documents, and the performance by the Company and the Trust of its obligations hereunder and thereunder, have been obtained and are in full force and effect and, at the Reset Date, will have been obtained and be in full force and effect;

(iv) except as disclosed in the Disclosure Documents, neither the Trust, the Company nor any of its subsidiaries is or, at the Reset Date, will be (i) in violation of its certificate of incorporation, by-laws or other organizational document, (ii) in default in any respect, and no event has occurred or will have occurred which, with notice or lapse of time or both, would constitute such a default, in the due performance or observance of any term, covenant or condition contained in any contract, indenture, declaration of trust, deed of trust, mortgage, loan agreement, note, lease or other instrument or agreement to which it is or will be bound or to which any of its properties or assets is or will be subject or

- (iii) in violation of any law, ordinance, governmental rule, regulation or court decree to which it or its property or assets may be subject;
- (v) the Disclosure Documents, including as provided in Section 3(x), will not, at the Effective Time and thereafter through and including the Reset Date, contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading; provided that no representation or warranty is made as to information contained in or omitted from the Disclosure Documents in reliance upon and in conformity with written information furnished to the Company by the Remarketing Agent specifically for inclusion therein;
- (vi) the financial statements of the Company contained (or incorporated by reference) in the Disclosure Documents will present fairly the financial position of the Company as of the dates indicated, and the results of operations and changes in financial position of the Company for the periods covered, in conformity with generally accepted accounting principles applied on a consistent basis, except as otherwise set forth therein;
- (vii) after the date of the most recent financial statements of the Company contained (or incorporated by reference) in the Disclosure Documents, there will not have been any material adverse change in the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries taken as a whole, except as disclosed in the Disclosure Documents;
- (viii) except as disclosed in the Disclosure Documents, there will be no legal or governmental proceedings pending at the Reset Date to which the Trust, the Company or any of its subsidiaries is a party or of which any material property or assets of the Trust, the Company or any of its subsidiaries is the subject which, if determined adversely to the Trust, the Company or any of its subsidiaries, might have a material adverse effect on the condition (financial or other), business, properties or results of operations of the Company and its subsidiaries, taken as a whole;
- (ix) any description of a contract, indenture, declaration of trust, deed of trust, mortgage, loan agreement, note, lease or other instrument or agreement contained in the Disclosure Documents will be, at the Effective Time and thereafter through and including the Reset Date, true, complete and correct in all material respects; and

(x) If the Registration Statement is filed, the Registration Statement at the Effective Time will conform to the requirements of the Securities Act and the Rules and Regulations and will not contain an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading, and the Prospectus, as of the Effective Time and thereafter through and including the Reset Date, will conform to the requirements of the Securities Act and the Rules and Regulations and will not include any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that no representation or warranty is made as to information contained in or omitted from any Preliminary Prospectus, the Registration Statement or the Prospectus in reliance upon and in conformity with written information furnished to the Company by the Remarketing Agent specifically for inclusion therein.

(b) The Remarketing Agent represents, warrants, covenants and agrees with the Company that if it shall not have received a No Registration Opinion and the Registration Statement shall not be effective on the Tender Notification Date (or such later date as may be provided in Section 2(b)), the Remarketing Agent will offer and sell the Subject Securities only in compliance with the federal and state securities laws applicable to unregistered sales of securities in effect at the time of the Remarketing.

4. Fees and Expenses. (a) The Company agrees to pay to the Remarketing Agent upon settlement of the transactions contemplated by the Remarketing (i) as compensation for its services hereunder, a fee equal to 1% of the aggregate Par Amount of outstanding Subject Securities on the Reset Date upon settlement of the transactions contemplated by the Remarketing, plus (ii) all out-of-pocket expenses reasonably incurred by the Remarketing Agent in connection with the performance of its duties; provided that if both the Initial Remarketing and the Final Remarketing fail, the Company shall not be required to pay any fees to, or reimburse any out-of-pocket expenses of, the Remarketing Agent.

(b) The Remarketing Agent acknowledges and agrees that the performance of its duties hereunder will be without charge to holders or purchasers of the Subject Securities other than the Company.

5. Broker-Dealer Participation. The Remarketing Agent shall enter into Broker-Dealer Agreements with all broker-dealers ("Broker-Dealers"), if any, which it selects to have participate in the remarketing process; provided that (i) such Broker-Dealers agree to comply with the terms of this Agreement, including the terms of Section 3(b) of this Agreement, (ii) any fees or commissions paid to the Broker-Dealers

shall be paid by the Remarketing Agent out of the fees it is paid pursuant to Section 4(a), and (iii) the Remarketing Agent agrees to provide to the Company an executed copy of each Broker-Dealer Agreement. None of the Remarketing Agent, the Trust and the Company shall be responsible for the out-of-pocket expenses of such Broker-Dealers or for ensuring compliance by such Broker-Dealers with the terms of this Agreement (except, with respect to the Remarketing Agent, as specifically set forth in the Broker-Dealer Agreement).

6. Disclosure Documents and Other Information. (a) If (i) the Registration Statement is not required to be filed with the Commission pursuant to the provisions of Section 2(b) of this Agreement and (ii) the Remarketing Agent determines that it is necessary or desirable to use a disclosure document in connection with the performance of its obligation to remarket the Subject Securities, the Remarketing Agent will notify the Company and the Company and the Trust will provide to the Remarketing Agent prior to the Tender Notification Date at the Company's expense a disclosure document or documents reasonably satisfactory to the Remarketing Agent and its counsel in respect of the Subject Securities (collectively, and including any documents or other information incorporated by reference therein, the "Nonregistered Offering Documents"). The Company and the Trust will supply the Remarketing Agent at the Company's expense with such number of copies of the Disclosure Documents as the Remarketing Agent reasonably requests from time to time. The Company will supplement and amend the Disclosure Documents so that at all times they will not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements in the Disclosure Documents, in light of the circumstances under which they were made, not misleading.

(b) The Company and the Trust each agrees to furnish to the Remarketing Agent (i) as promptly as practicable after they are available, all regular and periodic reports, if any, which the Company or the Trust files with the Commission, if any, under the Exchange Act and all reports which the Company or the Trust provides generally to holders of its publicly held securities and (ii) from time to time, such other information concerning the Company and the Trust as the Remarketing Agent may reasonably request.

(c) The Company and the Trust will provide the Remarketing Agent with such certificates, opinions of counsel, accountants' letters and other support for the information contained in any Disclosure Documents as the Remarketing Agent and its counsel may reasonably request.

(d) If the Registration Statement is filed with the Commission, the Company and the Trust agree that they will:

- (i) prepare the Registration Statement in conformity with the requirements of the Securities Act and the Rules and Regulations;
- (ii) cause the Registration Statement to become effective prior to the Tender Notification Date (or such later date as may be permitted in accordance with the provisions of Section 2(b));
- (iii) prepare the Prospectus in a form approved by the Remarketing Agent and file the Prospectus in accordance with Rule 424(b) (or any successor applicable rule) under the Securities Act and Rule 430A(a)(3) (or any successor applicable rule) under the Securities Act; make no further amendment or any supplement to the Registration Statement or to the Prospectus except as permitted herein; advise the Remarketing Agent, promptly after it receives notice thereof, of the time when any amendment to the Registration Statement has been filed or becomes effective or any supplement to the Prospectus or any amended Prospectus has been filed and furnish the Remarketing Agent with copies thereof; advise the Remarketing Agent, promptly after it receives notice thereof, of the issuance by the Commission of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus, of the suspension of the qualification of the securities covered by such Registration Statement for offering or sale in any jurisdiction, of the initiation or threatening of any proceeding for any such purpose, or of any request by the Commission for the amending or supplementing of the Registration Statement or the Prospectus or for additional information; and in the event of the issuance of any stop order or of any order preventing or suspending the use of any Preliminary Prospectus or the Prospectus or suspending any such qualification, promptly use its reasonable best efforts to obtain its withdrawal;
- (iv) furnish promptly to the Remarketing Agent and to counsel for the Remarketing Agent a signed copy of the Registration Statement as originally filed with the Commission, and each amendment thereto filed with the Commission, including all consents and exhibits filed therewith;
- (v) deliver promptly to the Remarketing Agent such number of the following documents as the Remarketing Agent shall reasonably request: (1) conformed copies of the Registration Statement as originally filed with the Commission and each amendment thereto (in each case excluding exhibits) and (2) each Preliminary Prospectus, the Prospectus and any amended or supplemented Prospectus; and, if the delivery of a Prospectus is required at any time

after the Effective Time in connection with the offering or sale of the securities covered by the Registration Statement and if at such time any events shall have occurred as a result of which the Prospectus as then amended or supplemented would include an untrue statement of a material fact or omit to state any material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made when such Prospectus is delivered, not misleading, or, if for any other reason it shall be necessary to amend or supplement the Prospectus in order to comply with the Securities Act, notify the Remarketing Agent and, upon its request, prepare and furnish without charge to the Remarketing Agent as many copies as the Remarketing Agent may from time to time reasonably request of an amended or supplemented Prospectus which will correct such statement or omission or effect such compliance;

(vi) file promptly with the Commission any amendment to the Registration Statement or the Prospectus or any supplement to the Prospectus that may, in the judgment of the Trust, the Company or the Remarketing Agent, be required by the Securities Act or requested by the Commission;

(vii) prior to filing with the Commission any amendment to the Registration Statement or supplement to the Prospectus or any Prospectus pursuant to Rule 424 (or any applicable successor rule) of the Rules and Regulations, furnish a copy thereof to the Remarketing Agent and counsel for the Remarketing Agent;

(viii) as soon as practicable after the Effective Time, make generally available to the Trust's and the Company's security holders and deliver to the Remarketing Agent an earnings statement of the Company and its subsidiaries (which need not be audited) complying with Section 11(a) (or any applicable successor section) of the Securities Act and the Rules and Regulations (including, at the option of the Company, Rule 158 (or any applicable successor rule));

(ix) promptly from time to time take such action as the Remarketing Agent may request to qualify the securities covered by the Registration Statement for offering and sale under the securities laws of such jurisdictions as the Remarketing Agent may request and to take all steps necessary to comply with such laws so as to permit the continuance of sales and dealings therein in such jurisdictions for as long as may be necessary to complete the distribution of the Subject Securities; provided, however, that in connection therewith the Trust or the Company will not be required to qualify as a foreign corporation or to file a general consent to service of process in any jurisdiction where it is not so qualified; and

(x) use its best effort to have the Subject Securities listed on any securities exchange or quoted in any automated inter-dealer quotation system reasonably requested by the Remarketing Agent.

7. Indemnification. (a) The Company and the Trust will indemnify and hold harmless the Remarketing Agent its partners, directors and officers and each person, if any, who controls such Remarketing Agent within the meaning of Section 15 of the Securities Act against any losses, claims, damages or liabilities, joint or several, to which the Remarketing Agent may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Disclosure Document, or any amendment or supplement thereto, or any Exchange Act Report or arise out of or are based upon the omission or alleged omission to state therein a material fact necessary in order to make the statements therein not misleading, in the light of the circumstances under which they were made, and will reimburse the Remarketing Agent for any legal or other expenses reasonably incurred by the Remarketing Agent in connection with investigating or defending any such loss, claim, damage liability or action as such expenses are incurred; provided, however, that the Company and the Trust will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon an untrue statement or alleged untrue statement in or omission or alleged omission from any Disclosure Document in reliance upon and in conformity with written information furnished to the Company and the Trust by the Remarketing Agent specifically for use therein.

(b) The Remarketing Agent will indemnify and hold harmless the Company and the Trust and their respective directors, officers and trustees and each person, if any, who controls the Company within the meaning of Section 15 of the Securities Act, against any losses, claims, damages or liabilities to which the Company or the Trust may become subject, under the Securities Act or the Exchange Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the Disclosure Documents, or any amendment or supplement thereto, or arise out of or are based upon the omission or the alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in reliance upon and in conformity with written information furnished to the Company or the Trust by the Remarketing Agent specifically for use therein, and will reimburse any legal or other expenses reasonably incurred by the Company or the Trust in connection with investi-

gating or defending any such loss, claim, damage, liability or action as such expenses are incurred.

(c) Promptly after receipt by an indemnified party under this

Section of notice of the commencement of any action, such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under subsection (a) or (b) above, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve the indemnifying party from any liability which it may have to any indemnified party otherwise than under subsection (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel satisfactory to such indemnified party (who shall not, except with the consent of the indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement includes (i) an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an indemnified party.

(d) If the indemnification provided for in this Section is unavailable or insufficient to hold harmless an indemnified party under subsection (a) or (b) above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Remarketing Agent on the other from the Remarketing of the Subject Securities in accordance with this Agreement or (ii) if the allocation provided by clause (i) above is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the Company on the one hand and the Remarketing Agent on the other in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Remarketing Agent on the other shall be deemed to be in the same

proportion as the aggregate outstanding Liquidation Amount (if the Subject Securities are HIGH TIDES) or principal amount (if the Subject Securities are Debentures) bear to the fees received by the Remarketing Agent from the Company under this Agreement. The relative fault shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Company or the Remarketing Agent and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such untrue statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding the provisions of this subsection (d), the Remarketing Agent shall not be required to contribute any amount in excess of the amount by which the aggregate outstanding Liquidation Amount (if the Subject Securities are HIGH TIDES) or principal amount (if the Subject Securities are Debentures) of the Subject Securities remarketed exceeds the amount of any damages which the Remarketing Agent has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission.

(e) The obligations of the Company and the Trust under this

Section shall be in addition to any liability which the Company and the Trust may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Remarketing Agent within the meaning of the Securities Act or the Exchange Act; and the obligations of the Remarketing Agent under this Section shall be in addition to any liability which the Remarketing Agent may otherwise have and shall extend, upon the same terms and conditions, to each person, if any, who controls the Company or the Trust within the meaning of the Securities Act or the Exchange Act.

8. Remarketing Agent's Liabilities. The Remarketing Agent shall incur no liability to the Company, the Debenture Trustee, the Property Trustee, the Administrative Trustees, the Delaware Trustee, the Tender Agent or any holder of Subject Securities for its actions as Remarketing Agent pursuant to the terms hereof and of the Trust Agreement or Indenture without gross negligence or in the absence of wilful misconduct. The undertaking of the Remarketing Agent to remarket any Subject Securities shall be on a "best efforts" basis.

9. Termination. This Agreement will terminate upon the earliest to occur of the following: (i) the written agreement of all parties hereto; (ii) the date that no Debenture is outstanding; and (iii) the day immediately following the Reset Date. The provisions of Sections 7, 8, 11 and 12 hereof will continue in effect as to actions

prior to the date of termination, and each party will pay to the others any amounts owing at the time of termination.

10. Resignation and Removal; Appointment of Successor. (a) The Remarketing Agent may resign at any time hereunder by giving at least 30 days' written notice thereof to the Company and the Tender Agent. No successor need have accepted its appointment for such resignation to be effective.

(b) The Remarketing Agent may be removed at any time for Cause by the holders of a majority in aggregate Par Amount of the Subject Securities outstanding, by written notice to the Remarketing Agent, the Tender Agent and the Company. No successor need have accepted its appointment for such removal to be effective.

(c) If the Remarketing Agent resigns or is removed in accordance with Section 10(b), the Company will use its best efforts to appoint as the successor Remarketing Agent hereunder an investment bank, broker, dealer or other organization which, in the judgment of the Company, is qualified to remarket the Subject Securities and to establish the Term Provisions. If the Company fails to so appoint a successor Remarketing Agent reasonably promptly, in light of the proximity of the Tender Notification Date, or if such successor fails to accept such appointment, the holders of not less than 25% in aggregate Par Amount of the Subject Securities outstanding, by written notice to the Tender Agent and the Company, may appoint a successor Remarketing Agent which is an investment bank, broker, dealer or other organization qualified to remarket the Subject Securities and to establish the Term Provisions; provided that for purposes of determining the holders of not less than 25% in aggregate Par Amount of the Subject Securities outstanding, Subject Securities owned by the Company, the Trust or any trustee or administrator of the Trust or any affiliate of any of the foregoing shall be disregarded and deemed not to be outstanding.

(d) A successor Remarketing Agent shall accept its appointment by executing and delivering a written instrument of acceptance to the Tender Agent and the Company.

(e) The provisions of Sections 7, 8, 11 and 12 hereof will continue in effect as to actions of the Remarketing Agent prior to the date of resignation or removal, and the Remarketing Agent will pay to and have the right to receive from the other parties hereto any amounts owing at the time of such event.

(f) The Tender Agent shall provide written notice of each resignation and each removal of the Remarketing Agent and each appointment of a successor Remarketing Agent and such successor's acceptance thereof by first-class mail, postage

prepaid, to the holders of the Subject Securities as their names and addresses appear in the applicable register.

(g) Any corporation or other entity into which the Remarketing Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Remarketing Agent may be a party, or any corporation succeeding to all or substantially all of the business of the Remarketing Agent, shall be the successor of the Remarketing Agent hereunder, without the execution or filing of any paper or any further act on the part of any of the parties hereto.

11. Dealing in Subject Securities by Remarketing Agent. The Remarketing Agent, either as principal or agent, may buy, sell, own, hold and deal in Subject Securities, and may join in any action which any owner of the Subject Securities may be entitled to take with like effect as if it did not act in any capacity hereunder. Except as provided in the next succeeding sentence, the Remarketing Agent is under no obligation at any time to purchase Subject Securities. If the Term Rate is established by the Remarketing Agent but on the Reset Date the Remarketing Agent is unable to consummate the sale of one or more Subject Securities tendered for remarketing, the Remarketing Agent shall purchase such Subject Securities on the Reset Date for 101% of their aggregate Par Amount; provided, however, that the Remarketing Agent shall have no obligation to purchase such Subject Securities in the event of a Failed Remarketing. The Remarketing Agent agrees that the purchase of Subject Securities for its own account or the account of its affiliates will be upon terms no more favorable to it than those pertaining to the purchase of Subject Securities in the market (which shall be determined by the Remarketing Agent in its sole discretion) in general at the time of such purchase and that neither it nor its affiliates will elect to retain Subject Securities on the Reset Date if the Subject Securities could be remarketed pursuant to this Agreement on terms more favorable to the Trust or the Company than the terms upon which the Remarketing Agent or such affiliates would continue to hold it. The Remarketing Agent, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Trust or the Company and may act as depository, trustee or agent for any committee or body of owners of Subject Securities or other obligations of the Trust or the Company as freely as if it had no obligations hereunder or under the Trust Agreement or Indenture.

12. Records. The Remarketing Agent agrees to keep books and records relating to its activities as Remarketing Agent in accordance with standard industry practice.

13. Purchase and Sales by Company. While the Company and its affiliates may from time to time purchase, hold and sell Subject Securities, the Company and the Remarketing Agent acknowledge that neither the Company nor any affiliate of the Company may acquire or bid to acquire Subject Securities on the Reset Date or submit orders in the Remarketing. The Remarketing Agent agrees that it will not knowingly remarket any Subject Securities to the Company or any of its affiliates.

14. Communication of Remarketing Conditions. The Remarketing Agent agrees, upon request from time to time by any holder of Subject Securities and to the extent the Remarketing Agent deems advisable, to advise such holder of current Remarketing Conditions.

15. Notices. Unless otherwise provided herein, all notices, requests, demands and formal actions hereunder shall be in writing and mailed or sent by facsimile transmission or delivered, as follows:

**If to the Company:**

Calpine Corporation  
50 West San Fernando Street  
San Jose, California 95113  
Attention: Secretary  
Telephone: (408) 995-5115  
Telecopy: (408) 995-0505

**If to the Tender Agent:**

The Bank of New York, as Tender Agent  
101 Barclay Street  
Floor 21 West  
New York, New York 10286  
Telephone: (212) 815-5783  
Telecopy: (212) 815-5915

**If to the Trust:**

c/o Calpine Corporation  
50 West San Fernando Street  
San Jose, California 95113  
Attention: Secretary  
Telephone: (408) 995-5115  
Telecopy: (408) 995-0505

**If to the Remarketing Agent:**

Credit Suisse First Boston Corporation  
Eleven Madison Avenue  
New York, New York 10010-3629  
Attention: Transactions Advisory Group - Joseph D. Fashano  
Telephone: (212) 325-2107  
Telecopy: (212) 325-4296

Each of the above parties may, by written notice given hereunder to the others, designate any further or different addresses or telecopier numbers to which subsequent notices, certificates, requests or other communications shall be sent. In addition, the parties hereto may agree to any other means by which subsequent notices, certificates, requests or other communications may be sent.

16. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by, the respective successors and assigns of the Company, the Trust, the Tender Agent, the Remarketing Agent and the holders of the Subject Securities.

17. The Tender Agent. In serving as the Tender Agent hereunder, the Debenture Trustee shall be entitled to the protections and benefits of Sections 6.01(d), 6.03, 6.06 and 12.07 of the Indenture and the Property Trustee shall be entitled to the protections and benefits of Sections 3.09, 3.10 and 10.04 of the Trust Agreement.

18. Entire Agreement. Except as otherwise provided herein, this Agreement contains the entire agreement between the parties relating to the subject matter hereof, and there are no other representations, endorsements, promises, agreements or understandings, oral, written or inferred, among the parties.

19. Descriptive Headings. The descriptive headings of the several sections of this Agreement are inserted for convenience only and do not constitute a part of this Agreement.

20. Amendment; Waiver. (a) This Agreement shall not be deemed or construed to be modified, amended, rescinded, canceled or waived, in whole or in part, except by a written instrument signed by a duly authorized representative of each of the Company, the Tender Agent, the Administrative Trustees and the Remarketing Agent.

(b) Failure of any party to exercise any right or remedy under this Agreement in the event of a breach hereof by the other party shall not constitute a waiver of any such right or remedy with respect to any subsequent breach.

21. Severability. If any clause, provision or section of this Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections hereof.

22. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. It shall not be necessary in making proof of this Agreement to produce or account for more than one such counterpart signed by the party against which enforcement of this Agreement is sought.

23. GOVERNING LAW. THIS AGREEMENT SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, AND THE RIGHTS OF THE PARTIES HERETO SHALL BE GOVERNED BY, THE LAW OF THE STATE OF NEW YORK.

**[SIGNATURE PAGE FOLLOWS]**

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

**CALPINE CORPORATION**

By:

Name:

Title:

**CALPINE CAPITAL TRUST II**

By:

Name:

Title: Administrative Trustee

THE BANK OF NEW YORK, as Tender Agent,

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON  
CORPORATION,**

By:

Name:

Title:

**EXHIBIT 4.8.5**

**CALPINE CAPITAL TRUST II**

**UP TO 7,200,000 HIGH TIDES**

**5 1/2% Convertible Preferred Securities**

**Remarketable Term Income Deferrable Equity Securities (HIGH TIDES)**  
(Liquidation Preference \$50 per HIGH TIDES)

Guaranteed to the extent set forth in the  
Preferred Securities Guarantee Agreement  
by, and convertible into  
Common Stock of,

**Calpine Corporation**

**REGISTRATION RIGHTS AGREEMENT**

January 31, 2000

Credit Suisse First Boston Corporation  
ING Barings LLC  
Acting on behalf of itself and  
the several Purchasers  
pursuant to the Purchase Agreement  
c/o Credit Suisse First Boston Corporation Eleven Madison Avenue  
New York, NY 10010-3629

Dear Sirs:

Calpine Capital Trust II, a statutory business trust formed under the laws of the State of Delaware (the "Trust") by, inter alia, Calpine Corporation, a Delaware corporation (the "Company"), proposes to issue and sell (the "Initial Placement") to Credit Suisse First Boston Corporation and the other initial purchasers (collectively, the "Purchasers") named in Schedule A to the Purchase Agreement dated January 31, 2000 (the "Purchase Agreement"), among the Purchasers, the Company and the

Trust, upon the terms set forth in the Purchase Agreement, up to 6,000,000 (or up to 7,200,000 to the extent the option granted by the Trust to the Purchasers pursuant to the Purchase Agreement is exercised in full) of its Remarketable Term Income Deferrable Equity Securities (HIGH TIDES), liquidation preference \$50 per security (the "Preferred Securities"). The proceeds of the sale by the Trust of the Preferred Securities and the Common Securities of the Trust, liquidation preference \$50 per Common Security (the "Common Securities"), are to be invested in the Convertible Subordinated Debentures due 2030 of the Company issued pursuant to the Indenture dated January 31, 2000 between the Company and The Bank of New York, as Trustee (the "Debentures") having an aggregate principal amount equal to the aggregate liquidation amount of the Preferred Securities and the Common Securities. As an inducement to you to enter into the Purchase Agreement and in satisfaction of a condition to your obligations thereunder, the Trust and the Company agree with you, (i) for the benefit of the Purchasers and (ii) for the benefit of the registered holders, including the Purchasers (each of the foregoing a "Holder" and together the "Holders"), from time to time of the Preferred Securities, the Debentures and the Common Stock of Calpine Corporation, par value \$.001 per share (such Common Stock being referred to as the "Common Stock"), of the Company issuable upon conversion of the Debentures, for which the Preferred Securities are exchangeable, as follows:

1. Definitions. Capitalized terms used herein without definition shall have their respective meanings set forth in or pursuant to the Purchase Agreement or, if not defined therein, in the Offering Circular dated January 25, 2000, in respect of the Preferred Securities or, if not defined therein, in the Amended and Restated Declaration of Trust dated as of January 31, 2000 (the "Declaration") relating to the Trust. As used in this Agreement, the following capitalized defined terms shall have the following meanings:

"Act" or "Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the Commission promulgated thereunder.

"Affiliate" of any specified person means any other person which, directly or indirectly, is in control of, is controlled by, or is under common control with, such specified person. For purposes of this definition, control of a person means the power, direct or indirect, to direct or cause the direction of the management and policies of such person whether by contract or otherwise; the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Applicable Rate" means the rate at which the Preferred Securities accrue distributions and the Debentures accrue interest. The Applicable Rate shall be

5.50% per annum from the date of original issuance of the Preferred Securities to (but excluding) the Reset Date. From the Reset Date, the Applicable Rate will be the Term Rate established by the Remarketing Agent to be effective on the Reset Date. The Applicable Rate will be increased upon the occurrence of a Registration Default, as set forth in Section 7(a) hereof.

"Business Day" means any day other than (i) a Saturday or Sunday, (ii) a day on which banking institutions in The City of New York are authorized or required by law to close or (iii) a day on which the corporate trust office of the Debenture Trustee or the Property Trustee is closed for business.

"Closing Date" has the meaning given such term in the Purchase Agreement.

"Commission" means the Securities and Exchange Commission.

"Common Stock" has the meaning set forth in the first paragraph to this Agreement.

"Company" has the meaning set forth in the first paragraph to this Agreement.

"Debentures" has the meaning set forth in the first paragraph to this Agreement.

"Debenture Trustee", "Guarantee Trustee" and "Property Trustee" each means The Bank of New York.

"Effectiveness Deadline" means the 150th day following the Closing Date.

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"Filing Deadline" means the 60th day following the Closing Date.

"Guarantee" means the guarantee by the Company of the Preferred Securities pursuant to a Guarantee Agreement dated as of January 31, 2000 between the Company and the Guarantee Trustee.

"Holder" and "Holders" each has the meaning set forth in the first paragraph to this Agreement.

"Initial Placement" has the meaning set forth in the first paragraph to this Agreement.

"Managing Underwriters" means the investment banker or investment bankers and manager or managers that shall administer an underwritten offering, if any, as set forth in Section 6 hereof.

"Preferred Securities" has the meaning set forth in the first paragraph to this Agreement.

"Prospectus" means the prospectus included in any Shelf Registration Statement (including, without limitation, a prospectus that discloses information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A under the Act), with respect to the terms of the offering of any portion of the Securities covered by such Shelf Registration Statement, as amended or supplemented by all amendments (including post-effective amendments) and supplements to the Prospectus.

"Purchase Agreement" has the meaning set forth in the first paragraph to this Agreement.

"Purchasers" has the meaning set forth in the first paragraph to this Agreement.

"Registrable Securities" has the meaning specified in the Indenture.

"Registration Default" has the meaning given to such term in Section 7(a) hereof.

"Remarketing Agent" has the meaning specified in the Indenture.

"Reset Date" means February 1, 2005 (or, if such day is not a Business Day, the next succeeding Business Day), or such earlier day as may be determined by the Remarketing Agent, in its sole discretion, for settlement of a successful remarketing.

"Securities" means the Preferred Securities, the Debentures, the Common Stock and the Guarantee, individually and collectively.

"Shelf Registration" means a registration effected pursuant to Section 2 hereof.

"Shelf Registration Period" has the meaning set forth in Section 2(b) hereof.

"Shelf Registration Statement" shall mean a "shelf" registration statement filed under the Securities Act on an appropriate form providing for the registration of, and the sale on a continuous or delayed basis by the Holders of, all of the Registrable Securities pursuant to Rule 415 under the Securities Act and/or any similar rule that may be adopted by the Commission, filed by the Company and the Trust pursuant to the provisions of Section 2 of this Agreement, including the Prospectus contained therein, any amendments and supplements to such registration statement, including post-effective amendments, and all exhibits and all material incorporated by reference in such registration statement.

"Suspension Period" has the meaning set forth in Section 7(b) hereof.

"Term Rate" means the rate established by the Remarketing Agent (as defined in the Indenture) in connection with the Remarketing (as defined in the Indenture) at which interest will accrue on the Debentures and distributions will accrue on the Preferred Securities on and after the Reset Date.

"Trust" has the meaning set forth in the first paragraph to this Agreement.

"Trustee" means the Guarantee Trustee, the Debenture Trustee or the Property Trustee, as applicable.

"Underwriter" means any underwriter of Securities in connection with an offering thereof under a Shelf Registration Statement.

2. Shelf Registration. (a) The Trust and the Company shall as promptly as practicable prepare and, not later than the Filing Deadline, shall file with the Commission and thereafter shall each use their best efforts to cause to be declared effective under the Act as soon as practicable, but in no event later than the Effectiveness Deadline, a Shelf Registration Statement relating to the offer and sale of the Securities by the Holders from time to time in accordance with the methods of

distribution elected by such Holders and set forth in such Shelf Registration Statement; provided, however, that no Holder (other than a Purchaser) shall be entitled to have the Securities held by it covered by such Shelf Registration Statement unless such Holder agrees in writing to be bound by all the provisions of this Agreement applicable to such Holder.

(1) The Trust and the Company shall each use its best efforts

(1) to keep the Shelf Registration Statement continuously effective in order to permit the Prospectus included therein to be lawfully delivered by the Holders of the relevant Securities, for a period of two years (or for such other period as shall be required under Rule 144(k) of the Securities Act or any successor rule thereto) from the date of its effectiveness or such shorter period that will terminate upon the earlier of the following (in any such case, such period being called the "Shelf Registration Period"):

(A) when all the Preferred Securities covered by the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement,

(B) when all Debentures issued to Holders in respect of Preferred Securities that had not been sold pursuant to the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement, or

(C) when all shares of Common Stock issued upon conversion of any such Preferred Securities or any such Debentures that had not been sold pursuant to the Shelf Registration Statement have been sold pursuant to the Shelf Registration Statement and

(2) during the Shelf Registration Period, promptly upon the request of any Holder to take any action reasonably necessary to register the sale of any Securities of such Holder and to identify such Holder as a selling securityholder.

The Trust and the Company shall be deemed not to have used their best efforts to keep the Shelf Registration Statement effective during the Shelf Registration Period if they voluntarily take any action that would result in Holders of

Securities covered thereby not being able to offer and sell such Securities during such period, unless such action is required by applicable law.

(2) Notwithstanding any provisions of this Agreement to the contrary, the Trust and the Company shall cause the Shelf Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of the Shelf Registration Statement, amendment or supplement, (i) to comply in all material respects with the applicable requirements of the Securities Act and the rules and regulations of the Commission and (ii) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading.

3. Registration Procedures. In connection with any Shelf Registration Statement, the following provisions shall apply:

(1) The Trust and the Company shall furnish to (i) the Purchasers, and (ii) any other Holders who so request, and their respective counsel and accountants, prior to the filing thereof with the Commission, a copy of any Shelf Registration Statement, and each amendment thereof and each amendment or supplement, if any, to the Prospectus included therein and shall each use its best efforts to reflect in each such document, when so filed with the Commission, such comments as the Purchasers and such other Holders reasonably may propose.

(2) The Trust and the Company shall give written notice to the Purchasers and the Holders:

(1) when the Shelf Registration Statement and any amendment thereto has been filed with the Commission and when the Shelf Registration Statement or any post-effective amendment thereto has become effective; and

(2) of any written request by the Commission for amendments or supplements to the Shelf Registration Statement or the Prospectus included therein or for additional information.

(3) of the issuance by the Commission of any stop order suspending the effectiveness of the Shelf Registration Statement or the initiation of any proceedings for that purpose;

(4) of the receipt by the Trust or the Company of any notification with respect to the suspension of the qualification of the Securities included therein for sale in any state or the initiation or threatening of any proceeding for such purpose; and

(5) of the happening, during the Shelf Registration Period, of any event that requires the making of any changes in the Shelf Registration Statement or the Prospectus so that, as of such date, the Registration Statement and the Prospectus do not contain an untrue statement of a material fact and do not omit to state a material fact required to be stated therein or necessary to make the statements therein (in the case of the Prospectus, in light of the circumstances under which they were made) not misleading (which advice shall be accompanied by an instruction to suspend the use of the Prospectus until the requisite changes have been made).

(3) Each of the Trust and the Company shall use its best efforts to prevent the issuance, and if issued to obtain the withdrawal, of any order suspending the effectiveness of any Shelf Registration Statement at the earliest possible time.

(4) The Trust and the Company shall furnish to each Purchaser and each requesting Holder of Securities included within the coverage of any Shelf Registration Statement, without charge, at least one copy of such Shelf Registration Statement and any post-effective amendment thereto (including, to any such Purchaser or Holder who so requests, any reports or other documents incorporated therein by reference), including financial statements and schedules included therein, and, if such Holder so requests, all exhibits (including those incorporated by reference).

(5) The Trust and the Company shall, during the Shelf Registration Period, deliver to each Holder of Securities included within the coverage of any Shelf Registration Statement, without charge, as many copies of the Prospectus (including each preliminary Prospectus) included in such Shelf Registration Statement and any amendment or supplement thereto as such Holder may reasonably request; and each of the Trust and the Company consents to the use, in accordance with the terms of this Agreement, of the Prospectus or any amendment or supplement thereto by each of the selling Holders of Securities in connection with the offering and sale of the Securities covered by the Prospectus or any amendment or supplement thereto during the Shelf Registration Period.

(6) Prior to any offering of Securities pursuant to any Shelf Registration Statement, the Trust and the Company shall register or qualify, or shall cooperate with the Holders of Securities included therein and their respective counsel in connection with the registration or qualification of, such Securities for offer and sale under the securities or blue sky laws of such states as any such Holders reasonably request in writing and do any and all other acts or things necessary or advisable to enable the offer and sale in such states of the Securities covered by such Shelf Registration Statement; provided, however, that neither the Trust nor the Company will be required to qualify generally to do business in any jurisdiction where it is not then so qualified or to take any action which would subject it to general service of process or to taxation in any such jurisdiction where it is not then so subject.

(7) Unless the applicable Securities shall be in book-entry only form, the Trust and the Company shall cooperate with the Holders of Securities to facilitate the timely preparation and delivery of certificates representing Securities to be sold pursuant to any Shelf Registration Statement free of any restrictive legends and in such permitted denominations and registered in such names as Holders may request in connection with the sale of Securities pursuant to such Shelf Registration Statement.

(8) Upon the occurrence of any event contemplated by paragraphs

(ii) through (v) of Section 3(b) above (other than a request by the Commission solely for additional information as referred to in Section 3(b)(ii) and unless directed otherwise by the Commission), the Trust and the Company shall promptly prepare and file a post-effective amendment to any Shelf Registration Statement or an amendment or supplement to the related Prospectus or file any other required document so that, as thereafter delivered to Holders or purchasers of the Securities included therein, the Prospectus will not contain an untrue statement of a material fact or omit to state any material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If the Company or the Trust notifies the Purchasers or the Holders of the Securities in accordance with paragraphs (ii) through (v) of Section 3(b) above to suspend the use of the Prospectus until the requisite changes to the Prospectus have been made, then the Purchasers and the Holders of the Securities shall suspend use of the Prospectus for such time.

(9) Not later than the effective date of any Shelf Registration Statement hereunder, the Trust and the Company shall provide a CUSIP number for the Preferred Securities (and, in the event of and at the time of any distribution thereof to Holders, the Debentures,) registered under such Shelf Registration

Statement, and provide the applicable Trustee with certificates for such Securities, in a form eligible for deposit with The Depository Trust Company.

(10) The Trust and the Company shall use their best efforts to comply with all applicable rules and regulations of the Commission and shall make generally available to their security holders (or otherwise provide in accordance with Section 11(a) of the Securities Act) as soon as practicable after the effective date of the applicable Shelf Registration Statement an earning statement satisfying the provisions of Section 11(a) of the Securities Act, but in no event later than 45 days after the end of a 12-month period (or 90 days, if such period is a fiscal year) beginning with the first month of the Company's first fiscal quarter commencing after the effective date of the Registration Statement, which statement shall cover such 12-month period.

(11) The Trust and the Company shall cause the Indenture, the Declaration and the Guarantee to be qualified under the Trust Indenture Act in a timely manner and containing such changes, if any, as shall be necessary for such qualification. In the event that such qualification would require the appointment of a new trustee under the Indenture, Declaration or Guarantee, the Company or Trust (as applicable) shall appoint a new trustee thereunder pursuant to the applicable provisions of such agreement.

(12) The Trust and the Company may require each Holder of Securities to be sold pursuant to any Shelf Registration Statement as a condition to the registration of such Holder's Securities thereunder to furnish to the Trust and the Company such information regarding the Holder and the distribution of such Securities as the Trust and the Company may from time to time reasonably require for inclusion in such Shelf Registration Statement. Each Holder who offers and sells Securities by means of the Shelf Registration Statement shall do so in accordance with the terms thereof and the requirements of the Securities Act.

(13) The Trust and the Company shall, if requested, promptly incorporate in a Prospectus supplement or post-effective amendment to a Shelf Registration Statement, such information as the Managing Underwriters, if any, reasonably agree should be included therein and to which the Trust and the Company do not reasonably object and shall make all required filings of such Prospectus supplement or post-effective amendment as soon as practicable after they are notified of the matters to be incorporated in such Prospectus supplement or post-effective amendment.

(14) The Trust and the Company shall enter into such customary agreements (including underwriting agreements in customary form) to take all other appropriate actions in order to expedite or facilitate the registration or the disposition of the Securities, and in connection therewith, if an underwriting agreement is entered into, cause the same to contain indemnification provisions and procedures substantially identical to those set forth in Section 5 hereof (or such other customary provisions and procedures acceptable to the Managing Underwriters, if any) with respect to all parties to be indemnified pursuant to Section 5 hereof.

(15) The Trust and the Company shall (i) make reasonably available for inspection by the Holders of Securities to be registered thereunder, any underwriter participating in any disposition pursuant to such Shelf Registration Statement, and any attorney, accountant or other agent retained by such Holders or any such underwriter, all relevant financial and other records, pertinent corporate documents and properties of the Trust and the Company and its subsidiaries as shall be requested in connection with the discharge of their due diligence obligations; (ii) cause the Company's officers, directors, employees and independent public accountants and any relevant Trustees to supply at the Company's expense all relevant information reasonably requested by such Holders or any such underwriter, attorney, accountant or agent in connection with any such Shelf Registration Statement as is customary for similar due diligence examinations; provided, however, that any information that is designated in writing by the Trust and the Company in good faith as confidential at the time of delivery of such information shall be kept confidential by such Holders or any such underwriter, attorney, accountant or agent, unless such disclosure is made in connection with a court proceeding or required by law, or such information becomes available to the public generally or through a third party without an accompanying obligation of confidentiality; and provided further that the foregoing inspection and information gathering shall be coordinated on behalf of the Holders and the other parties entitled thereto by one counsel who shall be Skadden, Arps, Slate, Meagher & Flom LLP unless another nationally-recognized law firm with specialization in securities laws shall be chosen by the Company; (iii) make such representations and warranties to the Holders of Securities registered thereunder and the underwriters, if any, in form, substance and scope as are customarily made by the issuers to underwriters in primary underwritten offerings and covering matters as are customarily covered in representations and warranties requested in primary underwritten offerings including, but not limited to, those set forth in the Purchase Agreement; (iv) obtain opinions of counsel to the Trust and the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the Managing Underwriters, if any) addressed to each

selling Holder and the underwriters, if any, thereof and dated, in the case of the initial opinion, the effective date of such Shelf Registration Statement (it being agreed that the matters to be covered by such opinion shall include, without limitation, the due incorporation and good standing of the Trust, the Company and its Subsidiaries; the due authorization, execution and delivery of the relevant agreement of the type referred to in Section 3(n) hereof; the due authorization, execution, authentication and issuance, and the validity and enforceability, of the applicable Securities; the absence of material legal or governmental proceedings involving the Trust, the Company and its Subsidiaries; the absence of governmental approvals required to be obtained in connection with the Shelf Registration Statement, the offering and sale of the applicable Securities, or any agreement of the type referred to in Section 3(n) hereof; the compliance as to form of such Shelf Registration Statement and any documents incorporated by reference therein and of the Indenture, the Declaration and the Guarantee with the requirements of the Securities Act and the Trust Indenture Act; and, as of the date of the opinion and as of the effective date of the Shelf Registration Statement or most recent post-effective amendment thereto, as the case may be, that such counsel do not believe that such Shelf Registration Statement and the prospectus included therein, as then amended or supplemented, and any documents incorporated by reference therein contain an untrue statement of a material fact or omit to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading (in the case of any such documents, in the light of the circumstances existing at the time that such documents were filed with the Commission under the Exchange Act); (v) cause its officers to execute and deliver all customary documents and certificates and updates thereof requested by such Holders and any underwriters of the applicable Securities and (vi) cause its independent public accountants and the independent public accountants with respect to any other entity for which financial information is provided in the Shelf Registration Statement to provide to the Holders of the applicable Securities and any underwriter therefor a comfort letter in customary form and covering matters of the type customarily covered in comfort letters in connection with primary underwritten offerings, subject to receipt of appropriate documentation as contemplated, and only if permitted, by Statement of Auditing Standards No. 72. The foregoing actions set forth in clauses (iii), (iv), (v) and (vi) of this Section 3(o) shall be performed at (A) the effectiveness of such Shelf Registration Statement and each post-effective amendment thereto and (B) each closing under any underwritten offering of the Securities to the extent required under any related underwriting or similar agreement.

(16) Each of the Trust and the Company will use its best efforts to cause the Common Stock relating to such Shelf Registration Statement to be listed

on each securities exchange, over-the-counter market, or respective counterpart if any, on which any shares of Common Stock are then listed.

(17) The Trust and the Company shall, in the event that any broker-dealer registered under the Exchange Act shall underwrite any Securities or participate as a member of an underwriting syndicate or selling group or "assist in the distribution" (within the meaning of the Rules of Fair Practice and the By-Laws of the National Association of Securities Dealers, Inc. ("NASD")) thereof, whether as a Holder of such Securities or as an underwriter, a placement or sales agent or a broker or dealer in respect thereof, or otherwise, assist such broker-dealer in complying with the requirements of such Rules and By-Laws, including, without limitation, by (A) if such Rules or By-Laws, including Rule 2720, shall so require, engaging a "qualified independent underwriter" (as defined in Rule 2720) to participate in the preparation of the Shelf Registration Statement relating to such Securities, to exercise usual standards of due diligence in respect thereto and, if any portion of the offering contemplated by such Shelf Registration Statement is an underwritten offering or is made through a placement or sales agent, to recommend the yield of such Securities, (B) indemnifying any such qualified independent underwriter to the extent of the indemnification of underwriters provided in Section 5 hereof and (C) providing such information to such broker-dealer as may be required in order for such broker-dealer to comply with the requirements of the Rules of Fair Practice of the NASD.

(18) The Trust and the Company shall use their best efforts to take all other steps necessary to effect the registration, offering and sale of the Securities covered by the Shelf Registration Statement contemplated hereby.

4. Registration Expenses. (a) All expenses incident to the Company's and the Trust's performance of and compliance with this Agreement will be borne by the Company, regardless of whether a Shelf Registration Statement is ever filed or becomes effective, including without limitation;

(1) all registration and filing fees and expenses;

(2) all fees and expenses of compliance with federal securities and state "blue sky" or securities laws;

(3) all expenses of printing (including printing certificates for the Securities without the Restrictive Legend to be issued and printing of Prospectuses), messenger and delivery services and telephone;

- (4) all fees and disbursements of counsel for the Company and the Trust;
- (5) all application and filing fees in connection with listing the Securities on a national securities exchange or automated quotation system pursuant to the requirements hereof; and
- (6) all fees and disbursements of independent certified public accountants of the Company and the Trust (including the expenses of any special audit and comfort letters required by or incident to such performance).

The Company and the Trust will bear their internal expenses (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit and the fees and expenses of any person, including special experts, retained by the Company or the Trust.

- (2) In connection with any Shelf Registration Statement required by this Agreement, the Company and the Trust will reimburse the Purchasers and the Holders who are selling or reselling Securities pursuant to the Shelf Registration Statement for the reasonable fees and disbursements of not more than one counsel, who shall be Skadden, Arps, Slate, Meagher & Flom LLP unless another nationally-recognized law firm with specialization in securities laws shall be chosen by the Company.

**5. Indemnification and Contribution.** (a) In connection with any Shelf Registration Statement, the Trust and the Company, jointly and severally, agree to indemnify and hold harmless the Purchasers, each Holder of Securities covered thereby (including the Purchasers), their respective partners, directors, and officers and each person, if any, who controls the Purchasers or any such Holder within the meaning of Section 15 of the Securities Act (each Purchaser, Holder and such controlling persons are referred to collectively as the "Indemnified Parties") against any losses, claims, damages or liabilities, joint or several, or any actions in respect thereof (including, but not limited to, any losses, claims, damages, liabilities or actions relating to purchases and sales of the Securities) to which each Indemnified Party may become subject under the Securities Act, the Exchange Act or other Federal or state statutory law or regulation, at common law or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of

or are based upon any untrue statement or alleged untrue statement of a material fact contained in the Shelf Registration Statement as originally filed or in any amendment or supplement thereof, or in any preliminary Prospectus or Prospectus, or in any amendment thereof or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in the light of the circumstances under which they were made, and shall reimburse each such Indemnified Party, as incurred, for any legal or other expenses reasonably incurred by them in connection with investigating or defending any such loss, claim, damage, liability or action; provided, however, that (i) the Company and the Trust will not be liable in any case to the extent that any such loss, claim, damage or liability arises out of or is based upon any such untrue statement or alleged untrue statement or omission or alleged omission made therein in reliance upon and in conformity with written information furnished to the Company by or on behalf of the Purchasers or any such Holder specifically for inclusion therein and (ii) the foregoing indemnity, with respect to any untrue statement or alleged untrue statement or omission or alleged omission made in any preliminary Prospectus relating to a Shelf Registration Statement, shall not inure to the benefit of any Holder (or any person controlling such Holder) from whom the person asserting any such losses, claims, damages or liabilities purchased the Securities concerned, to the extent that a Prospectus relating to such Securities was required to be delivered by such Holder under the Securities Act in connection with such purchase and any such loss, claim, damage or liability of such Holder results from the fact that there was not sent or given to such person, at or prior to the written confirmation of the sale of such Securities to such person, a copy of the final Prospectus if the Company had previously furnished copies thereof to such Holder at or prior to the written confirmation of the sale of such Securities to such person and the untrue statement or alleged untrue statement or omission or alleged omission contained in the preliminary prospectus was corrected in the final prospectus (or the final prospectus as supplemented). This indemnity agreement will be in addition to any liability which the Company or the Trust may otherwise have.

The Trust and the Company, jointly and severally, shall also indemnify underwriters, their officers, directors and each person who controls such underwriters within the meaning of the Securities Act or the Exchange Act to the same extent as provided above with respect to the indemnification of the Holders of the Securities and shall, if requested by any Holder, enter into an underwriting agreement reflecting such agreement, as provided in Section 3(n) and Section 6 hereof.

(1) Each Holder of Securities covered by a Shelf Registration Statement (including the Purchasers) severally, and not jointly, agrees to indemnify and hold harmless (i) the Trust and the Company, (ii) each of the directors of the Company, (iii) each of its officers who signs such Shelf Registration Statement and (iv) each person who controls the Trust or the Company within the meaning of either the Securities Act or the Exchange Act to the same extent as the foregoing indemnity from the Trust and the Company, but only in respect of written information relating to such Holder furnished to the Company by or on behalf of such Holder specifically for inclusion in the documents referred to in the foregoing indemnity. This indemnity agreement will be in addition to any liability which any such Holder may otherwise have.

(2) Promptly after receipt by an indemnified party under this

Section 5 of notice of the commencement of any action or proceeding (including a governmental investigation), such indemnified party will, if a claim in respect thereof is to be made against the indemnifying party under this Section 5, notify the indemnifying party of the commencement thereof; but the omission so to notify the indemnifying party will not relieve the indemnifying party from any liability it may have to any indemnified party otherwise than under paragraph (a) or (b) above. In case any such action is brought against any indemnified party and it notifies the indemnifying party of the commencement thereof, the indemnifying party will be entitled to participate therein and, to the extent that it may wish, jointly with any other indemnifying party similarly notified, to assume the defense thereof, with counsel reasonably satisfactory to such indemnified party (who shall not, except with the consent of such indemnified party, be counsel to the indemnifying party), and after notice from the indemnifying party to such indemnified party of its election so to assume the defense thereof, the indemnifying party will not be liable to such indemnified party under this Section 5 for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened action in respect of which any indemnified party is or could have been a party and indemnity could have been sought hereunder by such indemnified party unless such settlement includes an unconditional release of such indemnified party from all liability on any claims that are the subject matter of such action and does not include a statement as to or an admission of fault, culpability or a failure to act by or on behalf of any indemnified party.

(3) If the indemnification provided for in this Section 5 is unavailable or insufficient to hold harmless an indemnified party under subsections (a) or (b)

above, then each indemnifying party shall contribute to the amount paid or payable by such indemnified party as a result of the losses, claims, damages or liabilities (or actions in respect thereof) referred to in subsection (a) or (b) above (i) in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party or parties on the one hand and the indemnified party on the other from the Initial Placement and the Shelf Registration Statement, or (ii) if the allocation provided by the foregoing clause (i) is not permitted by applicable law, in such proportion as is appropriate to reflect not only the relative benefits referred to in clause (i) above but also the relative fault of the indemnifying party or parties on the one hand and the indemnified party on the other in connection with the statements or omissions that resulted in such losses, claims, damages or liabilities (or actions in respect thereof) as well as any other relevant equitable considerations. The relative fault of the parties shall be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by the Trust or the Company on the one hand or such Holder or such other indemnified party, as the case may be, on the other, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid by an indemnified party as a result of the losses, claims, damages or liabilities referred to in the first sentence of this subsection (d) shall be deemed to include any legal or other expenses reasonably incurred by such indemnified party in connection with investigating or defending any action or claim which is the subject of this subsection (d). Notwithstanding any other provision of this Section 5(d), the Holders of the Securities shall not be required to contribute any amount in excess of the amount by which the net proceeds received by such Holders from the sale of the Securities pursuant to the Shelf Registration Statement exceeds the amount of damages which such Holders have otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. For purposes of this paragraph (d), each person, if any, who controls such indemnified party within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as such indemnified party and each person, if any, who controls the Trust or the Company within the meaning of the Securities Act or the Exchange Act shall have the same rights to contribution as the Trust and the Company.

(4) The agreements contained in this Section 5 shall survive the sale of the Securities pursuant to a Registration Statement and shall remain in full

force and effect, regardless of any termination or cancellation of this Agreement or any investigation made by or on behalf of any indemnified party.

6. Underwritten Offering. If, pursuant to written notice delivered to the Company by the Holders of a majority in aggregate liquidation amount of the Preferred Securities, a majority in aggregate principal amount of the Debentures or a majority of holders of the Common Stock, as the case may be, registered pursuant to a Shelf Registration, such Holders so elect, the offer and sale of any such Preferred Securities, Debentures and/or Common Stock may be effected in the form of an underwritten offering. In any such underwritten offering, the investment banker or bankers and manager or managers that will administer the offering will be selected by, and the underwriting arrangements with respect thereto will be approved by, the Company; provided, however, that such investment bankers and managers and underwriting arrangements must be reasonably satisfactory to the Holders of a majority of the Securities to be included in such offering. No Holder may participate in any underwritten offering contemplated hereby unless such Holder (a) agrees to sell such Holder's Securities in accordance with any approved underwriting arrangements, and (b) completes and executes all reasonable questionnaires, powers of attorney, indemnities, underwriting agreements, lock-up letters and other documents required under the terms of such approved underwriting arrangements.

7. Changes to the Applicable Rate Under Certain Circumstances. (a) The Applicable Rate at which interest is paid on the Debentures (including in respect of amounts accruing during any Deferral Period), and distributions are paid on the Preferred Securities shall be adjusted as follows, if any of the following events occur (each such event in clauses (i) through (iii) below, a "Registration Default"):

- (1) if a Shelf Registration Statement is not filed with the Commission on or prior to the Filing Deadline;
- (2) if the Shelf Registration Statement is not declared effective by the Commission on or prior to the Effectiveness Deadline;
- (3) if (A) after the Shelf Registration Statement is declared effective, such Shelf Registration Statement ceases to be effective prior to the end of the Shelf Registration Period or (B) such Shelf Registration Statement or the related Prospectus ceases to be usable in connection with resales of Securities covered by such Shelf Registration Statement prior to the end of the Shelf Registration Period be-

cause either (1) any event occurs as a result of which the related Prospectus forming part of such Shelf Registration Statement would include any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein in the light of the circumstances in which they were made not misleading or (2) it shall be necessary to amend such Shelf Registration Statement, or supplement the related Prospectus, to comply with the Securities Act or the Exchange Act or the respective rules thereunder.

Each of the foregoing will constitute a Registration Default whatever the reason for any such event and whether it is voluntary or involuntary or is beyond the control of the Company or pursuant to operation of law or as a result of any action or inaction by the Commission.

Additional Interest shall accrue on the Securities over and above the interest set forth in the title of the Securities from and including the date on which any such Registration Default shall occur to but excluding the date on which all such Registration Defaults have been cured, at a rate of 0.50% per annum (the "Additional Interest Rate"). The increase in the Applicable Rate attributable to any Registration Default shall cease to be effective from the date such Registration Default is cured, and the Applicable Rate shall be reduced at such time to the Applicable Rate in effect immediately prior to such Registration Default; provided, however, in the event a Registration Default occurs prior to the Reset Date and is cured on or after the Reset Date, the Applicable Rate shall be the Term Rate from the date such Registration Default is cured.

(2) A Registration Default referred to in Section 7(a)(iii) shall be deemed not to have occurred and be continuing in relation to the Shelf Registration Statement or the related Prospectus if (i) such Registration Default has occurred solely as a result of (x) the filing of a post-effective amendment to such Shelf Registration Statement to incorporate annual audited financial information with respect to the Company where such post-effective amendment is not yet effective and needs to be declared effective to permit Holders to use the related Prospectus or (y) the occurrence of other material events or developments with respect to the Trust or the Company that would need to be described in such Registration Statement or the related Prospectus and

(ii) in the case of clause (y), the Trust and the Company are proceeding promptly and in good faith to amend or supplement such Registration Statement and related Prospectus to describe such events; provided, however, that in any case if such Registration Default occurs for a continuous period in excess of

30 days, Additional Interest shall be payable in accordance with the above paragraph from the day such Registration Default occurred until such Registration Default is cured.

(3) Any amounts of Additional Interest due pursuant to Section 7(a) will be payable in cash on the regular interest payment dates (or such other time as provided in the Indenture or Declaration, as applicable, for the payment of interest or distributions) with respect to the Securities. The amount of Additional Interest will be determined by multiplying the applicable Additional Interest Rate by the principal amount of the Securities and further multiplied by a fraction, the numerator of which is the number of days such Additional Interest Rate was applicable during such period (determined on the basis of a 360-day year comprised of twelve 30-day months), and the denominator of which is 360.

8. Rules 144 and 144A. The Company and the Trust shall use their best efforts to file the reports required to be filed by them under the Securities Act and the Exchange Act in a timely manner and, if at any time the Company or the Trust is not required to file such reports, it will, upon the request of any Holder of Securities, make publicly available other information so long as necessary to permit sales of their securities pursuant to Rules 144 and 144A of the Securities Act, or any successor regulation or statute thereto. The Company and the Trust covenant that they will take such further action as any Holder of Securities may reasonably request, all to the extent required from time to time to enable such Holder to sell Securities without registration under the Securities Act within the limitation of the exemptions provided by Rules 144 and 144A (including the requirements of Rule 144A(d)(4)). The Company and the Trust will provide a copy of this Agreement to prospective purchasers of Securities identified to the Company or the Trust by the Purchasers upon request. Upon the request of any Holder of Securities, the Company and the Trust shall deliver to such Holder a written statement as to whether it has complied with such requirements. Notwithstanding the foregoing, nothing in this Section 7 shall be deemed to require the Company and the Trust to register any of their securities pursuant to the Exchange Act.

#### 9. Miscellaneous.

(1) Remedies. The Company and the Trust each acknowledge and agree that any failure by either of them to comply with their respective obligations under Section 2 hereof may result in material irreparable injury to the Purchasers or the Holders for which there is no adequate remedy at law, that it will not be possible to measure damages for such injuries precisely and that, in the event of any such

failure, the Purchasers or any Holder may obtain such relief as may be required to specifically enforce the Company's and the Trust's obligations under Section 2 hereof. The Company and the Trust each further agree to waive the defense in any action for specific performance of Section 2 hereof that a remedy at law would be adequate.

(2) No Inconsistent Agreements. The Trust and the Company have not, as of the date hereof, entered into, nor shall they on or after the date hereof, enter into, any agreement with respect to their securities or otherwise that is inconsistent with the rights granted to the Holders herein or otherwise conflicts with the provisions hereof.

(3) Amendments and Waivers. The provisions of this Agreement, including the provisions of this sentence, may not be amended, qualified, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the Trust and the Company have obtained the written consent of a majority in principal amount, liquidation preference or voting rights (as applicable ) of the Securities affected by such amendment, qualification, modification, supplement, waiver or consent.

(4) Notices. All notices and other communications provided for or permitted hereunder shall be made in writing and shall be mailed, delivered, telegraphed and confirmed or faxed and confirmed:

(1) if to a Holder, at the most current address given by such Holder to the Company in accordance with the provisions of this Section 8(c), which address initially is, with respect to each Holder, the address of such Holder maintained by the Registrar under the Indenture, with respect to the Debentures; or the Declaration, with respect to the Preferred Securities; with a copy in a like manner to Credit Suisse First Boston Corporation;

(2) if to any or all of the Purchasers, initially at the address set forth in the Purchase Agreement; and

(3) if to the Trust or the Company, initially at its address set forth in the Purchase Agreement.

The Purchaser or the Trust and the Company by notice to the other may designate additional or different addresses for subsequent notices or communications.

(5) Third Party Beneficiaries. The Holders shall be third party beneficiaries to the agreements made hereunder between the Company and/or the Trust, on the one hand, and the Purchasers, on the other hand, and shall have the right to enforce such agreements directly to the extent they may deem such enforcement necessary or advisable to protect their rights or the rights of Holders hereunder.

(6) Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of each of the parties and the Holders, including, without the need for an express assignment or any consent by the Trust or the Company thereto, subsequent Holders of Securities. The Trust and the Company hereby agree to extend the benefits of this Agreement to any Holder of Securities and any such Holder may specifically enforce the provisions of this Agreement as if an original party hereto.

(7) Counterparts. This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

(8) Headings. The headings in this Agreement are for convenience of reference only and shall not limit or otherwise affect the meaning hereof.

(9) Governing Law. THIS AGREEMENT 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.

(10) Securities Held by the Company or the Trust. Whenever the consent or approval of Holders of a specified percentage of principal amount of Securities is required hereunder, Securities held by the Company, the Trust or their affiliates (other than subsequent Holders of Securities if such subsequent Holders are deemed to be affiliates solely by reason of their holdings of such Securities) shall not be considered to be outstanding and shall not be counted in determining whether such consent or approval was given by the Holders of such required percentage.

(11) Severability. In the event that any one of more of the provisions contained herein, or the application thereof in any circumstances, is held invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such provision in every other respect and of the remaining

provisions hereof shall not be in any way impaired or affected thereby, it being intended that all of the rights and privileges of the parties shall be enforceable to the fullest extent permitted by law.

(Signature page follows.)

Please confirm that the foregoing correctly sets forth the agreement between the Company, the Trust and you.

Very truly yours,

**CALPINE CAPITAL TRUST II**

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

Name:

Title: Administrative Trustee

**CALPINE CORPORATION**

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

Name:

Title:

The foregoing Registration Rights Agreement is hereby confirmed and accepted as of the date first above written.

**CREDIT SUISSE FIRST BOSTON CORPORATION  
ING BARINGS LLC**

Acting on behalf of itself and  
the several Purchasers  
pursuant to the Purchase Agreement

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

Title:

**EXHIBIT 4.8.6**

**AMENDED AND RESTATED  
DECLARATION OF TRUST  
OF  
CALPINE CAPITAL TRUST II**

January 31, 2000

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**AMENDED AND RESTATED**

**DECLARATION OF TRUST**

**OF**

**CALPINE CAPITAL TRUST II**

January 31, 2000

AMENDED AND RESTATED DECLARATION OF TRUST ("Declaration"), dated and effective as of January 31, 2000, by the undersigned trustees (together with all other Persons from time to time duly appointed and serving as trustees in accordance with the provisions of this Declaration, the "Trustees"), Calpine Corporation, a Delaware corporation, as trust Depositor (the "Depositor"), and by the holders, from time to time, of undivided beneficial interests in the assets of the Trust (as defined below) issued pursuant to this Declaration;

WHEREAS, the Trustees and the Depositor established Calpine Capital Trust II (the "Trust") under the Business Trust Act (as hereinafter defined) pursuant to a Declaration of Trust dated as of January 24, 2000 (the "Original Declaration"), and a Certificate of Trust filed with the Secretary of State of the State of Delaware on January 25, 2000, for the sole purpose of issuing and selling certain securities representing undivided beneficial interests in the assets of the Trust and investing the proceeds thereof in certain Debentures of the Debenture Issuer (as hereinafter defined);

WHEREAS, as of the date hereof, no interests of the Trust have been issued;

WHEREAS, all of the Trustees and the Depositor, by this Declaration, amend and restate in its entirety each and every term and provision of the Original Declaration; and

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

## **ARTICLE I**

### **Interpretation and Definitions**

Section 1.1 Definitions. Unless the context otherwise requires:

- (1) Capitalized terms used in this Declaration but not defined in the preamble above have the respective meanings assigned to them in this Declaration, and any capitalized term not defined in this Declaration shall have the meaning assigned thereto in the Indenture;
- (2) a term defined anywhere in this Declaration or the Indenture has the same meaning throughout;
- (3) all references to "the Declaration" or "this Declaration" are to this Declaration as modified, supplemented or amended from time to time;
- (4) all references in this Declaration to Articles, Sections, Annexes and Exhibits are to Articles and Sections of and Annexes and Exhibits to this Declaration unless otherwise specified;
- (5) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles;
- (6) a term defined in the Trust Indenture Act has the same meaning when used in this Declaration unless otherwise defined in this Declaration or unless the context otherwise requires; and
- (7) a reference to the singular includes the plural and vice versa.

"Additional Amounts" has the meaning specified in the Indenture.

"Administrative Action" has the meaning set forth in the definition of "Tax Event" in this Section 1.01.

"Administrative Trustee" means any Trustee other than the Property Trustee and the Delaware Trustee.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For the purposes of this definition, "control" when used with

respect to any specified Person means 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; the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Agent" means any Registrar, Paying Agent, Conversion Agent or co-Registrar.

"Appointment Event" means an event defined in the terms of the Preferred Securities, as set forth in Annex I, which entitles the Holders of a Majority in liquidation amount of the Preferred Securities to appoint a Special Trustee.

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

"Beneficiaries" has the meaning set forth in Section 4.03(a).

"Book Entry Interest" means a beneficial interest in a Global Preferred Securities Certificate, ownership and transfers of which shall be maintained and made through book entries by a Depositary as described in Section 9.02.

"Business Day" means any day other than a Saturday or a Sunday, a day on which banking institutions in New York, New York are authorized or required by law to close, or a day on which the corporate trust office of the Property Trustee or the Debenture Trustee is closed for business.

"Business Trust Act" means Chapter 38 of Title 12 of the Delaware Code, 12 Del. Code Section 3801 et seq., as it may be amended from time to time, or any successor legislation.

"Certificate" means a certificate in global or definitive form representing a Common Security or a Preferred Security.

"Change in 1940 Act Law" has the meaning specified in paragraph 4(d) of Annex I.

"Closing Date" means January 31, 2000.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor legislation.

"Commission" means the Securities and Exchange Commission.

"Common Securities" has the meaning specified in Section 7.01(a).

"Common Securities Guarantee" means the guarantee agreement to be dated as of January 31, 2000 of the Depositor in respect of the Common Securities.

"Common Stock" has the meaning specified in the Indenture.

"Compounded Interest" has the meaning specified in the Indenture.

"Conversion Agent" has the meaning set forth in Section 7.04.

"Conversion Date" has the meaning specified in paragraph 5(b) of Annex I.

"Conversion Request" has the meaning specified in paragraph 5(b) of Annex I.

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

"Debenture Event of Default" in respect of the Securities means an Event of Default (as defined in the Indenture) has occurred and is continuing in respect of the Debentures.

"Debenture Issuer" means the Depositor in its capacity as issuer of the Debentures.

"Debentures" means the series of Debentures to be issued by the Debenture Issuer under the Indenture and to be held by the Property Trustee, in the form attached to the Indenture as Exhibit A.

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

"Declaration" means this Amended and Restated Declaration of Trust as originally executed or as it may from time to time be supplemented or amended.

"Declaration Trustees" means collectively, the Administrative Trustees, the Property Trustee and the Delaware Trustee.

"Deferral Period" has the meaning specified in paragraph 2(b) of Annex I.

"Definitive Preferred Securities" means any Preferred Securities in definitive form issued by the Trust.

"Delaware Trustee" has the meaning set forth in Section 5.02.

"Depository" means The Depository Trust Company, the initial clearing agency, until a successor shall be appointed pursuant to Section 9.05, and thereafter means such successor Depository.

"Depositor" means Calpine Corporation, a Delaware corporation, or any successor entity in a merger, consolidation or amalgamation, in its capacity as Depositor of the Trust.

"Direct Action" has the meaning specified in Section 3.08(e).

"Disclosure Documents" has the meaning specified in the Remarketing Agreement.

"Dissolution Tax Opinion" has the meaning specified in the definition of Tax Event in this Section 1.01.

"Distribution" means a distribution payable to Holders of Securities in accordance with Section 6.01.

"Event of Default" means:

(1) a Debenture Event of Default; or

(2) default by the Trust in the payment of any Distribution when it becomes due and payable, and continuation of such default for a period of 30 days (subject to the deferral of any due date in the case of a Deferral Period); or

(3) default by the Trust in the payment of any Redemption Price of any Security when it becomes due and payable; or

(4) default in the performance, or breach, in any material respect, of any covenant or warranty of the Trustees in the Declaration (other than a covenant or warranty, a default in the performance of which or the breach of which is addressed in clause (ii) or (iii) above), and continuation of such default or breach for a period of 60 days after there has been given, by registered or certified mail, to the defaulting Declaration Trustee or Declaration Trustees by the holders of at least 25% in aggregate liquidation amount of the outstanding Preferred Securities, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under the Declaration; or

(5) the failure of the Depositor to appoint a successor Property Trustee in the manner required by Section 5.06(a).

"Exchange Act" means the Securities Exchange Act of 1934, as amended from time to time, or any successor legislation, and the rules and regulations promulgated thereunder.

"Failed Final Remarketing" has the meaning specified in the Remarketing Agreement.

"Fiscal Year" shall have the meaning specified in Section 11.01.

"Global Preferred Securities" means Rule 144A Global Preferred Securities and/or Unrestricted Global Preferred Securities, as the context requires.

"Holder" means a Person in whose name a Certificate representing a Security is registered, such Person being a beneficial owner within the meaning of the Business Trust Act.

"Indemnified Person" means (a) any Trustee; (b) any Affiliate of any Trustee; (c) any officers, directors, shareholders, members, partners, employees, representatives or agents of any Trustee; or (d) any employee or agent of the Trust or its Affiliates.

"Indenture" means the Indenture, dated as of January 31, 2000, between the Debenture Issuer and the Debenture Trustee, as it may be amended from time to time.

"Initial Conversion Price" has the meaning specified in paragraph 5(a) of Annex I.

"Initial Rate" has the meaning specified in paragraph 2(a) of Annex I.

"Initial Redemption Price" has the meaning specified in the Indenture.

"Investment Company" means an investment company as defined in the Investment Company Act, and the rules and regulations promulgated thereunder.

"Investment Company Act" means the Investment Company Act of 1940, as amended from time to time, or any successor legislation.

"Investment Company Event" has the meaning specified in paragraph 4(d) of Annex I.

"Legal Action" has the meaning set forth in Section 3.06(g).

"Like Amount" means (i) with respect to a redemption of Securities, Securities having an aggregate liquidation amount equal to that portion of the principal amount of Debentures to be contemporaneously redeemed in accordance with the Indenture, allocated to such Securities based upon the relative liquidation amounts of such classes and the proceeds of which will be used to pay the applicable Redemption Price of such Securities and (ii) with respect to a distribution of Debentures to Holders of the Securities in connection with a dissolution and liquidation of the Trust, Debentures having a principal amount equal to the aggregate liquidation amount of the Securities of the Holder to whom such Debentures are distributed.

"Liquidation Distribution" has the meaning specified in paragraph 3 of Annex I.

"List of Holders" has the meaning set forth in Section 2.02(a).

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

"Ministerial Action" has the meaning set forth in paragraph 4(d) in Annex I.

"No Recognition Opinion" has the meaning specified in paragraph 4(d) of Annex I.

"Obligations" means any costs, expenses or liabilities of the Trust, other than obligations of the Trust to pay to Holders of any Securities or other similar interests in the Trust the amounts due such Holders pursuant to the terms of the Securities or such other similar interests, as the case may be.

"Offering Circular" means the confidential offering circular, dated January 25, 2000, relating to the issuance by the Trust of Preferred Securities.

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

- (1) a statement that each officer signing the Certificate has read the covenant or condition and the definition relating thereto;
- (2) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Certificate;
- (3) a statement that each such officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to express an informed opinion as to whether or not such covenant or condition has been complied with; and
- (4) a statement as to whether, in the opinion of each such officer, such condition or covenant has been complied with.

"OID" means original issue discount.

"Optional Closing Date" has the meaning assigned to such term in the Purchase Agreement.

"Optional Redemption" has the meaning specified in the Indenture.

"Participants" has the meaning set forth in Section 7.03(b).

"Paying Agent" has the meaning specified in Section 7.04.

"Payment Amount" has the meaning specified in Section 6.01.

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Preferred Securities" has the meaning specified in Section 7.01(a).

"Preferred Securities Guarantee" means the guarantee agreement to be dated as of January 31, 2000, between the Depositor and The Bank of New York, as Guarantee Trustee, in respect of the Preferred Securities.

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

"Property Trustee" means the Trustee meeting the eligibility requirements set forth in Section 5.03.

"Property Trustee Account" has the meaning set forth in Section 3.08(c).

"Pro Rata" has the meaning specified in paragraph 9 of Annex I.

"Purchase Agreement" has the meaning set forth in Section 7.03.

"QIBs" has the meaning set forth in Section 7.03(a).

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

"Redemption Price" has the meaning specified in the Indenture.

"Redemption Tax Opinion" has the meaning specified in paragraph 4 (d) of Annex I.

"Registrar" has the meaning set forth in Section 7.04.

"Registration Default" has the meaning specified in the Registration Rights Agreement.

"Registration Rights Agreement" means the Registration Rights Agreement, dated January 31, 2000, among the Depositor, the Trust and the initial Purchasers named in the Purchase Agreement.

"Registration Statement" has the meaning specified in the Registration Rights Agreement.

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

"Remarketing" has the meaning specified in the Remarketing Agreement.

"Remarketing Agent" has the meaning specified in the Indenture.

"Remarketing Agreement" means the Remarketing Agreement, dated January 31, 2000 among the Depositor, the Trust, the Tender Agent and the Remarketing Agent.

"Responsible Officer" means, with respect to the Property Trustee, any vice-president, any assistant vice-president, the treasurer, any assistant treasurer, any trust officer or assistant trust officer or any other officer in the Corporate Trust Department of the Property Trustee customarily performing functions similar to those performed by any of the above designated officers and also means, with respect to a particular corporate trust matter, any other officer to whom such matter is referred because of that officer's knowledge of and familiarity with the particular subject.

"Restricted Preferred Securities" shall mean the Rule 144A Global Preferred Securities.

"Restricted Securities Legend" has the meaning specified in Section 9.02(h).

"Rule 144A" has the meaning specified in Section 7.03(a).

"Rule 144A Global Preferred Security" has the meaning specified in Section 7.03(a).

"Securities" means the Common Securities and the Preferred Securities.

"Securities Act" means the Securities Act of 1933, as amended from time to time, or any successor legislation, and the rules and regulations promulgated thereunder.

"Securities Guarantee" means the Common Securities Guarantee and the Preferred Securities Guarantee.

"Shelf Registration Statement" has the meaning specified in the Registration Rights Agreement.

"Special Trustee" means a trustee appointed by the Holders of a Majority in liquidation amount of the Preferred Securities in accordance with Section 5.06(ii)(B).

"Successor Delaware Trustee" has the meaning set forth in Section 5.06(c).

"Successor Entity" has the meaning specified in Section 3.15(b)

"Successor Property Trustee" has the meaning set forth in Section 5.06(a).

"Successor Securities" has the meaning specified in Section 3.15(b).

"Super Majority" has the meaning set forth in Section 2.06(a)(ii).

"Tax Event" means the receipt by the Property Trustee of an opinion of nationally recognized independent tax counsel to the Depositor (reasonably acceptable to the Trustees) experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (i) any amendment to or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority thereof or therein, (ii) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action") or (iii) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced, in each case, on or after the date of original issuance of the Debentures or the issue date of the Preferred Securities issued by

the Trust, there is more than an insubstantial risk that (a) if the Debentures are held by the Property Trustee, (x) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to interest accrued or received on the Debentures or subject to more than a de minimis amount of other taxes, duties or other governmental charges as determined by such counsel, or (y) any portion of interest payable by the Depositor to the Trust (or OID accruing) on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Depositor in whole or in part for United States federal income tax purposes or (b) with respect to Debentures which are no longer held by the Property Trustee, any portion of interest payable by the Depositor (or OID accruing) on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Depositor in whole or in part for United States federal income tax purposes.

"Tender Agent" means the Property Trustee if any Preferred Securities are outstanding and the Debenture Trustee if the Debentures have been distributed to the Holders of the Preferred Securities.

"Tender Notification Date" has the meaning specified in the Indenture.

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

"Term Provisions" has the meaning specified in the Remarketing Agreement.

"Term Call Protections" has the meaning specified in the Remarketing Agreement.

"Treasury Regulations" means the income tax regulations, including temporary and proposed regulations, promulgated under the Code by the United States Treasury, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

"Trust" has the meaning specified in the first recital of this Agreement.

"Trust Indenture Act" means the Trust Indenture Act of 1939, as amended from time to time, or any successor legislation, and the rules and regulations promulgated thereunder.

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

"Unrestricted Global Preferred Security" has the meaning set forth in Section 9.02(b).

## **ARTICLE II**

### **Trust Indenture Act**

Section 1.2 Trust Indenture Act; Application. (a) This Declaration is, or will be upon qualification under the Trust Indenture Act, subject to the provisions of the Trust Indenture Act that are required to be part of this Declaration, which are incorporated by reference in and made part of this Declaration and shall, to the extent applicable, be governed by such provisions. This Declaration will not be qualified under the Trust Indenture Act except upon the effectiveness of the Shelf Registration Statement.

- (1) The Property Trustee shall be the only Trustee which is a Trustee for the purposes of the Trust Indenture Act.
- (2) Until such time as this Declaration is qualified under the Trust Indenture Act, the parties hereto agree that the provisions of Sections 310 to 317, inclusive, of the Trust Indenture Act shall be incorporated herein by reference, subject to the provisions of this Declaration, and to the extent that any provision of this Declaration limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.
- (3) The application of the Trust Indenture Act to this Declaration shall not affect the nature of the Securities as equity securities representing undivided beneficial interests in the assets of the Trust.

Section 1.3 Lists of Holders of Securities. (a) Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide the Property Trustee (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Property Trustee may reasonably require, of the names and addresses of the Holders of the Securities ("List of Holders") as of such record date, provided that neither the Depositor nor the Administrative Trustees on behalf of the Trust shall be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Property Trustee by the Depositor and the Administrative Trustees on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Property Trustee. The Property Trustee shall preserve, in as current a form as is reasonably practicable, all information contained in Lists of Holders given to it or which it receives in its capacity as Paying Agent (if acting in such capacity), provided that the Property Trustee may destroy any List of Holders previously given to it on receipt of a new List of Holders.

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

Section 1.4 Reports by the Property Trustee. Within 60 days after March 15 of each year, commencing March 15, 2000, the Property Trustee shall provide to the Holders of the Preferred Securities such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Property Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

Section 1.5 Periodic Reports to Property Trustee. Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such documents, reports and information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act, such compliance certificate to be delivered annually on or before 120 days after the end of each fiscal year of the Depositor.

Section 1.6 Evidence of Compliance with Conditions Precedent. Each of the Depositor and the Administrative Trustees on behalf of the Trust shall provide to the Property Trustee such evidence of compliance with any conditions precedent, if any, provided for in this Declaration that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by an officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

**Section 1.7 Events of Default; Waiver.** (a) The Holders of a Majority in liquidation amount of Preferred Securities may, by vote, on behalf of the Holders of all of the Preferred Securities, waive any past Event of Default in respect of the Preferred Securities and its consequences, provided that, if the Event of Default:

- (1) is caused by a Debenture Event of Default that is not waivable under the Indenture, the Event of Default under the Declaration shall also not be waivable;
- (2) is caused by a Debenture Event of Default that requires the consent or vote of greater than a majority in principal amount of the holders of the Debentures (a "Super Majority") to be waived under the Indenture, the Event of Default under the Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;
- (3) is the result of a default by the Trust in the payment of any Distribution when it becomes due and payable, which default has continued for 30 days (subject to the deferral of any due date in the case of a Default Period), the Event of Default shall not be waivable; or
- (4) is the result of a default by the Trust in the payment of any Redemption Price of any Preferred Security when it becomes due and payable, the Event of Default shall not be waivable.

The foregoing provisions of this Section 2.06(a) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

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

(2) The Holders of a Majority in liquidation amount of the Common Securities may, by vote, on behalf of the Holders of all of the Common Securities, waive any past Event of Default with respect to the Common Securities and its consequences, provided that, if the Event of Default is caused by a Debenture Event of Default that:

(1) is not waivable under the Indenture, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this Section 2.06(b), the Event of Default under the Declaration shall also not be waivable; or

(2) requires the consent or vote of a Super Majority to be waived, except where the Holders of the Common Securities are deemed to have waived such Event of Default under the Declaration as provided below in this Section 2.06(b), the Event of Default under the Declaration may only be waived by the vote of the Holders of at least the proportion in liquidation amount of the Preferred Securities that the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding;

provided further, each Holder of Common Securities will be deemed to have waived any such Event of Default and all Events of Default with respect to the Common Securities and its consequences until the effects of all Events of Default with respect to the Preferred Securities have been cured, waived or otherwise eliminated, and until such Events of Default have been so cured, waived or otherwise eliminated, the Property Trustee will be deemed to be acting solely on behalf of the Holders of the Preferred Securities and only the Holders of the Preferred Securities will have the right to direct the Property Trustee in accordance with the terms of the Securities. The foregoing provisions of this Section 2.06(b) shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act are hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act. Subject to the foregoing provisions of this Section 2.06(b), upon such waiver, any such default shall cease to exist and any Event of Default with respect to the Common Securities arising therefrom shall be deemed to have been cured for every purpose of this Declaration, but no such waiver shall extend to any subsequent or other default or Event of Default with respect to the Common Securities or impair any right consequent thereon.

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

provisions of this Section 2.06(c) shall be in lieu of Section 316(a)(1)(B) of the Trust Indenture Act and such Section 316(a)(1)(B) of the Trust Indenture Act is hereby expressly excluded from this Declaration and the Securities, as permitted by the Trust Indenture Act.

Section 1.8 Event of Default; Notice. (a) The Property Trustee shall, within ten Business Days after the occurrence of an Event of Default actually known to the Property Trustee, (i) transmit by mail, first-class postage prepaid, to the Holders of the Securities, and (ii) transmit by any means provided for in this Declaration to the Administrative Trustees and the Depositor, notices of all defaults actually known to the Property Trustee, unless such defaults have been cured or waived before the giving of such notice (the term "defaults" for the purposes of this Section 2.07(a) being hereby defined to be an Event of Default, not including any periods of grace and irrespective of the giving of any notice); provided that, except for a default in the payment of principal of (or premium, if any) or interest on any of the Debentures or in the payment of any sinking fund installment established for the Debentures, the Property Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee, or a trust committee of directors and/or Responsible Officers of the Property Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Securities.

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

(1) a default under Sections 5.01(1) and 5.01(2) of the Indenture; or

(2) any default as to which the Property Trustee shall have received written notice.

## **ARTICLE III**

### **Organization**

Section 1.9 Name. The Trust is named "Calpine Capital Trust II," as such name may be modified from time to time by the Administrative Trustees following written notice to the Holders of Securities. The Trust's activities may be conducted under the name of the Trust or any other name deemed advisable by the Administrative Trustees.

Section 1.10 Office. The address of the principal office of the Trust is c/o Calpine Corporation, 50 West San Fernando Street, San Jose, California 95113, Attention: General Counsel. On ten Business Days' written notice to the Holders of Securities, the Administrative Trustees may designate another principal office.

Section 1.11 Purpose. The exclusive purposes and functions of the Trust are (a) to issue and sell the Securities and use the proceeds from such sale to acquire the Debentures, and (b) except as otherwise limited herein, to engage in only those other activities necessary or incidental thereto. The Trust shall not borrow money, issue debt or reinvest proceeds derived from investments, pledge any of its assets, or otherwise undertake (or permit to be undertaken) any activity that would cause the Trust not to be classified for United States Federal income tax purposes as a grantor trust.

Section 1.12 Authority. (a) Subject to the limitations provided in this Declaration and to the specific duties of the Property Trustee, the Administrative Trustees shall have exclusive and complete authority to carry out the purposes of the Trust. An action taken by the Administrative Trustees in accordance with their powers shall constitute the act of and serve to bind the Trust and an action taken by the Property Trustee in accordance with its powers shall constitute the act of and serve to bind the Trust. In dealing with the Trustees acting on behalf of the Trust, no Person shall be required to inquire into the authority of the Trustees to bind the Trust. Persons dealing with the Trust are entitled to rely conclusively on the power and authority of the Trustees as set forth in this Declaration.

(1) Except as expressly set forth in this Declaration and except if a meeting of the Administrative Trustees is called with respect to any matter over which the Administrative Trustees have power to act, any power of the Administrative Trustees may be exercised by, or with the consent of, any one such Administrative Trustee.

(2) An Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purposes of signing any documents which the Administrative Trustees have power and authority to cause the Trust to execute pursuant to Section 3.06.

Section 1.13 Title to Property of the Trust. Except as provided in Section 3.08 with respect to the Debentures and the Property Trustee Account or as otherwise provided in this Declaration, legal title to all assets of the Trust shall be vested in the Trust. The Holders shall not have legal title to any part of the assets of the Trust, but shall have an undivided beneficial interest in the assets of the Trust.

**Section 1.14 Powers and Duties of the Administrative Trustees.** The Administrative Trustees shall have, together (except in the case of paragraphs (a), (b) and (c) of this Section 3.06) with any Special Trustee holding office pursuant to Section 5.06, if any, the exclusive power, duty and authority to cause the Trust to engage in the following activities:

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

(2) in connection with the issue and sale of the Preferred Securities to:

(1) assist in the preparation of the Offering Circular and preliminary offering circular, if any, in each case prepared by the Depositor, in relation to the offering and sale of the Preferred Securities to qualified institutional buyers in reliance of Rule 144A under the Securities Act and to execute and file with the Commission, at such time as determined by the Depositor (whether in accordance with the Registration Rights Agreement or otherwise), a registration statement on Form S-3, or other form as applicable, prepared by the Depositor, including any amendments thereto in relation to the Preferred Securities;

(2) execute and file any documents prepared by the Depositor, or take any acts as determined by the Depositor to be necessary in order to qualify or register all or part of the Preferred Securities in any State or foreign jurisdiction in which the Depositor has determined to qualify or register such Preferred Securities for sale;

(3) execute and file an application, prepared by the Depositor, to the Private Offerings, Resale and Trading through Automated Linkages ("PORTAL") Market and, at such time as determined by the Depositor (whether pursuant to the Registration Rights Agreement or otherwise), to the New York Stock Exchange, Inc. or any other national stock exchange or the NASDAQ National Market for listing or quotation of the Preferred Securities, but if and only if the Depositor has so instructed the Administrative Trustees to make such filing;

- (4) to execute and deliver letters, documents, or instruments with The Depository Trust Company relating the Preferred Securities;
  - (5) execute and file with the Commission a registration statement on Form 8-A, at such time as determined by the Depositor, including any amendments thereto, prepared by the Depositor relating to the registration of the Preferred Securities under Section 12 of the Exchange Act, but if and only if the Depositor has so instructed the Administrative Trustees to make such filing; and
  - (6) execute and enter into the Remarketing Agreement, the Registration Rights Agreement and the Purchase Agreement and other related agreements providing for the sale of the Preferred Securities; and
  - (7) and to execute and file any agreement, certificate or other document which such Administrative Trustee deems necessary or appropriate in connection with the issuance and sale of the Preferred Securities;
- (3) to acquire the Debentures with the proceeds of the sale of the Preferred Securities and the Common Securities; provided, however, that the Administrative Trustees shall cause legal title to the Debentures to be held of record in the name of the Property Trustee for the benefit of the Holders of the Preferred Securities and the Holders of Common Securities;
  - (4) to give the Depositor and the Property Trustee prompt written notice of the occurrence of a Tax Event or an Investment Company Event; provided that the Administrative Trustees (and Special Trustee, if any) shall consult with the Depositor and the Property Trustee before taking or refraining from taking any Ministerial Action in relation to a Tax Event or Investment Company Event;
  - (5) to establish a record date with respect to all actions to be taken hereunder that require a record date be established, including and with respect to, for the purposes of Section 316(c) of the Trust Indenture Act, Distributions, voting rights, redemptions and exchanges, and to issue relevant notices to the Holders of Preferred Securities and Holders of Common Securities as to such actions and applicable record dates;
  - (6) to take all actions and perform such duties as may be required of the Administrative Trustees pursuant to the terms of the Securities;

- (7) to bring or defend, pay, collect, compromise, arbitrate, resort to legal action, or otherwise adjust claims or demands of or against the Trust ("Legal Action"), unless pursuant to Section 3.08(e), the Property Trustee has the exclusive power to bring such Legal Action;
- (8) to employ or otherwise engage employees and agents (who may be designated as officers with titles) and managers, contractors, advisors, and consultants and pay reasonable compensation for such services;
- (9) to cause the Trust to comply with the Trust's obligations under the Trust Indenture Act;
- (10) to give the certificate required by Section 314(a)(4) of the Trust Indenture Act to the Property Trustee, which certificate may be executed by any Administrative Trustee;
- (11) to incur expenses that are necessary or incidental to carry out any of the purposes of the Trust;
- (12) to act as, or appoint another Person to act as, Registrar, Conversion Agent, Paying Agent, Tender Agent and transfer agent for the Securities;
- (13) to give prompt written notice to the Holders of the Securities of any notice received from the Debenture Issuer of its election to defer payments of interest on the Debentures by extending the interest payment period under the Indenture;
- (14) to execute all documents or instruments, perform all duties and powers, and do all things for and on behalf of the Trust in all matters necessary or incidental to the foregoing;
- (15) to take all action that may be necessary or appropriate for the preservation and the continuation of the Trust's valid existence, rights, franchises and privileges as a statutory business trust under the laws of the State of Delaware and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Holders of the Preferred Securities or to enable the Trust to effect the purposes for which the Trust was created;

(16) to take any action, not inconsistent with this Declaration or with applicable law, that the Administrative Trustees determine in their discretion to be necessary or desirable in carrying out the activities of the Trust as set out in this Section 3.06, including, but not limited to:

- (1) causing the Trust not to be deemed to be an Investment Company required to be registered under the Investment Company Act;
- (2) causing the Trust to be classified for United States federal income tax purposes as a grantor trust and not as an association taxable as a corporation or partnership; and
- (3) cooperating with the Debenture Issuer to ensure that the Debentures will be treated as indebtedness of the Debenture Issuer for United States federal income tax purposes,

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

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

The Administrative Trustees must exercise the powers set forth in this Section 3.06 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.03, and the Administrative Trustees shall not take any action that is inconsistent with the purposes and functions of the Trust set forth in Section 3.03.

Subject to this Section 3.06, the Administrative Trustees shall have none of the powers or the authority of the Property Trustee set forth in Section 3.08.

Any expenses incurred by the Administrative Trustee (or the Special Trustee, if any) pursuant to this Section 3.06 shall be reimbursed by the Debenture Issuer.

The Administrative Trustees shall take all action on behalf of the Trust that are not specifically required by this Declaration to be taken by any other Trustee.

Section 1.15 Prohibition of Actions by the Trust and the Trustees. (a) The Trust shall not, and the Trustees (including the Property Trustee) on behalf of the Trust shall not, engage in any activity other than as required or authorized by this Declaration. In particular, the Trust shall not and the Trustees (including the Property Trustee) shall cause the Trust not to:

- (1) invest any proceeds received by the Trust from holding the Debentures, but shall distribute all such proceeds to Holders of Securities pursuant to the terms of this Declaration and of the Securities;
- (2) acquire any assets other than as expressly provided herein;
- (3) possess Trust property for other than a Trust purpose;
- (4) make any loans or incur any indebtedness other than loans represented by the Debentures;
- (5) possess any power or otherwise act in such a way as to vary the Trust assets or the terms of the Securities in any way whatsoever;
- (6) issue any securities or other evidences of beneficial ownership of, or beneficial interest in, the Trust other than the Securities; or
- (7) other than as provided in the Declaration or Annex I hereto, (A) direct the time, method and place of exercising any trust or power conferred upon the Debenture Trustee with respect to the Debentures, (B) waive any past default that is waivable under Section 5.14 of the Indenture, (C) exercise any right to rescind or annul any declaration that the principal of all the Debentures shall be due and payable, or (D) consent to any amendment, modification or termination of the Indenture or the Debentures where such consent shall be required unless, in the case of each action described in clause (A), (B), (C) or (D), the Trust shall have received an opinion of a nationally recognized independent counsel experienced in such matters to the effect that such modification will not cause more than an insubstantial risk that for United States federal income tax purposes the Trust will not be classified as a grantor trust.

Section 1.16 Powers and Duties of the Property Trustee. (a) The legal title to the Debentures shall be owned by and held of record in the name of the Property Trustee in trust for the benefit of the Holders of the Securities. The right, title and interest of the Property Trustee to the Debentures shall vest automatically in each Person who may hereafter be appointed as Property Trustee in accordance with Section 5.06. To the fullest extent permitted by law, such vesting and cessation of title shall be effective whether or not conveyancing documents with regard to the Debentures have been executed and delivered.

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

(2) The Property Trustee shall:

(1) establish and maintain a segregated non-interest bearing trust account (the "Property Trustee Account") in the name of and under the exclusive control of the Property Trustee on behalf of the Holders of the Securities and, upon the receipt of payments of funds made in respect of the Debentures held by the Property Trustee, deposit such funds into the Property Trustee Account and make payments to the Holders of the Preferred Securities and Holders of the Common Securities from the Property Trustee Account in accordance with Section 6.01. Funds in the Property Trustee Account shall be held uninvested until disbursed in accordance with this Declaration.

(2) engage in such ministerial activities as so directed and as shall be necessary or appropriate to effect the redemption of the Preferred Securities and the Common Securities to the extent the Debentures are redeemed or mature; and

(3) upon written notice of distribution issued by the Administrative Trustees in accordance with the terms of the Securities, engage in such ministerial activities as so directed as shall be necessary or appropriate to effect the distribution of the Debentures to Holders of Securities upon the occurrence of certain special events (as may be defined in the terms of the Securities) arising from a change in law or a change in legal interpretation or other specified circumstances pursuant to the terms of the Securities.

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

(4) The Property Trustee shall take any Legal Action which arises out of or in connection with an Event of Default or the Property Trustee's duties and obligations under this Declaration or the Trust Indenture Act; provided, however, that if a Debenture Event of Default has occurred and is continuing and such event is attributable to the failure of the Depositor as issuer of the Debentures to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption, on the redemption date), then a Holder of Preferred Securities may institute a legal proceeding directly, subject to the terms of the Indenture (including the subordination provisions set forth in Article XII thereof), for enforcement of payment to such Holder of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder (a "Direct Action") on or after the respective due date specified in the Securities. In connection with such Direct Action, the Holders of the Common Securities will be subrogated to the rights of such Holder of Preferred Securities to the extent of any payment made by the Depositor to such Holder of Preferred Securities in such Direct Action. In addition, if the Property Trustee fails to enforce its rights under the Debentures (other than rights arising from an Event of Default described in the immediately preceding sentence) after any Holder of Preferred Securities shall have made a written request to the Property Trustee to enforce such rights, such Holder of Preferred Securities may, to the fullest extent permitted by law, institute a direct action to enforce the rights of the Property Trustee or any other Person. Except as provided in the preceding sentences, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the holders of the Debentures.

(5) The Property Trustee shall not resign as a Trustee unless either:

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

(2) a Successor Property Trustee has been appointed and has accepted that appointment in accordance with Section 5.06.

(6) The Property Trustee shall have the legal power to exercise all of the rights, powers and privileges of a holder of Debentures under the Indenture and, if an Event of Default occurs and is continuing, the Property Trustee shall, for the benefit of

Holders of the Securities, enforce its rights as holder of the Debentures subject to the rights of the Holders pursuant to the terms of such Securities.

(7) The Property Trustee shall act as the initial Paying Agent and Registrar to pay Distributions, redemption payments or liquidation payments on behalf of the Trust with respect to all Securities and any such Paying Agent shall comply with Section 317(b) of the Trust Indenture Act. Any Paying Agent may be removed by the Administrative Trustees at any time and a successor Paying Agent or additional Paying Agents may be appointed at any time by the Administrative Trustees. The Paying Agent may resign upon 30 days' written notice to the Property Trustee, the Administrative Trustees and the Depositor.

(8) Subject to this Section 3.08, the Property Trustee shall have none of the duties, liabilities, powers or the authority of the Administrative Trustees set forth in Section 3.06.

The Property Trustee must exercise the powers set forth in this Section 3.08 in a manner that is consistent with the purposes and functions of the Trust set out in Section 3.03, and the Property Trustee shall not take any action that is inconsistent with the purposes and functions of the Trust set out in Section 3.03.

Section 1.17 Certain Duties and Responsibilities of the Property Trustee. (a) The Property Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Declaration and no implied covenants shall be read into this Declaration against the Property Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Property Trustee shall exercise such of the rights and powers vested in it by this Declaration, and use the same degree of care and skill in its exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(1) No provision of this Declaration shall be construed to relieve the Property Trustee from liability for its own negligent action, its own negligent failure to act, or its own willful misconduct, except that:

(1) prior to the occurrence of an Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(1) the duties and obligations of the Property Trustee shall be determined solely by the express provisions of this

Declaration and in the Securities and the Property Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Declaration and in the Securities, and no implied covenants or obligations shall be read into this Declaration or the Securities against the Property Trustee; and

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

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

(3) the Property Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the Securities relating to the time, method and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under this Declaration;

(4) no provision of this Declaration shall require the Property Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers;

(5) the Property Trustee's sole duty with respect to the custody, safe keeping and physical preservation of the Debentures and the Property Trustee Account shall be to deal with such property in a similar manner as the Property Trustee deals with similar property for its own

account, subject to the protections and limitations on liability afforded to the Property Trustee under this Declaration and the Trust Indenture Act;

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

(7) the Property Trustee shall not be liable for any interest on any money received by it except as it may otherwise agree with the Depositor. Money held by the Property Trustee need not be segregated from other funds held by it except in relation to the Property Trustee Account maintained by the Property Trustee pursuant to Section 3.08(c)(i) and except to the extent otherwise required by law; and

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

Section 1.18 Certain Rights of Property Trustee. (a) Subject to the provisions of Section 3.09:

(1) the Property Trustee may rely conclusively and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document believed by it to be genuine and to have been signed, sent or presented by the proper party or parties;

(2) any direction or act of the Depositor or the Administrative Trustees contemplated by this Declaration shall be sufficiently evidenced by an Officers' Certificate;

(3) whenever in the administration of this Declaration, the Property Trustee shall deem it desirable that a matter be proved or established before taking, suffering or omitting any action hereunder, the Property Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and rely upon an

Officers' Certificate which, upon receipt of such request, shall be promptly delivered by the Depositor or the Administrative Trustees;

(4) the Property Trustee shall have no duty to see to any recording, filing or registration of any instrument (including any financing or continuation statement or any filing under tax or securities laws) or any rerecording, refiling or registration thereof;

(5) the Property Trustee may consult with counsel of its choice or other experts and the advice or opinion of such counsel and experts with respect to legal matters or advice within the scope of such experts' area of expertise shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with such advice or opinion, such counsel may be counsel to the Depositor or any of its Affiliates, and may include any of its employees. The Property Trustee shall have the right at any time to seek instructions concerning the administration of this Declaration from any court of competent jurisdiction;

(6) the Property Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Declaration at the request or direction of any Holder, unless such Holder shall have provided to the Property Trustee security satisfactory to the Property Trustee, against the costs, expenses (including its attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested in writing by the Property Trustee, provided, that, nothing contained in this Section 3.10(a)(vi) shall be taken to relieve the Property Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Declaration;

(7) the Property Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, security, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Property Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit;

(8) the Property Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by

or through agents or attorneys and the Property Trustee shall not be responsible for any misconduct or negligence on the part of any agent or attorney appointed with due care by it hereunder;

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

(10) whenever in the administration of this Declaration the Property Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder the Property Trustee (i) may request instructions from the Holders of the Securities which instructions may only be given by the Holders of the same proportion in liquidation amount of the Securities as would be entitled to direct the Property Trustee under the terms of the Securities in respect of such remedy, right or action, (ii) may refrain from enforcing such remedy or right or taking such other action until such instructions are received, and (iii) shall be protected in acting in accordance with such instructions;

(11) except as otherwise expressly provided by this Declaration, the Property Trustee shall not be under any obligation to take any action that is discretionary under the provisions of this Declaration; and

(12) the Property Trustee shall not be liable for any action taken, suffered, or omitted to be taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Declaration.

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

right, power, duty or obligation. No permissive power or authority available to the Property Trustee shall be construed to be a duty.

Section 1.19 Delaware Trustee. Notwithstanding any other provision of this Declaration other than Section 5.02, the Delaware Trustee shall not be entitled to exercise any powers, nor shall the Delaware Trustee have any of the duties and responsibilities of the Administrative Trustees or the Property Trustee (except as required by the Business Trust Act) described in this Declaration. Except as set forth in Section 5.02, the Delaware Trustee shall be a Trustee for the sole and limited purpose of fulfilling the requirements of Section 3807 of the Business Trust Act.

Section 1.20 Execution of Documents. Except as otherwise required by applicable law, any Administrative Trustee is authorized to execute on behalf of the Trust any documents that the Administrative Trustees have the power and authority to execute pursuant to Section 3.06; provided that, the registration statement referred to in Section 3.06(b)(i), including any amendments thereto, shall be signed by a majority of the Administrative Trustees.

Section 1.21 Not Responsible for Recitals or Issuance of Securities. The recitals contained in this Declaration and the Securities shall be taken as the statements of the Depositor, and the Trustees do not assume any responsibility for their correctness. The Trustees make no representations as to the value or condition of the property of the Trust or any part thereof. The Trustees make no representations as to the validity or sufficiency of this Declaration, the Debentures or the Securities.

Section 1.22 Duration of Trust. The Trust, unless dissolved pursuant to the provisions of Article VIII hereof, shall exist until February 1, 2035.

Section 1.23 Mergers. (a) The Trust may not consolidate, amalgamate, merge with or into, or be replaced by, or convey, transfer or lease its properties and assets substantially as an entirety to any Person, except as described in Section 3.15(b) and (c) of this Declaration or paragraph 3 of Annex I.

(1) The Trust may, with the consent of a majority of the Administrative Trustees and without the consent of the Holders of the Securities, the Delaware Trustee or the Property Trustee, consolidate, amalgamate, merge with or into, or be replaced by a trust organized as such under the laws of any State or the District of Columbia; provided that:

(1) if the Trust is not the surviving entity, the successor entity (the "Successor Entity") either:

- (1) expressly assumes all of the obligations of the Trust under the Securities; or
- (2) substitutes for the Preferred Securities other securities having substantially the same terms as the Preferred Securities (the "Successor Securities") as long as the Successor Securities rank, with respect to participation in the profits and Distributions or in the assets of the Successor Entity at least as high as the Preferred Securities rank with respect to participation in the profits and dividends or in the assets of the Trust;
- (2) the Debenture Issuer expressly acknowledges a trustee of the Successor Entity that possesses the same powers and duties as the Property Trustee as the Holder of the Debentures;
- (3) to the extent the Preferred Securities are listed on any national securities exchange or with another organization for listing or quotation, the Preferred Securities or any Successor Securities shall be so listed, or any Successor Securities will be listed upon notification of issuance, on any national securities exchange or with any other organization on which the Preferred Securities are then listed or quoted;
- (4) such merger, consolidation, amalgamation or replacement does not cause the Preferred Securities (including any Successor Securities) to be downgraded by any nationally recognized statistical rating organization;
- (5) such merger, consolidation, amalgamation or replacement does not adversely affect the powers, preferences and other special rights of the Holders of the Preferred Securities (including any Successor Securities) in any material respect;
- (6) such Successor Entity has a purpose substantially identical and limited to that of the Trust;
- (7) prior to such merger, consolidation, amalgamation or replacement, the Depositor has received an opinion of a nationally recognized independent counsel (reasonably acceptable to the Property Trustee) to the Trust experienced in such matters to the effect that:

- (1) following such merger, consolidation, amalgamation or replacement, the Trust or the Successor Entity will continue to be treated as a grantor trust for United States federal income tax purposes;
  - (2) following such merger, consolidation, amalgamation or replacement, neither the Depositor nor the Successor Entity will be required to register as an Investment Company;
  - (3) such merger, consolidation, amalgamation or replacement will not adversely affect the limited liability of the Holders of the Securities (including any Successor Securities);
  - (8) the Depositor or any permitted successor or assignee directly or indirectly owns all the common securities of such successor entity and provides a guarantee to the Holders of the Successor Securities with respect to the Successor Entity having substantially the same terms as the Preferred Securities Guarantee; and
  - (9) such merger, consolidation, amalgamation, replacement or lease is not a taxable event for the Holders of the Preferred Securities.
- (c) Notwithstanding Section 3.15(b), the Trust shall not, except with the consent of Holders of 100% in liquidation amount of the Securities, consolidate, amalgamate, merge with or into, or be replaced by or convey, transfer or lease its properties and assets substantially as an entirety to any other entity or permit any other entity to consolidate, amalgamate, merge with or into, or replace it if such consolidation, amalgamation, merger or replacement would cause the Trust or Successor Entity to be classified as other than a grantor trust for United States federal income tax purposes.

## **ARTICLE IV**

### **Depositor**

Section 1.24 Depositor's Purchase of Common Securities. On the Closing Date and any Optional Closing Date the Depositor will purchase an amount of Common Securities issued by the Trust such that the aggregate liquidation amount of

such Common Securities purchased by the Depositor shall at such date equal at least 3% of the total capital of the Trust.

Section 1.25 Responsibilities of the Depositor. In connection with the issue and sale of the Preferred Securities, the Depositor shall have the exclusive right and responsibility to engage in the following activities:

- (1) to prepare the Offering Circular and to prepare for filing by the Trust with the Commission the Shelf Registration Statement, including any amendments thereto;
- (2) to determine the States and foreign jurisdictions, if any, in which to take appropriate action to qualify or register for sale all or part of the Preferred Securities and to do any and all such acts (including at the time of the Remarketing), other than actions which must be taken by the Trust, and advise the Trust of actions it must take, and prepare for execution and filing any documents to be executed and filed by the Trust, as the Depositor deems necessary or advisable in order to comply with the applicable laws of any such States and foreign jurisdictions;
- (3) if so determined by the Depositor, to prepare for filing by the Trust an application to PORTAL, the New York Stock Exchange or any other national stock exchange or the NASDAQ National Market for listing or quotation of the Preferred Securities (including at the time of the Remarketing);
- (4) to prepare for filing by the Trust with the Commission a registration statement on Form 8-A relating to the registration of the Preferred Securities (both at the time of their original issuance and at the time of the Remarketing, if required) under Section 12 of the Exchange Act, including any amendments thereto, if the Depositor in its sole discretion determines such a filing is necessary or appropriate; and
- (5) to negotiate the terms of the Purchase Agreement, the Registration Rights Agreement and the Remarketing Agreement and other related agreements providing for the sale of the Preferred Securities (both at the time of their original issuance and at the time of the Remarketing).

Section 1.26 Guarantee of Payment of Trust Obligations.

- (1) Subject to the terms and conditions of this Section 4.03, the Depositor hereby irrevocably and unconditionally guarantees, to the extent set forth in the Securities Guarantees and subject to the terms of the Indenture (including the subordination provisions set forth in Article XII thereof), to each Person to whom the Trust is now

or hereafter becomes indebted or liable (the "Beneficiaries") the full payment, when and as due, of any and all Obligations to such Beneficiaries.

(2) The agreement of the Depositor in Section 4.03(a) is intended to be for the benefit of, and to be enforceable by, all such Beneficiaries, whether or not such Beneficiaries have received notice hereof.

(3) The agreement of the Depositor set forth in Section 4.03(a) shall terminate and be of no further force and effect upon the later of (a) the date on which full payment has been made of all amounts payable to all Holders of all the Preferred Securities (whether upon redemption, liquidation, exchange or otherwise) and (b) the date on which there are no Beneficiaries remaining; provided, however, that such agreement shall continue to be effective or shall be reinstated, as the case may be, if at any time any Holder of Preferred Securities or any Beneficiary must restore payment of any sums paid under the Preferred Securities, under any Obligation, under the Preferred Securities Guarantee or under this Agreement for any reason whatsoever. Such agreement is continuing, irrevocable, unconditional and absolute.

## **ARTICLE V**

### **Trustees**

Section 1.27 Number of Trustees. The number of Trustees shall initially be five (5), consisting of three (3) Administrative Trustees, the Delaware Trustee and the Property Trustee, and:

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

(2) after the issuance of any Securities:

(1) the number of Trustees may be increased or decreased, except as provided in Sections 5.01(b)(ii) and 5.06(a)(ii)(B) with respect to the Special Trustee, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities; provided, however, that, the number of Trustees shall in no event be less than two (2); provided, further, that (1) one Trustee, in the case of a natural person, shall be a person who is a resident of the State of Delaware or that, if not a natural person, is an entity which has its principal place of business in the State of

Delaware; (2) there shall be at least one Trustee who is an employee or officer of, or is affiliated with the Depositor (an "Administrative Trustee"); and (3) one Trustee shall be the Property Trustee for so long as this Declaration is required to qualify as an indenture under the Trust Indenture Act, and such Trustee may also serve as Delaware Trustee if it meets the applicable requirements.

(2) the number of Trustees shall be increased automatically by one (1) if an Appointment Event has occurred and is continuing and the Holders of a Majority in liquidation amount of the Preferred Securities appoint a Special Trustee in accordance with Section 5.06(a)(ii).

Section 1.28 Delaware Trustee. If required by the Business Trust Act, one Trustee (the "Delaware Trustee") shall be (a) a natural person who is a resident of the State of Delaware; or (b) if not a natural person, an entity which has its principal place of business in the State of Delaware, and otherwise meets the requirements of applicable law, provided that, if the Property Trustee has its principal place of business in the State of Delaware and otherwise meets the requirements of applicable law, then the Property Trustee shall also be the Delaware Trustee and Section 3.11 shall have no application. The initial Delaware Trustee shall be The Bank of New York (Delaware).

Section 1.29 Property Trustee; Eligibility. (a) There shall at all times be one Trustee which shall act as Property Trustee which shall:

(1) not be an Affiliate of the Depositor; and

(2) be a corporation organized and doing business under the laws of the United States of America or any State or Territory thereof or of the District of Columbia, or a corporation or Person permitted by the Commission to act as an institutional trustee under the Trust Indenture Act, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least fifty million U.S. dollars (\$50,000,000), and subject to supervision or examination by federal, state, territorial or District of Columbia authority. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority referred to above, then for the purposes of this

Section 5.03(a)(ii), the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.

(2) If at any time the Property Trustee shall cease to be eligible to so act under Section 5.03(a), the Property Trustee shall immediately resign in the manner and with the effect set forth in Section 5.06(e).

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

(4) The Preferred Securities Guarantee shall be deemed to be specifically described in this Declaration for purposes of clause (i) of the first provision contained in Section 310(b) of the Trust Indenture Act.

(5) The initial Property Trustee shall be The Bank of New York.

Section 1.30 Qualifications of Administrative Trustees and Delaware Trustee Generally. Each Administrative Trustee and the Delaware Trustee (unless the Property Trustee also acts as Delaware Trustee) shall be either a natural person who is at least 21 years of age or a legal entity that shall act through one or more Authorized Officers.

Section 1.31 Initial Trustees. The initial Administrative Trustees shall be:

Peter Cartwright  
c/o Calpine Corporation  
50 West San Fernando Street San Jose, California 95113

Ann B. Curtis  
c/o Calpine Corporation  
50 West San Fernando Street San Jose, California 95113

Thomas R. Mason  
c/o Calpine Corporation  
50 West San Fernando Street San Jose, California 95113

The initial Delaware Trustee shall be:

The Bank of New York (Delaware) White Clay Center  
Route 273  
Newark, Delaware 19711  
Attention: Corporate Trust Department

The initial Property Trustee shall be:

The Bank of New York  
101 Barclay Street  
New York, New York 10286  
Attention: Corporate Trust Administration

Section 1.32 Appointment, Removal and Resignation of Trustees. Except as provided otherwise in this Section 5.06, Trustees may be appointed or removed without cause at any time:

(1) until the issuance of any Securities, by written instrument executed by the Depositor; and

(2) after the issuance of any Securities:

(1) other than in respect to a Special Trustee, by vote of the Holders of a Majority in liquidation amount of the Common Securities voting as a class at a meeting of the Holders of the Common Securities, unless a Debenture Event of Default shall have occurred and be continuing, in which event the Property Trustee and the Delaware Trustee may only be removed by the Holders of a Majority in liquidation amount of the Preferred Securities, voting as a class at a meeting of the Holders of the Preferred Securities; and

(2) if an Appointment Event has occurred and is continuing, one (1) additional trustee (the "Special Trustee"), who shall have the same rights, powers and privileges as an Administrative Trustee, may be appointed by vote of the Holders of a Majority in liquidation amount of the Preferred Securities, voting as a class at a meeting of the Holders of the Preferred Securities, and such Special Trustee may only be removed (otherwise than by the

operation of Section 5.06(e)), by vote of the Holders of a Majority in liquidation amount of the Preferred Securities voting as a class at a meeting of the Holders of the Preferred Securities. (1) (2) The Trustee that acts as Property Trustee shall not be removed in accordance with Section 5.06 until a successor Property Trustee meeting the requirements of Section 5.03 (a "Successor Property Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Property Trustee and delivered to the Administrative Trustees and the Depositor.

(3) The Depositor shall remove the Property Trustee by written instrument upon:

- (1) the entry or a decree or order by a court having jurisdiction in the premises adjudging the Property Trustee as bankrupt or insolvent, or approving as properly filed a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Property Trustee under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or appointing a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Property Trustee or of any substantial part of its property or ordering the winding up or liquidation of its affairs, and the continuance of any such decree or order unstayed and in effect for a period of 60 consecutive days; or
- (2) the institution by the Property Trustee of proceedings to be adjudicated a bankrupt or insolvent, or the consent by it to the institution of bankruptcy or insolvency proceedings against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable federal or state bankruptcy, insolvency, reorganization or other similar law, or the consent by it to the filing of any such petition or to the appointment of a receiver, liquidator, assignee, trustee, sequestrator (or other similar official) of the Property Trustee or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due and its willingness to be adjudicated a bankrupt, or the taking of corporate action by the Property Trustee in furtherance of any such action.

The Depositor shall appoint a Successor Property Trustee within 60 days of such an event.

(4) The Trustee that acts as Delaware Trustee shall not be removed in accordance with Section 5.06(a) until a successor Trustee possessing the qualifications to act as Delaware Trustee under Sections 5.02 and 5.04 (a "Successor Delaware Trustee") has been appointed and has accepted such appointment by written instrument executed by such Successor Delaware Trustee and delivered to the Trustees and the Depositor.

(5) A Trustee appointed to office shall hold office until his successor shall have been appointed or until his death, removal or resignation, provided that a Special Trustee shall only hold office while an Appointment Event is continuing and shall cease to hold office immediately after the Appointment Event pursuant to which the Special Trustee was appointed and all other Appointment Events cease to be continuing. Any Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing signed by the Trustee and delivered to the Depositor and the Trust, which resignation shall take effect upon such delivery or upon such later date as is specified therein; provided, however, that:

(1) No such resignation of the Trustee that acts as the Property Trustee shall be effective:

(1) until a Successor Property Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Property Trustee and delivered to the Trust, the Depositor and the resigning Property Trustee; or

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

(2) no such resignation of the Trustee that acts as the Delaware Trustee shall be effective until a Successor Delaware Trustee has been appointed and has accepted such appointment by instrument executed by such Successor Delaware Trustee and delivered to the Trust, the Depositor and the resigning Delaware Trustee; and

(3) no such resignation of a Special Trustee shall be effective until the 60th day following delivery of the instrument of resignation of the Special Trustee to the Depositor and the Trust or such later date specified in such instrument during which period the Holders of the Preferred Securities shall have the right to appoint a successor Special Trustee as provided in this Section 5.06.

(6) The Holders of the Common Securities shall use their best efforts to promptly appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be, if the Property Trustee or the Delaware Trustee delivers an instrument of resignation in accordance with this Section 5.06.

(7) If no Successor Property Trustee or Successor Delaware Trustee shall have been appointed and accepted appointment as provided in this Section 5.06 within 60 days after delivery to the Depositor and the Trust of an instrument of resignation or removal, the resigning Property Trustee or Delaware Trustee, resigning or being removed as applicable, may petition any court of competent jurisdiction for appointment of a Successor Property Trustee or Successor Delaware Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper and prescribe, appoint a Successor Property Trustee or Successor Delaware Trustee, as the case may be.

(8) No Property Trustee or Delaware Trustee shall be liable for the acts or omissions to act of any Successor Property Trustee or Successor Delaware Trustee, as the case may be.

**Section 1.33 Vacancies among Trustees.** If a Trustee ceases to hold office for any reason and the number of Trustees is not reduced pursuant to Section 5.01, or if the number of Trustees is increased pursuant to Section 5.01, a vacancy shall occur. A resolution certifying the existence of such vacancy by a majority of the Administrative Trustees shall be conclusive evidence of the existence of such vacancy. The vacancy shall be filled with a Trustee appointed in accordance with Section 5.06.

**Section 1.34 Effect of Vacancies.** The death, resignation, retirement, removal, bankruptcy, dissolution, liquidation, incompetence or incapacity to perform the duties of a Trustee shall not operate to dissolve, terminate or annul the Trust. Whenever a vacancy in the number of Administrative Trustees shall occur, until such vacancy is filled by the appointment of a Administrative Trustee in accordance with Section 5.06, the Administrative Trustees in office, regardless of their number, shall have all the powers granted to the Administrative Trustees and shall discharge all the duties imposed upon the Administrative Trustees by this Declaration.

**Section 1.35 Meetings.** Meetings of the Administrative Trustees shall be held from time to time upon the call of any Administrative Trustee. Regular meetings of the Administrative Trustees may be held at a time and place fixed by resolution of the Administrative Trustees. Notice of any meetings of the Administrative Trustees shall be hand delivered or otherwise delivered in writing (including by facsimile or overnight courier) not less than 24 hours before such meeting. Notices shall contain a brief statement of the time, place and anticipated purposes of the meeting. The presence

(whether in person or by telephone) of an Administrative Trustee at a meeting shall constitute a waiver of notice of such meeting except where an Administrative Trustee attends a meeting for the express purpose of objecting to the transaction of any activity on the ground that the meeting has not been lawfully called or convened. Unless provided otherwise in this Declaration, any action of the Administrative Trustees may be taken at a meeting by vote of a majority of the Administrative Trustees present (whether in person or by telephone) and eligible to vote with respect to such matter, provided that a Quorum is present, or without a meeting and without prior notice by the unanimous written consent of the Administrative Trustees.

In the event there is only one Administrative Trustee, any and all action of such Administrative Trustee shall be evidenced by a written consent of such Administrative Trustee. In the event a Special Trustee is holding office pursuant to Section 5.06, such Special Trustee shall have the same rights as an Administrative Trustee with respect to notice and participation in a meeting of the Administrative Trustees.

#### Section 1.36 Delegation of Power.

(1) Any Administrative Trustee may, by power of attorney consistent with applicable law, delegate to any other natural person over the age of 21 his or her power for the purpose of executing any documents contemplated in Section 3.06, including any registration statement or amendment thereto filed with the Commission, or making any other governmental filing; and

(2) the Administrative Trustees shall have power to delegate from time to time to such of their number or to officers of the Trust the doing of such things and the execution of such instruments either in the name of the Trust or the names of the Administrative Trustees or otherwise as the Administrative Trustees may deem expedient, to the extent such delegation is not prohibited by applicable law or contrary to the provisions of the Trust, as set forth herein.

Section 1.37 Merger, Conversion, Consolidation or Succession to Business. Any Person into which the Property Trustee or the Delaware Trustee, as the case may be, may be merged or converted or with which either may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Property Trustee or the Delaware Trustee, as the case may be, shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Property Trustee or the Delaware Trustee, as the case may be, shall be the successor of the Property Trustee or the Delaware Trustee, as the case may be, hereunder, provided such Person shall be otherwise qualified and eligible under this Article, without the execution or filing of any

paper or any further act on the part of any of the parties hereto other than as required by applicable law.

## **ARTICLE VI**

### **Distributions**

Section 1.38 Distributions. Holders shall receive Distributions in accordance with the applicable terms of the relevant Holder's Securities. Distributions shall be made on the Preferred Securities and the Common Securities in accordance with the preferences set forth in the terms attached as Annex I hereto. If and to the extent that the Debenture Issuer makes a payment of interest (including Compounded Interest (as defined in the Indenture) and Additional Amounts (as defined in the Indenture)) premium and principal on the Debentures held by the Property Trustee (the amount of any such payment being a "Payment Amount"), the Property Trustee shall and is directed, to the extent funds are available for that purpose, to make a distribution (a "Distribution") of the Payment Amount to Holders.

## **ARTICLE VII**

### **Issuance of Securities**

Section 1.39 General Provisions Regarding Securities.

(1) The Administrative Trustees shall on behalf of the Trust issue one class of convertible preferred securities, designated as Remarketable Term Income Deferrable Equity Securities (HIGH TIDES), liquidation amount \$50 per HIGH TIDES, representing undivided beneficial interests in the assets of the Trust (the "Preferred Securities"), having such terms as are set forth in Annex I (including as such terms may be modified in accordance with the provisions of the Remarketing Agreement) and one class of convertible common securities, liquidation amount \$50, representing undivided beneficial interests in the assets of the Trust (the "Common Securities"), having such terms as are set forth in Annex I. On the Reset Date and as contemplated by the Remarketing Agreement, the Trust may also issue securities having Term Provisions to be set by the Remarketing Agent in accordance with the terms of the Remarketing Agreement. The Trust shall have no securities or other interests in the assets of the Trust other than the Preferred Securities and the Common Securities. The Trust shall issue no Securities in bearer form.

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

(3) Upon issuance of the Securities as provided in this Declaration, the Securities so issued shall be deemed to be validly issued, fully paid and non-assessable, subject to Section 10.01 with respect to the Common Securities.

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

(5) Every Person, by virtue of having become a Holder or a Preferred Security Beneficial Owner in accordance with the terms of this Declaration, shall be deemed to have covenanted to treat the Debentures as indebtedness and the Securities as evidence of an indirect beneficial ownership interest in the Debentures.

#### Section 1.40 Execution and Authentication.

(1) The Securities shall be signed on behalf of the Trust by one Administrative Trustee. In case any Administrative Trustee who shall have signed any of the Securities shall cease to be such Administrative Trustee before the Securities so signed shall be delivered by the Trust, such Securities nevertheless may be delivered as though the person who signed such Securities had not ceased to be such Administrative Trustee; and any Securities may be signed on behalf of the Trust by such persons who, at the actual date of execution of such Security, shall be the Administrative Trustees, although at the date of the execution and delivery of the Declaration any such person was not such an Administrative Trustee.

(2) One Administrative Trustee shall sign the Preferred Securities for the Trust by manual or facsimile signature. Unless otherwise determined by the Trust, such signature shall, in the case of Common Securities, be a manual signature.

A Preferred Security shall not be valid until authenticated by the manual signature of an authorized signatory of the Property Trustee. The signature shall be conclusive evidence that the Preferred Security has been authenticated under this Declaration.

Upon a written order of the Trust signed by one Administrative Trustee, the Property Trustee shall authenticate the Preferred Securities for original issue by

executing the Property Trustee's certificate of authentication contained in the form of Preferred Securities attached hereto as Exhibit A-1. The aggregate number of Preferred Securities outstanding at any time shall not exceed the number set forth in the terms in Annex I hereto except as provided in Sections 7.06 and 7.07.

The Property Trustee may appoint an authenticating agent acceptable to the Trust to authenticate Preferred Securities. An authenticating agent may authenticate Preferred Securities whenever the Property Trustee may do so. Each reference in this Declaration to authentication by the Property Trustee includes authentication by such agent. An authenticating agent has the same rights as the Property Trustee to deal with the Depositor or an Affiliate.

The Trustee shall have the right to decline to authenticate and deliver any Securities under this Section if the Trustee, being advised by counsel, determines that such action may not lawfully be taken or if the Trustee in good faith shall determine that such action would expose the Trustee to personal liability to existing Holders.

**Section 1.41 Form and Dating.** The Preferred Securities and the Property Trustee's certificate of authentication shall be substantially in the form of Exhibit A-1 and the Common Securities shall be substantially in the form of Exhibit A-2, each of which is hereby incorporated in and expressly made a part of this Declaration. Certificates may be printed, lithographed or engraved or may be produced in any other manner as is reasonably acceptable to the Administrative Trustees, as evidenced by their execution thereof. The Securities may have letters, numbers, notations or other marks of identification or designation and such legends or endorsements required by law, stock exchange rule, agreements to which the Trust is subject, if any, or usage (provided that any such notation, legend or endorsement is in a form acceptable to the Trust). The Trust at the direction of the Depositor shall furnish any such legend not contained in Exhibit A-1 to the Property Trustee in writing. Each Preferred Security shall be dated the date of its authentication. The terms and provisions of the Securities set forth in Annex I and the forms of Securities set forth in Exhibits A-1 and A-2 are part of the terms of this Declaration and to the extent applicable, the Property Trustee and the Depositor, by their execution and delivery of this Declaration, expressly agree to such terms and provisions and to be bound thereby.

The Preferred Securities are being offered and sold by the Trust pursuant to a Purchase Agreement relating to the Preferred Securities, dated January 25, 2000, among the Trust, the Depositor and the Purchasers named therein (the "Purchase Agreement").

(1) Global Securities. Preferred Securities offered and sold to Qualified Institutional Buyers ("QIBs") in reliance on Rule 144A under the Securities Act ("Rule 144A") as provided in the Purchase Agreement, shall be initially issued in the form of one or more permanent global Securities in definitive, fully registered form without distribution coupons with the appropriate global legends and Restricted Securities Legend set forth in Exhibit A-1 hereto (each, a "Rule 144A Global Preferred Security"), which shall be deposited on behalf of the purchasers of the Preferred Securities represented thereby with the Property Trustee, at its New York office, as custodian for the Depositary, and registered in the name of the Depositary or a nominee of the Depositary, duly executed by the Trust and authenticated by the Property Trustee as provided herein. The number of Preferred Securities represented by the Rule 144A Global Preferred Security may from time to time be increased or decreased by adjustments made on the records of the Property Trustee and the Depositary or its nominee as hereinafter provided.

(2) Book-Entry Provisions. This Section 7.03(b) shall apply only to the Rule 144A Global Preferred Securities and such other Preferred Securities in global form as may be authorized by the Trust to be deposited with or on behalf of the Depositary.

An Administrative Trustee on behalf of the Trust shall execute and the Property Trustee shall, in accordance with this Section 7.03, authenticate and deliver initially one or more Rule 144A Global Preferred Securities that (a) shall be registered in the name of Cede & Co. or other nominee of the Depositary and (b) shall be delivered by the Trustee to such Depositary or pursuant to the Depositary's written instructions or held by the Trustee as custodian for the Depositary.

Unless and until definitive, fully registered certificated Preferred Securities have been issued to the Preferred Security Beneficial Owners pursuant to Section 7.03:

(1) the provisions of this Section 7.03 shall be in full force and effect;

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

(3) to the extent that the provisions of this Section 7.03 conflict with any other provisions of this Declaration, the provisions of this Section 7.03 shall control; and

(4) the rights of the Preferred Security Beneficial Owners shall be exercised only through the Depositary and shall be limited to those established by law and agreements between such Preferred Security Beneficial Owners and the Depositary and/or the Participants and the Depositary shall receive and transmit payments of Distributions on the Global Preferred Securities to such Participants. The Depositary will make book-entry transfers among the Participants and receive and transmit payments of Distributions on the Global Preferred Securities to such Participants; provided, that solely for the purposes of determining whether the Holders of the requisite amount of Preferred Securities have voted on any matter provided for in this Declaration, so long as Definitive Preferred Security Certificates have not been issued, the Trustees may conclusively rely on, and shall be protected in relying on, any written instrument (including a proxy) delivered to the Trustees by the Depositary setting forth the Preferred Security Beneficial Owners' votes or assigning the right to vote on any matter to any other Persons either in whole or in part.

Members of, or participants in, the Depositary ("Participants") shall have no rights under this Declaration with respect to any Global Preferred Security held on their behalf by the Depositary or by the Property Trustee as the custodian of the Depositary or under such Global Preferred Security, and the Depositary may be treated by the Trust, the Property Trustee and any agent of the Trust or the Property Trustee as the absolute owner of such Global Preferred Security for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Trust, the Property Trustee or any agent of the Trust or the Property Trustee from giving effect to any written certification, proxy or other authorization furnished by the Depositary or impair, as between the Depositary and its Participants, the operation of customary practices of such Depositary governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Security.

(3) Certificated Securities. Except as provided in Section 7.03(d), owners of beneficial interests in the Global Preferred Security will not be entitled to receive physical delivery of certificated Preferred Securities.

(4) Subject to Section 9.05, a Global Preferred Security deposited with the Depositary or with the Property Trustee as custodian for the Depositary pursuant to this Section 7.03 shall be transferred to the beneficial owners thereof in the form of

certificated Preferred Securities only if such transfer complies with Section 9.02 and (i) the Depositary notifies the Depositor that it is unwilling or unable to continue as Depositary for such Global Preferred Security or if at any time such Depositary ceases to be a "clearing agency" registered under the Exchange Act, at a time when the Depositary is required to be so registered to act as such depositary, (ii) the Administrative Trustees decide in their sole discretion determines that such Global Preferred Security shall be so exchangeable, or (iii) an Event of Default has occurred and is continuing.

(5) Any Global Preferred Security that is transferable to the beneficial owners thereof in the form of certificated Preferred Securities pursuant to this Section 7.03 shall be surrendered by the Depositary to the Property Trustee located in the Borough of Manhattan, City of New York, to be so transferred, in whole or from time to time in part, without charge, and the Property Trustee shall authenticate and deliver, upon such transfer of each portion of such Global Preferred Security, an equal aggregate liquidation amount of Preferred Securities of authorized denominations in the form of certificated Preferred Securities. Any portion of a Global Preferred Security transferred pursuant to this Section shall be registered in such names and such amounts as the Depositary shall direct. Any Preferred Security in the form of certificated Preferred Securities delivered in exchange for an interest in the Rule 144A Global Preferred Security shall, except as otherwise provided by Section 9.02, bear the Restricted Securities Legend set forth in Section 9.02(h).

(6) Subject to the provisions of Section 7.03(e), the registered holder of a Global Preferred Security may grant proxies and otherwise authorize any Person, including Participants and Persons that may hold interests through Participants, to take any action which a holder is entitled to take under this Declaration or the Securities.

(1)

(7) In the event of the occurrence of any of the events specified in Section 7.03(d), the Trust will promptly make available to the Property Trustee a reasonable supply of certificated Securities in definitive, fully registered form without distribution coupons.

Section 1.42 Registrar, Paying Agent, Conversion Agent and Tender Agent. The Administrative Trustees shall maintain in the Borough of Manhattan, City of New York, State of New York (i) an office or agency where Preferred Securities may be presented for registration of transfer or for exchange ("Registrar"), (ii) an office or agency where Preferred Securities may be presented for payment ("Paying Agent") and (iii) an office or agency where Securities may be presented for conversion ("Conversion Agent"). The Registrar shall keep a register of the Preferred Securities and of their transfer and exchange. The Administrative Trustees may appoint the Registrar, the Paying Agent and the Conversion Agent and may appoint one or more co-Registrars, one or more additional

paying agents and one or more additional conversion agents in such other locations as it shall determine. The term "Paying Agent" includes any additional paying agent and the term "Conversion Agent" includes any additional conversion agent. The Administrative Trustees may change any Paying Agent, Registrar, co-Registrar or Conversion Agent without prior notice to any Holder; provided that the Administrative Trustees shall provide notice of such change to all Holders promptly thereafter. The Administrative Trustees shall notify the Property Trustee of the name and address of any Agent not a party to this Declaration. If the Administrative Trustees fail to appoint or maintain another entity as Registrar, Paying Agent or Conversion Agent, the Property Trustee shall act as such. The Trust or any of its Affiliates may act as Paying Agent, Registrar, or Conversion Agent. The Trust shall act as Paying Agent, Registrar, co-Registrar, and Conversion Agent for the Common Securities.

The Trust initially appoints the Property Trustee as Registrar, Paying Agent, and Conversion Agent for the Preferred Securities. The Property Trustee shall also serve as Tender Agent and shall have the responsibilities of such described in the Remarketing Agreement for so long as the Debentures are held by the Property Trustee.

Section 1.43 Paying Agent to Hold Money in Trust. The Trust shall require each Paying Agent other than the Property Trustee to agree in writing that the Paying Agent will hold in trust for the benefit of Holders or the Property Trustee all money held by the Paying Agent for the payment of principal or distribution on the Securities, and will notify the Property Trustee if there are insufficient funds. While any such insufficiency continues, the Property Trustee may require a Paying Agent to pay all money held by it to the Property Trustee. The Administrative Trustees at any time may require a Paying Agent to pay all money held by it to the Property Trustee and to account for any money disbursed by it. Upon payment over to the Property Trustee, the Paying Agent (if other than the Trust or an Affiliate of the Trust) shall have no further liability for the money. If the Trust or the Depositor or an Affiliate of the Trust or the Depositor acts as Paying Agent, it shall segregate and hold in a separate trust fund for the benefit of the Holders all money held by it as Paying Agent.

Section 1.44 Replacement Securities. If the Holder of a Security claims that the Security has been lost, destroyed or wrongfully taken or if such Security is mutilated and is surrendered to the Trust or in the case of the Preferred Securities to the Property Trustee, an Administrative Trustee on behalf of the Trust shall issue and the Property Trustee shall authenticate a replacement Security if the Property Trustee's and such Administrative Trustee's requirements, as the case may be, are met. If required by the Property Trustee or such Administrative Trustee, an indemnity bond must be sufficient in the judgment of both to protect the Trustees, the Depositor or any authenticating

agent from any loss which any of them may suffer if a Security is replaced. The Depositor may charge for its expenses in replacing a Security.

In case any such mutilated, destroyed, lost or stolen Security has become or is about to become due and payable, or is about to be purchased by the Depositor pursuant to Article IV hereof, the Depositor in its discretion may, instead of the Trust's issuing a new Security, pay or purchase such Security, as the case may be.

Every replacement Security is an additional obligation of the Trust.

**Section 1.45 Outstanding Preferred Securities.** The Preferred Securities outstanding at any time are all the Preferred Securities authenticated by the Property Trustee except for those canceled by it, those delivered to it for cancellation, and those described in this Section as not outstanding.

If a Preferred Security is replaced, paid or purchased pursuant to Section 7.06 hereof, it ceases to be outstanding unless the Property Trustee receives proof satisfactory to it that the replaced, paid or purchased Preferred Security is held by a protected purchaser (as such term is used in Section 8-405 of the Delaware Uniform Commercial Code).

If Preferred Securities are considered paid in full in accordance with the terms of this Declaration, they cease to be outstanding and Distributions on them ceases to accumulate.

A Preferred Security does not cease to be outstanding because one of the Trust, the Depositor or an Affiliate of the Depositor holds the Security.

**Section 1.46 Preferred Securities in Treasury.** In determining whether the Holders of the required amount of Securities have concurred in any direction, waiver or consent, Preferred Securities owned by the Trust, the Depositor or an Affiliate of the Depositor, as the case may be, shall be disregarded and deemed not to be outstanding, except that for the purposes of determining whether the Property Trustee shall be fully protected in relying on any such direction, waiver or consent, only Securities which the Property Trustee knows are so owned shall be so disregarded.

**Section 1.47 Temporary Securities.** Until definitive Securities are ready for delivery, the Trust may prepare and, in the case of the Preferred Securities, the Property Trustee shall authenticate temporary Securities. Temporary Securities shall be substantially in the form of definitive Securities but may have variations that the Trust considers appropriate for temporary Securities. Without unreasonable delay, the Trust

shall prepare and deliver to the Property Trustee Preferred Securities in certificated form (other than in the case of Preferred Securities in global form) and thereupon any or all temporary Preferred Securities (other than any such Preferred Securities in global form) may be surrendered in exchange therefor, at the office of the Registrar, and the Property Trustee shall authenticate and deliver an equal aggregate liquidation amount of definitive Preferred Securities in certificated form in exchange for temporary Preferred Securities (other than any such Preferred Securities in global form).

Section 1.48 Cancellation. Any Administrative Trustee on behalf of the Trust at any time may deliver Preferred Securities to the Property Trustee for cancellation. The Registrar, Paying Agent and Conversion Agent shall forward to the Property Trustee any Preferred Securities surrendered to them for registration of transfer, redemption, conversion, exchange or payment. The Property Trustee shall promptly cancel all Preferred Securities, surrendered for registration of transfer, redemption, conversion, exchange, payment, replacement or cancellation and shall return such canceled Preferred Securities to the Administrative Trustees. The Trust may not issue new Preferred Securities to replace Preferred Securities that it has paid or that have been delivered to the Property Trustee for cancellation or that any Holder has converted.

## **ARTICLE VIII**

### **Termination of Trust**

Section 1.49 Dissolution of Trust. (a) The Trust shall dissolve upon the earliest to occur of the following:

- (1) the bankruptcy of the Holder of the Common Securities or the Depositor;
- (2) the filing of a certificate of dissolution or its equivalent with respect to the Holder of the Common Securities or the Depositor; the revocation of the charter of the Holder of the Common Securities or the Depositor and the expiration of 90 days after the date of revocation without a reinstatement thereof;
- (3) a written direction of the Depositor to dissolve the Trust and distribute a Like Amount of Debentures to Holders of the Securities in accordance with the terms of the Securities;

- (4) all of the Securities shall have been called for redemption and the amounts necessary for redemption thereof shall have been paid to the Holders in accordance with the terms of the Securities;
- (5) the expiration of the term of the Trust as set forth in Section 3.14 hereof;
- (6) the entry of a decree of judicial dissolution of the Holder of the Common Securities, the Depositor or the Trust;
- (7) upon distribution of the Common Stock of the Depositor to Holders of all outstanding Securities upon conversion of all such Securities; or
- (8) before the issuance of any Securities, with the consent of all the Administrative Trustees and the Depositor.

(2) As soon as is practicable after the occurrence of an event referred to in Section 8.01(a), and after the completion of the winding up of the affairs of the Trust, the Trustees shall file a certificate of cancellation with the Secretary of State of the State of Delaware.

(3) The provisions of Section 3.09 and Article X shall survive the termination of the Trust.

## **ARTICLE IX**

### **Transfer and Exchange**

Section 1.50 General.

(1) When Preferred Securities are presented to the Registrar or a co-Registrar with a request to register a transfer or to exchange them for an equal number of Preferred Securities represented by different certificates, the Registrar shall register the transfer or make the exchange if its requirements for such transactions are met. To permit registrations of transfers and exchanges, the Administrative Trustees shall prepare and one Administrative Trustee shall execute and the Property Trustee shall authenticate Preferred Securities at the Registrar's request.

(2) Securities may only be transferred, in whole or in part, in accordance with the terms and conditions set forth in this Declaration and in the terms of the Securities. To the fullest extent permitted by law, any transfer or purported transfer of any Security not made in accordance with this Declaration shall be null and void.

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

(1) the Trust would not be classified for United States federal income tax purposes as a grantor trust; and

(2) the Trust would be an Investment Company or the transferee would become an Investment Company.

(3) The Administrative Trustees shall provide for the registration of Securities and of transfers of Securities, which will be effected without charge but only upon payment (with such indemnity as the Administrative Trustees may require) in respect of any tax or other governmental charges that may be imposed in relation to it. Upon surrender for registration of transfer of any Securities, the Administrative Trustees shall cause one or more new Securities to be issued and authenticated by the Property Trustee in the name of the designated transferee or transferees. Every Security surrendered for registration of transfer shall be accompanied by a written instrument of transfer in form satisfactory to the Administrative Trustees duly executed by the Holder or such Holder's attorney duly authorized in writing. Each Security surrendered for registration of transfer shall be cancelled in accordance with

Section 7.10. A transferee of a Security shall be entitled to the rights and subject to the obligations of a Holder hereunder upon the receipt by such transferee of a Security. By acceptance of a Security, each transferee shall be deemed to have agreed to be bound by this Declaration.

(4) The Trust shall not be required (i) to issue, register the transfer of, or exchange, Preferred Securities during a period beginning at the opening of business 15 days before the day of any selection of Preferred Securities for redemption set forth in the terms of the Securities as set forth in Annex I hereto and ending at the close of business on the day of selection, or (ii) to register the transfer or exchange of any Preferred Security so selected for redemption in whole or in part, except the unredeemed portion of any Preferred Security being redeemed in part.

(5) All Preferred Securities issued upon any transfer or exchange pursuant to the terms of this Declaration shall evidence the same security and shall be entitled to the same benefits under this Declaration as the Preferred Securities surrendered upon such transfer or exchange.

#### Section 1.51 Transfer Procedures and Restrictions.

(1) General. Subject to Sections 9.02(b) and 9.02(h)(ii), if Preferred Securities are issued upon the transfer, exchange or replacement of Preferred Securities bearing the Restricted Securities Legend set forth in Exhibit A-1 hereto, or if a request is made to remove such Restricted Securities Legend on Preferred Securities, the Preferred Securities so issued shall bear the Restricted Securities Legend, or the Restricted Securities Legend shall not be removed, as the case may be, unless there is delivered to the Trust and the Property Trustee such satisfactory evidence, which may include an opinion of counsel licensed to practice law in the State of New York, as may be reasonably required by the Depositor, that (i) neither the legend nor the restrictions on transfer set forth therein are required to ensure that transfers thereof comply with the provisions of Rule 144A or (ii) that such Securities are not "restricted" within the meaning of Rule 144 under the Securities Act. Upon provision of such satisfactory evidence, the Property Trustee, at the written direction of the Trust, shall authenticate and deliver Preferred Securities that do not bear the Restricted Securities Legend.

(2) Transfers After Effectiveness of Shelf Registration Statement. After the effectiveness of a Shelf Registration Statement for any Preferred Securities, all requirements pertaining to Restricted Securities Legends on any Preferred Security included within such Shelf Registration Statement will cease to apply, and beneficial interests in a Preferred Security in global form without Restricted Securities Legends will be available to transferees of such Preferred Securities upon directions to transfer such Holder's beneficial interest in the Rule 144A Global Preferred Security. After the effectiveness of the Shelf Registration Statement, an Administrative Trustee on behalf of the Trust shall execute and the Property Trustee shall authenticate a Preferred Security in global form without the Restricted Securities Legend (the "Unrestricted Global Preferred Security") to deposit with the Depositary to evidence transfers of beneficial interests from the Rule 144A Global Preferred Security.

(3) Transfer and Exchange of Definitive Preferred Securities. When Definitive Preferred Securities are presented to the Registrar or co-Registrar

(x) to register the transfer of such Definitive Preferred Securities; or

(y) to exchange such Definitive Preferred Securities for an equal number of Definitive Preferred Securities of another denomination; the Registrar or co-Registrar shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided, however, that the Definitive Preferred Securities surrendered for transfer or exchange:

(1) shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Administrative Trustees and the Registrar or co-Registrar, duly executed by the Holder thereof or his attorney duly authorized in writing.

(2) in the case of Definitive Preferred Securities that are Restricted Preferred Securities, are being transferred or exchanged  
(x) pursuant to an effective registration statement under the Securities Act or (y) pursuant to, and in compliance with, clause (A) or (B) below:

(1) if such Restricted Preferred Securities are being delivered to the Registrar by a Holder for registration in the name of such Holder, without transfer, such Holder shall deliver a certification to that effect (in the form set forth on the reverse of the Preferred Security); or

(2) if such Restricted Preferred Securities are being transferred pursuant to an exemption from registration in accordance with Rule 144A under the Securities Act such Holder shall deliver: (i) a certification to that effect (in the form set forth on the reverse of the Preferred Security) and (ii) if the Trust or Registrar so requests, evidence reasonably satisfactory to them as to the compliance with the restrictions set forth in the Restricted Securities Legend.

Definitive Preferred Securities that are transferred to QIBs in accordance with Rule 144A under the Securities Act must be delivered to QIBs in the form of a beneficial interest in the Rule 144A Global Preferred Security in accordance with Section 9.02(d) except as otherwise provided in Section 7.03(d).

(4) Restrictions on Transfer of a Definitive Preferred Security for a Beneficial Interest in a Global Preferred Security. A Definitive Preferred Security may not be exchanged for a beneficial interest in a Global Preferred Security except upon

satisfaction of the requirements set forth below. Upon receipt by the Property Trustee of a Definitive Preferred Security, duly endorsed or accompanied by appropriate instruments of transfer, in form satisfactory to the Property Trustee, together with written instructions directing the Property Trustee to make, or to direct the Depositary to make, an adjustment on its books and records with respect to such Global Preferred Security to reflect an increase in the number of the Preferred Securities represented by the Global Preferred Security, then the Property Trustee shall cancel such Definitive Preferred Security and cause, or direct the Depositary to cause, the aggregate number of Preferred Securities represented by the Global Preferred Security to be increased accordingly. If no Global Preferred Securities are then outstanding, an Administrative Trustee on behalf of the Trust shall execute and the Property Trustee shall authenticate, upon written order of any Administrative Trustee, an appropriate number of Preferred Securities in global form.

(5) Transfer and Exchange of Global Preferred Securities. The transfer and exchange of Global Preferred Securities or beneficial interests therein shall be effected through the Depositary, in accordance with this Declaration (including applicable restrictions on transfer set forth herein, if any) and the procedures of the Depositary therefor.

(6) Transfer of a Beneficial Interest in a Global Preferred Security for a Definitive Preferred Security. Definitive Preferred Securities issued in exchange for a beneficial interest in a Global Preferred Security pursuant to this Section 9.02(f) shall be registered in such names and in such authorized denominations as the Depositary, pursuant to instructions from its Participants or indirect participants or otherwise, shall instruct the Property Trustee. The Property Trustee shall deliver such Preferred Securities to the Persons in whose names such Preferred Securities are so registered in accordance with the instructions of the Depositary.

(7) Restrictions on Transfer and Exchange of Global Preferred Securities. Notwithstanding any other provisions of this Declaration (other than the provisions set forth in Section 7.03), a Global Preferred Security may not be transferred as a whole except by the Depositary to a nominee of the Depositary or another nominee of the Depositary or by the Depositary or any such nominee to a successor Depositary or a nominee of such successor Depositary.

(8) Legend.

(1) Except as permitted by the following paragraph (ii), each Preferred Security certificate evidencing the Global Preferred Securities and the Definitive Preferred Securities (and all Preferred Securities issued in exchange therefor or substitution thereof) shall bear a legend the "Restricted Securities Legend") in substantially the following form:

"EACH OF THE PREFERRED SECURITIES (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND EACH OF THE PREFERRED SECURITIES AND ANY DEBENTURES ISSUED UPON EXCHANGE FOR THE PREFERRED SECURITIES REPRESENTED HEREBY AND ANY COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF EACH OF THE PREFERRED SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF EACH OF THE PREFERRED SECURITIES 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 PREFERRED SECURITY AGREES FOR THE BENEFIT OF THE ISSUER AND THE COMPANY THAT (A) THIS PREFERRED SECURITY AND ANY DEBENTURES OR COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (i) 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) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iii) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iii) 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 EACH OF THE PREFERRED SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE."

(2) Upon any sale or transfer of a Restricted Preferred Security (including any Restricted Preferred Security represented by a Global Preferred Security) pursuant to Rule 144 under the Securities Act or an effective registration statement under the Securities Act the Registrar shall permit the Holder thereof to exchange such Restricted Preferred Security for an interest in the Unrestricted Global Preferred Security.

(9) Cancellation or Adjustment of Global Preferred Security. At such time as all beneficial interests in a Global Preferred Security have either been exchanged for Definitive Preferred Securities to the extent permitted by the Declaration or redeemed, repurchased or cancelled in accordance with the terms of this Declaration, such Global Preferred Security shall be returned to the Depositary for cancellation or retained and cancelled by the Property Trustee. At any time prior to such cancellation, if any beneficial interest in a Global Preferred Security is exchanged for Definitive Preferred Securities, Preferred Securities represented by such Global Preferred Security shall be reduced and an adjustment shall be made on the books and records of the Property Trustee (if it is then the Registrar for such Global Preferred Security) with respect to such Global Preferred Security, by the Property Trustee or the Registrar, to reflect such reduction.

(10) No Obligation of the Property Trustee.

(1) The Property Trustee shall have no responsibility or obligation to any Preferred Security Beneficial Owner, a Participant in the Depositary or other Person with respect to the accuracy of the records of the Depositary or its nominee or of any Participant thereof, with respect to any ownership interest in the Preferred Securities or with respect to the delivery to any Participant, Preferred Security Beneficial Owner or other Person (other than the Depositary) of any notice (including any notice of redemption) or the payment of any amount, under or with respect to such Preferred Securities. All notices and communications to be given to the Holders and all payments to be made to Holders under the Preferred Securities shall be given or made only to or upon the order of the registered Holders (which shall be the Depositary or its nominee in the case of a Global Preferred Security). The rights of Preferred Security Beneficial Owners in any Global Preferred Security shall be exercised only through the Depositary subject to the applicable rules and procedures of the Depositary. The Property Trustee may conclusively rely and shall be fully protected in relying upon information furnished by the Depositary or agent thereof with respect to its Participants and any Preferred Security Beneficial Owners.

(2) The Property Trustee and Registrar shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Declaration or under applicable law with respect to any transfer of any interest in any Preferred Security (including any transfers between or among Depositary Participants or Preferred Security Beneficial Owners in any Global Preferred Security) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Declaration, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

Section 1.52 Deemed Security Holders. The Trustees may treat the Person in whose name any Certificate shall be registered on the books and records of the Trust as the sole holder of such Certificate and of the Securities represented by such Certificate for purposes of receiving Distributions and for all other purposes whatsoever and, accordingly, shall not be bound to recognize any equitable or other claim to or interest in such Certificate or in the Securities represented by such Certificate on the part of any Person, whether or not the Trust, the Property Trustee, the Registrar or a co-Registrar shall have actual or other notice thereof.

#### Section 1.1

Section 1.53 Notices to Depositary. Whenever a notice or other communication to the Preferred Security Holders is required under this Declaration, the Administrative Trustees shall, in the case of any Global Preferred Security, give all such notices and communications specified herein to be given to the Preferred Security Holders to the Depositary and shall have no notice obligations to the Preferred Security Beneficial Owners.

Section 1.54 Appointment of Successor Depositary. If the Depositary elects to discontinue its services as securities depositary with respect to the Preferred Securities, the Administrative Trustees may, in their sole discretion, appoint a successor Depositary with respect to such Preferred Securities.

## **ARTICLE X**

### **Limitation of Liability of Holders of Securities, Trustees or Others**

Section 1.55 Liability. (a) Except as expressly set forth in this Declaration, the Securities Guarantee and the terms of the Securities, the Depositor shall not be:

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

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

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

(3) Pursuant to Section 3803(a) of the Business Trust Act, the Holders of the Preferred Securities shall be entitled to the same limitation of personal liability extended to stockholders of private corporations for profit organized under the General Corporation Law of the State of Delaware.

Section 1.56 Exculpation. (a) No Indemnified Person shall be liable, responsible or accountable in damages or otherwise to the Trust or any Covered Person for any loss, damage or claim incurred by reason of any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of the authority conferred on such Indemnified Person by this Declaration or by law, except that an Indemnified Person shall be liable for any such loss, damage or claim incurred by reason of such Indemnified Person's gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions.

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

Section 1.57 Fiduciary Duty. (a) To the extent that, at law or in equity, an Indemnified Person has duties (including fiduciary duties) and liabilities relating thereto to the Trust or to any other Covered Person, an Indemnified Person acting under this Declaration shall not be liable to the Trust or to any other Covered Person for its good faith reliance on the provisions of this Declaration. The provisions of this Declaration, to the extent that they restrict the duties and liabilities of an Indemnified Person

otherwise existing at law or in equity (other than the duties imposed on the Property Trustee under the Trust Indenture Act), are agreed by the parties hereto to replace such other duties and liabilities of such Indemnified Person.

(1) Unless otherwise expressly provided herein:

(1) whenever a conflict of interest exists or arises between an Indemnified Person and any Covered Person; or

(2) whenever this Declaration or any other agreement contemplated herein or therein provides that an Indemnified Person shall act in a manner that is, or provides terms that are, fair and reasonable to the Trust or any Holder of Securities,

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

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

(1) in its "discretion" or under a grant of similar authority, the Indemnified Person shall be entitled to consider such interests and factors as it desires, including its own interests, and shall have no duty or obligation to give any consideration to any interest of or factors affecting the Trust or any other Person; or

(2) in its "good faith" or under another express standard, the Indemnified Person shall act under such express standard and shall not be subject to any other or different standard imposed by this Declaration or by applicable law.

Section 1.58 Indemnification. (a) To the fullest extent permitted by applicable law, the Debenture Issuer shall indemnify and hold harmless each Indemnified Person from and against any loss, damage, liability, tax, penalty, expense or claim of any

kind or nature whatsoever incurred by such Indemnified Person by reason of the creation, operation or termination of the Trust or any act or omission performed or omitted by such Indemnified Person in good faith on behalf of the Trust and in a manner such Indemnified Person reasonably believed to be within the scope of authority conferred on such Indemnified Person by this Declaration, except that no Indemnified Person shall be entitled to be indemnified in respect of any loss, damage or claim incurred by such Indemnified Person by reason of gross negligence (or, in the case of the Property Trustee, negligence) or willful misconduct with respect to such acts or omissions. The Debenture Issuer shall be entitled to participate in the defense of any action arising hereunder and, to the extent it may wish, assume the defense thereof, with counsel satisfactory to such Indemnified Persons (who shall not, except with the consent of the Indemnified Persons, be counsel to the Debenture Issuer). Upon assuming such defense, the Debenture Issuer shall not be liable for any legal or other expenses subsequently incurred by such Indemnified Persons in connection with the defense thereof, other than reasonable costs of investigation. The Debenture Issuer shall not, without the prior written consent of the Indemnified Persons, effect any settlement of any pending or threatened action in respect of which any Indemnified Person is or could have been a party and indemnity could have been sought hereunder by such Indemnified Person unless such settlement (i) includes an unconditional release of such Indemnified Person from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of an Indemnified Person.

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

**Section 1.59 Outside Businesses.** Any Covered Person, the Depositor, the Delaware Trustee and the Property Trustee (subject to Section 5.03(c)) may engage in or possess an interest in other business ventures of any nature or description, independently or with others, similar or dissimilar to the business of the Trust, and the Trust and the Holders of Securities shall have no rights by virtue of this Declaration in and to such independent ventures or the income or profits derived therefrom and the pursuit of any such venture, even if competitive with the business of the Trust, shall not be deemed wrongful or improper. None of the Depositor, any Covered Person, the Delaware Trustee, the Administrative Trustees or the Property Trustee shall be obligated to present

any particular investment or other opportunity to the Trust even if such opportunity is of a character that, if presented to the Trust, could be taken by the Trust, and any Covered Person, the Depositor, the Delaware Trustee and the Property Trustee shall have the right to take for its own account (individually or as a partner or fiduciary) or to recommend to others any such particular investment or other opportunity. Any Covered Person, the Delaware Trustee and the Property Trustee may engage or be interested in any financial or other transaction with the Depositor or any Affiliate of the Depositor, or may act as depositary for, trustee or agent for, or act on any committee or body of holders of, securities or other obligations of the Depositor or its Affiliates.

## **ARTICLE XI**

### **Accounting**

Section 1.60 Fiscal Year. The fiscal year ("Fiscal Year") of the Trust shall be the calendar year, or such other year as is required by the Code.

Section 1.61 Certain Accounting Matters.

- (1) At all times during the existence of the Trust, the Administrative Trustees shall keep, or cause to be kept, full books of account, records and supporting documents, which shall reflect in reasonable detail, each transaction of the Trust. The books of account shall be maintained on the accrual method of accounting, in accordance with generally accepted accounting principles, consistently applied. The Trust shall use the accrual method of accounting for United States federal income tax purposes. The books of account and the records of the Trust shall be examined by and reported upon as of the end of each Fiscal Year by a firm of independent certified public accountants selected by the Administrative Trustees.
- (2) The Administrative Trustees shall cause to be prepared and delivered to each of the Holders of Securities, within 90 days after the end of each Fiscal Year of the Trust, annual financial statements of the Trust, including a balance sheet of the Trust as of the end of such Fiscal Year, and the related statements of income or loss;
- (3) The Administrative Trustees shall cause to be duly prepared and delivered to each of the Holders of Securities, any annual United States federal income tax information statement, required by the Code, containing such information with regard to the Securities held by each Holder as is required by the Code and the Treasury Regulations. Notwithstanding any right under the Code to deliver any such statement at a

later date, the Administrative Trustees shall endeavor to deliver all such statements within 30 days after the end of each Fiscal Year of the Trust.

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

**Section 1.62 Banking.** The Administrative Trustees on behalf of the Trust shall maintain one or more bank accounts in the name and for the sole benefit of the Trust; provided, however, that all payments of funds in respect of the Debentures held by the Property Trustee shall be made directly to the Property Trustee Account and no other funds of the Trust shall be deposited in the Property Trustee Account. The sole signatories for such accounts shall be designated by the Administrative Trustees; provided, however, that the Property Trustee shall designate the signatories for the Property Trustee Account.

**Section 1.63 Withholding.** The Trust and the Administrative Trustees on behalf of the Trust shall comply with all withholding requirements under United States federal, state and local law. The Administrative Trustees on behalf of the Trust shall request, and the Holders shall provide to the Administrative Trustees, such forms or certificates as are necessary to establish an exemption from withholding with respect to each Holder, and any representations and forms as shall reasonably be requested by the Administrative Trustees on behalf of the Trust to assist it in determining the extent of, and in fulfilling the Trust's withholding obligations. The Administrative Trustees shall file required forms with applicable jurisdictions and, unless an exemption from withholding is properly established by a Holder, shall remit amounts withheld with respect to the Holder to applicable jurisdictions. To the extent that the Trust is required to withhold and pay over any amounts to any authority with respect to Distributions or allocations to any Holder, the amount withheld shall be deemed to be a distribution in the amount of the withholding to the Holder. In the event of any claimed overwithholding, Holders shall be limited to an action against the applicable jurisdiction. If the amount required to be withheld was not withheld from actual Distributions made, the Administrative Trustees on behalf of the Trust may reduce subsequent Distributions by the amount of such withholding.

## **ARTICLE XII**

### **Amendments and Meetings**

Section 1.64 Amendments. (a) Except as otherwise provided in this Declaration or by any applicable terms of the Securities, this Declaration may be amended from time to time by the Depositor, the Property Trustee and the Administrative Trustees, without the consent of the Holders of the Securities,

(i) to cure any ambiguity, correct or supplement any provision in the Declaration that may be inconsistent with any other provision, or to make any other provisions with respect to ministerial matters or questions arising under the Declaration, which shall not be inconsistent with the other provisions of the Declaration, or (ii) to modify, eliminate or add to any provisions of the Declaration to such extent as shall be necessary to ensure that the Trust will not be taxable as a corporation or will be classified for United States federal income tax purposes as a grantor trust at all times that any Securities are outstanding or to ensure that the Trust will not be required to register as an "investment company" under the Investment Company Act; provided, however, that in the case of clause (i), such action shall not adversely affect in any material respect the interests of any Holder of Securities, and any such amendments of the Declaration shall become effective when notice thereof is given to the Holders of the Securities.

(1) Except as provided in (c) below, and the terms of the Securities, this Declaration may be amended by the Trustees and the Depositor with (i) the consent of Holders representing not less than a Majority in liquidation amount of the outstanding Preferred Securities, and (ii) receipt by the Trustees of an opinion of counsel to the effect that such amendment or the exercise of any power granted to the Trustees in accordance with such amendment will not affect the Trust's status as a grantor trust for United States federal income tax purposes or the Trust's exemption from status as an "investment company" under the Investment Company Act.

(2) Without the consent of each Holder of Securities, the Declaration may not be amended to (i) change the amount or timing of any Distribution on the Securities or otherwise adversely affect the amount of any Distribution required to be made in respect of the Securities of a specified date or (ii) restrict the right of a Holder of Securities to institute suit for the enforcement of any such payment on or after such date.

Section 1.65 Meetings of the Holders of Securities; Action by Written Consent. (a) Meetings of the Holders of any class of Securities may be called at any time by the Administrative Trustees (or as provided in the terms of the Securities) to consider and act on any matter on which Holders of such class of Securities are entitled to act under the terms of this Declaration, the terms of the Securities or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading. Except as otherwise set forth in the terms of the Securities, the Administrative Trustees shall call a meeting of the Holders of such class if directed to do so by the Holders of at least 25% in

liquidation amount of such class of Securities. Such direction shall be given by delivering to the Administrative Trustees one or more requests in a writing stating that the signing Holders of Securities wish to call a meeting and indicating the general or specific purpose for which the meeting is to be called. Any Holders of Securities calling a meeting shall specify in writing the Certificates held by the Holders of Securities exercising the right to call a meeting and only those Securities represented by the Certificates so specified shall be counted for purposes of determining whether the required percentage set forth in the second sentence of this paragraph has been met.

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

(1) notice of any such meeting shall be given to all the Holders of Securities having a right to vote thereat at least 7 days and not more than 60 days before the date of such meeting. Whenever a vote, consent or approval of the Holders of Securities is permitted or required under this Declaration or the rules of any stock exchange on which the Preferred Securities are listed or admitted for trading, such vote, consent or approval may be given at a meeting of the Holders of Securities. Any action that may be taken at a meeting of the Holders of Securities may be taken without a meeting and without prior notice if a consent in writing setting forth the action so taken is signed by the Holders of Securities owning not less than the minimum aggregate liquidation amount of Securities that would be necessary to authorize or take such action at a meeting at which all Holders of Securities having a right to vote thereon were present and voting. Prompt notice of the taking of action without a meeting shall be given to the Holders of Securities entitled to vote who have not consented in writing. The Administrative Trustees may specify that any written ballot submitted to the Holders for the purpose of taking any action without a meeting shall be returned to the Trust within the time specified by the Administrative Trustees;

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

interpretations thereunder, as if the Trust were a Delaware corporation and the Holders of the Securities were stockholders of a Delaware corporation;

(3) each meeting of the Holders of the Securities shall be conducted by the Administrative Trustees or by such other Person that the Administrative Trustees may designate; and

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

## **ARTICLE XIII**

### **Representations of Property Trustee and Delaware Trustee**

Section 1.66 Representations and Warranties of Property Trustee. The Trustee that acts as initial Property Trustee represents and warrants to the Trust and to the Depositor at the date of this Declaration, at the Closing Date and at each Optional Closing Date, if any, and each Successor Property Trustee represents and warrants to the Trust and the Depositor at the time of the Successor Property Trustee's acceptance of its appointment as Property Trustee that:

(1) The Property Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, with corporate power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration.

(2) The execution, delivery and performance by the Property Trustee of the Declaration have been duly authorized by all necessary corporate action on the part of the Property Trustee. The Declaration has been duly executed and delivered by the Property Trustee, and constitutes a legal, valid and binding obligation of the Property Trustee, enforceable against it in accordance with its terms, subject to applicable bankruptcy, reorganization, moratorium, insolvency, and other similar laws

affecting creditors' rights generally and to general principles of equity and the discretion of the court (regardless of whether the enforcement of such remedies is considered in a proceeding in equity or at law).

(3) The execution, delivery and performance of the Declaration by the Property Trustee do not conflict with or constitute a breach of the certificate of incorporation or by-laws of the Property Trustee.

(4) No consent, approval or authorization of, or registration with or notice to, any New York or federal banking authority is required for the execution, delivery or performance by the Property Trustee, of the Declaration.

(e) The Property Trustee satisfies the qualifications set forth in Section 5.03 and shall not create, incur or assume or suffer to exist any mortgage, pledge, hypothecation, encumbrance, lien or other change or security interest upon the Debentures.

Section 1.67 Representations and Warranties of Delaware Trustee. The Trustee that acts as initial Delaware Trustee represents and warrants to the Trust and to the Depositor at the date of this Declaration, at the Closing Date and at each Optional Closing Date, if any, and each Successor Delaware Trustee represents and warrants to the Trust and the Depositor at the time of the Successor Property Trustee's acceptance of its appointment as Delaware Trustee that:

(1) The Delaware Trustee is a banking corporation with trust powers, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, with corporate power and authority to execute and deliver, and to carry out and perform its obligations under the terms of, the Declaration.

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

(3) The execution, delivery and performance of the Declaration by the Delaware Trustee does not conflict with or constitute a breach of the certificate of incorporation or by-laws of the Delaware Trustee.

(4) No consent, approval or authorization of, or registration with or notice to, any Delaware or federal banking authority is required for the execution, delivery or performance by the Delaware Trustee, of the Declaration.

(5) The Delaware Trustee is an entity which has its principal place of business in the State of Delaware.

(6) The Delaware Trustee has been authorized to perform its obligations under the Certificate of Trust and the Declaration.

## **ARTICLE XIV**

### **Registration Rights**

Section 14.01. Registration Rights. The Holders of the Preferred Securities, the Debentures, the Guarantee and the shares of Common Stock of the Depositor issuable upon conversion of the Securities are entitled to the benefits of a Registration Rights Agreement.

## **ARTICLE XV**

### **Miscellaneous**

Section 1.68 Notices. All notices provided for in this Declaration shall be in writing, duly signed by the party giving such notice, and shall be delivered, telecopied or mailed by registered or certified mail, as follows:

(1) if given to the Trust, in care of the Administrative Trustees at the Trust's mailing address set forth below (or such other address as the Administrative Trustees may give notice of to the Holders of the Securities):

Calpine Capital Trust II  
c/o Calpine Corporation  
50 West San Fernando Street San Jose, California 95113 Attention: Secretary

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

The Bank of New York 101 Barclay Street, Floor 21 West New York, New York 10286 Attention: Corporate Trust Administration

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

The Bank of New York (Delaware) White Clay Center  
Route 273  
Newark, Delaware 19711 Attention: Corporate Trust Department

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

Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: Secretary

(5) if given to any other Holder, at the address set forth on the books and records of the Trust or the Registrar, as applicable.

All such notices shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or

other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

Section 1.69 Governing Law. This Declaration and the rights of the parties hereunder shall be governed by and interpreted in accordance with the laws of the State of Delaware and all rights and remedies shall be governed by such laws without regard to principles of conflict of laws. Sections 3540 and 3561 of Title 12 of the Delaware Code shall not apply to the Trust. To the fullest extent permitted by law, there shall not be applicable to the parties hereunder or this Declaration any provision of the laws (statutory or common) of the State of Delaware pertaining to trusts that relate to or regulate, in a manner inconsistent with the terms hereof (A) the filing with any court or governmental body or agency of trustee accounts or schedules of trustee fees and charges, (B) affirmative requirements to post bonds for trustees, officers, agents or employees of a trust, (C) the necessity for obtaining court or other governmental approval concerning the acquisition, holding or disposition of real or personal property, (D) fees or other sums payable to trustees, officers, agents, or employees of a trust, (E) the allocation of receipts and expenditures to income or principal, (F) restrictions or limitations on the permissible nature, amount or concentration of trust investments or requirements relating to the titling, storage or other manner of holding or investing trust assets or (G) the establishment of fiduciary or other standards of responsibility or limitations on the acts or powers of trustees that are inconsistent with the limitations or liabilities or authorities and powers of the trustees hereunder as set forth or referenced in this Declaration.

Section 1.70 Intention of the Parties. It is the intention of the parties hereto that the Trust be classified for United States federal income tax purposes as a grantor trust. The provisions of this Declaration shall be interpreted to further this intention of the parties.

Section 1.71 Headings. Headings contained in this Declaration are inserted for convenience of reference only and do not affect the interpretation of this Declaration or any provision hereof.

Section 1.72 Successors and Assigns. Whenever in this Declaration any of the parties hereto is named or referred to, the successors and assigns of such party shall be deemed to be included, and all covenants and agreements in this Declaration by the Depositor and the Trustees shall bind and inure to the benefit of their respective successors and assigns, whether so expressed.

Section 1.73 Partial Enforceability. If any provision of this Declaration, or the application of such provision to any Person or circumstance, shall be held

invalid, the remainder of this Declaration, or the application of such provision to Persons or circumstances other than those to which it is held invalid, shall not be affected thereby.

Section 1.74 Counterparts. This Declaration may contain more than one counterpart of the signature page and this Declaration may be executed by the affixing of the signature of each of the Trustees to one of such counterpart signature pages. All of such counterpart signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

**[SIGNATURE PAGE FOLLOWS]**

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

Peter Cartwright, as Administrative Trustee

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Ann B. Curtis, as Administrative Trustee

---

Thomas R. Mason, as Administrative Trustee

---

Calpine Corporation, as Depositor and Debenture Issuer

By:  
Name:

Title:

The Bank of New York,  
as Delaware Trustee

By:

Name:

Title:

The Bank of New York,  
as Property Trustee

By:

Name:

Title:

## **ANNEX I**

### **TERMS OF**

**Remarketable Term Income Deferrable  
Equity Securities (HIGH TIDES\_) and  
HIGH TIDES Common Securities**

Pursuant to Section 7.01 of the Amended and Restated Declaration of Trust, dated as of January 31, 2000 (as amended from time to time, the "Declaration"), the designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities and the Common Securities are set out below (each capitalized term used but not defined herein has the meaning set forth in the Declaration or the Indenture (as defined in the Declaration) or, if not defined in the Declaration, Indenture or Remarketing Agreement, as defined in the Offering Circular (as defined in the Declaration):

#### **1. Designation and Number.**

(a) "Preferred Securities." 7,200,000 (including 1,200,000 relating to the exercise of the full amount of the option granted by the Trust) Preferred Securities of the Trust with an aggregate liquidation preference with respect to the assets of the Trust of THREE HUNDRED SEVENTY-ONE MILLION ONE HUNDRED THIRTY-FOUR THOUSAND ONE HUNDRED Dollars (\$371,134,100) (including SIXTY-ONE MILLION EIGHT HUNDRED FIFTY-FIVE THOUSAND SEVEN HUNDRED Dollars (\$61,855,700) relating to the exercise of the full amount of the option granted by the Trust), and a liquidation amount with respect to the assets of the Trust of \$50 per Preferred Security, are hereby designated for the purposes of identification only as "Remarketable Term Income Deferrable Equity Securities (HIGH TIDES\_)" (the "Preferred Securities"). The Preferred Security Certificates evidencing the Preferred Securities shall be substantially in the form attached hereto as Exhibit A-1, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice or to conform to the rules of any stock exchange or other organization on which the Preferred Securities are listed, if any.

(b) "Common Securities." 222,682 (including 37,114 relating to the exercise of the full amount of the option granted by the Trust) Common Securities of the Trust with an aggregate liquidation amount with respect to the assets of the Trust of ELEVEN MILLION ONE HUNDRED THIRTY-FOUR THOUSAND ONE HUNDRED Dollars (\$11,134,100) (including ONE MILLION EIGHT HUNDRED FIFTY-FIVE THOUSAND SEVEN HUNDRED Dollars (\$1,855,700) relating to the

exercise of the full amount of the option granted by the Trust) and a liquidation amount with respect to the assets of the Trust of \$50 per Common Security, are hereby designated for the purposes of identification only as "HIGH TIDES Common Securities" (the "Common Securities"). The Common Security Certificates evidencing the Common Securities shall be substantially in the form attached hereto as Exhibit A-2, with such changes and additions thereto or deletions therefrom as may be required by ordinary usage, custom or practice.

## 2. Distributions.

(a) Distributions payable on each Security will accrue at the Applicable Rate applied to the stated liquidation amount of \$50 per Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. The Applicable Rate will be 5% per annum (the "Initial Rate") from January 31, 2000 to but excluding the Reset Date. From the Reset Date, the Applicable Rate will be the Term Rate established by the Remarketing Agent to be effective on the Reset Date. The Applicable Rate will be increased by 0.50% per annum during the continuation of a Registration Default until such Registration Default is cured. Distributions in arrears for more than one quarter will bear interest thereon compounded quarterly at the Applicable Rate (to the extent permitted by applicable law) as described in the Declaration. The term "Distributions" as used herein includes such quarterly Distributions, additional Distributions on quarterly Distributions not paid on the applicable Distribution Date and Additional Amounts, as applicable. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

(b) Distributions on the Securities will be cumulative, will accrue from January 31, 2000 and will be payable quarterly in arrears, on the following dates, which dates correspond to the interest payment dates on the Debentures: February 1, May 1, August 1 and November 1 of each year, commencing on May 1, 2000, except as otherwise described below (each such date being a "Distribution Date"). The Reset Date is any date (1) not later than February 1, 2005 (or, if such day is not a Business Day, the next succeeding Business Day), and (2) not earlier than 70 Business Days prior to February 1, 2005, as may be determined by the Remarketing Agent, in its sole discretion, for settlement of a successful remarketing. The fifteenth day of the month immediately preceding each Distribution Date is the record date for determining which

holders of Securities shall be paid the Distributions and Additional Amounts, if any, payable on such Distribution Date. If the Reset Date is prior to the record date for the immediately following Distribution Date, then Distributions and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Distribution Date shall be paid on such Distribution Date to the person in whose name each Security is registered on the relevant record date, subject to our right to initiate a Deferral Period. If the Reset Date is on or after the record date for the immediately following Distribution Date, then (1) Distributions and Additional Amounts, if any, accrued from and after the record date to but excluding the Reset Date shall be paid on the immediately following Distribution Date to the person in whose name each Security is registered on the relevant record date and (2) Distributions and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Distribution Date shall be paid on the second Distribution Date immediately following the Reset Date to the person in whose name each Security is registered on the relevant record date for such second Distribution Date, subject in each case to our right to initiate a Deferral Period.

So long as no Debenture Event of Default has occurred and is continuing, the Depositor has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each a "Deferral Period") and, as a consequence of such deferral, Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Applicable Rate compounded quarterly during any such Deferral Period. Prior to three Business Days before a Regular Record Date relating to a Payment Resumption Date (as defined in the Indenture), the Depositor may further extend such Deferral Period; provided that such Deferral Period together with all such previous and further extensions thereof may not exceed 20 consecutive quarters or extend beyond (i) the maturity (whether at the stated maturity or by declaration of acceleration, call for redemption or otherwise) of the Debentures under the Indenture and (ii) in the case of a Deferral Period which begins prior to the Reset Date, the Reset Date. Payments of accrued Distributions will be payable to Holders as they appear on the books and records of the Trust on the Regular Record Date for the relevant Payment Resumption Date. Upon the termination of any Deferral Period and the payment of all amounts then due, the Depositor may commence a new Deferral Period, subject to the above requirements.

(c) Distributions on the Securities will be payable to the Holders thereof as they appear on the books and records of the Trust at the close of business on the relevant record dates. The relevant record dates shall be on the fifteenth day of the month immediately preceding each relevant payment date, except as otherwise described in this Annex I to the Declaration. Subject to any applicable laws and

regulations and the provisions of the Declaration, each such payment in respect of Preferred Securities being held in book-entry form through The Depository Trust Company (the "Depository"), or any successor Depository appointed pursuant to the Declaration, will be made as described under the heading "Description of HIGH TIDES -- Form, Book-Entry Procedures and Transfer" in the Offering Circular. The relevant record dates for the Common Securities shall be the same record dates as for the Preferred Securities. Distributions payable on any Securities that are not punctually paid on any Distribution payment date, as a result of the Depositor having failed to make a payment under the Debentures, will cease to be payable to the Person in whose name such Securities are registered on the relevant record date, and such defaulted Distribution will instead be payable to the Person in whose name such Securities are registered on the special record date or other specified date determined in accordance with the Indenture. If any date on which Distributions are payable on the Securities is not a Business Day, then payment of the Distribution payable on such date will be made on the next succeeding day that is a Business Day (and without any additional Distributions or other payment in respect of any such delay) except that, with respect to any Redemption Date, if such Business Day is in the next succeeding calendar year, such Redemption Date shall be the immediately preceding Business Day, in each case with the same force and effect as if made on such date.

(d) In the event of an election by the Holder to convert its Securities through the Conversion Agent into Common Stock pursuant to the terms of the Securities as forth in this Annex I to the Declaration, no payment, allowance or adjustment shall be made with respect to accumulated and unpaid Distributions on such Securities, or be required to be made; provided that Holders of Securities at the close of business on any record date for the payment of Distributions will be entitled to receive the Distributions payable on such Securities on the corresponding payment date notwithstanding the conversion of such Securities into Common Stock following such record date.

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

### 3. Liquidation Distribution Upon Dissolution.

In the event of any voluntary or involuntary dissolution of the Trust, the Trust shall be liquidated by the Trustees as expeditiously as the Trustees determine to be possible by distributing, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, to the Holders of the Securities a Like Amount of Debentures, unless such distribution would not be practical, in which event such Holders will

be entitled to receive out of the assets of the Trust available for distribution to Holders, after satisfaction of liabilities to creditors of the Trust as provided by applicable law, an amount equal to the aggregate liquidation amount thereof plus accrued and unpaid Distributions thereon to the date of payment (such amount being the "Liquidation Distribution"). If such Liquidation Distribution can be paid only in part because the Trust has insufficient assets available to pay in full the aggregate Liquidation Distribution, then the amounts payable directly by the Trust on the Securities shall be paid on a Pro Rata basis in accordance with paragraph 9. The Holder of the Common Securities will be entitled to receive Distributions upon any such liquidation Pro Rata with the Holders of the Preferred Securities, except as provided in paragraph 10.

#### 4. Redemption and Distribution.

- (a) Upon the repayment or payment of the Debentures in whole or in part, whether at maturity or upon redemption or otherwise (other than following any distribution of the Debentures to the Holders), the proceeds from such repayment or redemption shall be simultaneously applied to redeem, on a Pro Rata basis, a Like Amount of Securities, on the redemption date, in an amount per Security equal to the applicable Redemption Price, payable in cash, which Redemption Price will be equal to (i) the liquidation amount of each of the Securities plus any accrued and unpaid Distributions thereon (A) in the case of the repayment of the Debentures at stated maturity, or (B) in the case of a redemption of the Debentures in certain limited circumstances set forth in the Indenture upon the occurrence of a Tax Event, or (ii) (A) in the case of an Optional Redemption after February 5, 2003 until but excluding the Tender Notification Date, the Initial Redemption Price; (B) in the case of an Optional Redemption on or after the Reset Date (except in the event of a Failed Final Remarketing), in accordance with the Term Call Protections or (C) in the event of a Failed Final Remarketing, 100% of the then outstanding aggregate principal amount of the Securities being redeemed, plus accrued and unpaid interest thereon.
- (b) If fewer than all the outstanding Securities are to be so redeemed, the Common Securities and the Preferred Securities will be redeemed Pro Rata and the Preferred Securities to be redeemed will be as described in Paragraph 4(f)(ii) below.
- (c) The Depositor, as the Holder of the outstanding Common Securities, shall have the right at any time (including, without limitation, upon the occurrence of a Tax Event or Investment Company Event) to dissolve the Trust and, after satisfaction of the creditors of the Trust, cause a Like Amount of the Debentures to be distributed to the Holders of the Securities in liquidation of the Trust, provided that neither the Depositor nor the Administrative Trustees may cause the dissolution of the Trust during the period beginning on the Business Day following the Tender Notification

Date and ending on the Reset Date (other than upon the occurrence of a Tax Event or an Investment Company Event), provided that the Administrative Trustees shall have received a No Recognition Opinion (as defined below) prior to the dissolution of the Trust.

(d) If, at any time, a Tax Event shall occur and be continuing the Depositor shall cause the Trustees to dissolve the Trust and, after satisfaction of the creditors of the Trust, cause a Like Amount of Debentures to be distributed to the Holders of the Securities in liquidation of the Trust within 90 days following the occurrence of such Tax Event; provided, however, that such dissolution, liquidation and distribution shall be conditioned on (i) the Trustees' receipt of an opinion of a nationally recognized independent tax counsel (reasonably acceptable to the Trustees) experienced in such matters (a "No Recognition Opinion"), which opinion may rely on published revenue rulings of the Internal Revenue Service, to the effect that the Holders of the Preferred Securities will not recognize any income, gain or loss for United States federal income tax purposes as a result of such dissolution and distribution of Debentures, and (ii) the Depositor being unable to avoid such Tax Event within such 90-day period by taking some ministerial action or pursuing some other reasonable measure that, in the sole judgment of the Depositor, will have no adverse effect on the Trust, the Depositor or the Holders of the Preferred Securities and will involve no material cost ("Ministerial Action").

If (i) the Depositor has received an opinion (a "Redemption Tax Opinion") of a nationally recognized independent tax counsel (reasonably acceptable to the Trustees) experienced in such matters that, as a result of a Tax Event, there is more than an insubstantial risk that (a) the Trust would not be considered to be a grantor trust for United States federal income tax purposes or (b) the Depositor would be precluded from deducting the interest on the Debentures for United States federal income tax purposes, even after the Debentures were distributed to the Holders of Securities upon liquidation of the Trust as described in this paragraph 4(d), or (ii) the Trustees shall have been informed by such tax counsel that it cannot deliver a No Recognition Opinion, the Depositor shall have the right, upon not less than 30 nor more than 60 days' notice, and within 90 days following the occurrence and continuation of such Tax Event, to redeem the Debentures in whole, but not in part, for cash, for the principal amount plus accrued and unpaid interest thereon and, following such redemption, all the Securities will be redeemed by the Trust at the liquidation amount of \$50 per Security plus accrued and unpaid Distributions thereon; provided, however, that, if at the time there is available to the Depositor or the Trust the opportunity to eliminate, within such 90-day period, the Tax Event by taking some Ministerial Action, the Trust or the Depositor will pursue such Ministerial Action in lieu of redemption.

In lieu of the foregoing options, the Depositor shall also have the option of causing the Securities to remain outstanding and pay Additional Amounts on the Debentures.

"Tax Event" means that the Property Trustee shall have received an opinion of a nationally recognized independent tax counsel to the Depositor (reasonably acceptable to the Trustees) experienced in such matters (a "Dissolution Tax Opinion") to the effect that, as a result of (i) any amendment to, or change (including any announced prospective change (which shall not include a proposed change), provided that a Tax Event shall not occur more than 90 days before the effective date of any such prospective change) in the laws (or any regulations thereunder) of the United States or any political subdivision or taxing authority therefor or therein, (ii) any judicial decision or official administrative pronouncement, ruling, regulatory procedure, notice or announcement, including any notice or announcement of intent to adopt such procedures or regulations (an "Administrative Action") or (iii) any amendment to or change in the administrative position or interpretation of any Administrative Action or judicial decision that differs from the theretofore generally accepted position, in each case, by any legislative body, court, governmental agency or regulatory body, irrespective of the manner in which such amendment or change is made known, which amendment or change is effective or such Administrative Action or decision is announced, in each case, on or after the date of original issuance of the Debentures or the issue date of the Preferred Securities issued by the Trust, there is more than an insubstantial risk that (a) if the Debentures are held by the Property Trustee, (x) the Trust is, or will be within 90 days of the date of such opinion, subject to United States federal income tax with respect to interest accrued or received on the Debentures or subject to more than a de minimis amount of other taxes, duties or other governmental charges as determined by such counsel, or (y) any portion of interest payable by the Depositor to the Trust (or OID accruing) on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Depositor in whole or in part for United States federal income tax purposes or (b) with respect to Debentures which are no longer held by the Property Trustee, any portion of interest payable by the Depositor (or OID accruing) on the Debentures is not, or within 90 days of the date of such opinion will not be, deductible by the Depositor in whole or in part for United States federal income tax purposes.

If an Investment Company Event (as hereinafter defined) shall occur and be continuing, the Depositor shall cause the Trustees to dissolve the Trust and, after satisfaction to creditors of the Trust, cause a Like Amount of the Debentures to be distributed to the Holders of the Securities in liquidation of the Trust within 90 days following the occurrence of such Investment Company Event.

"Investment Company Event" means the occurrence of a change in law or regulation or a written change in interpretation or application of law or regulation by any legislative body, court, governmental agency or regulatory authority (a "Change in 1940 Act Law"), to the effect that the Trust is or will be considered an Investment Company which is required to be registered under the Investment Company Act, which Change in 1940 Act Law becomes effective on or after the date of the Offering Circular.

After the date fixed for any distribution of Debentures: (i) the Securities will no longer be deemed to be outstanding, (ii) the Depositary or its nominee (or any successor Depository or its nominee), as record Holder of Preferred Securities represented by global certificates, will receive a registered global certificate or certificates representing the Debentures to be delivered upon such distribution and (iii) any certificates representing Securities, except for certificates representing Preferred Securities held by the Depositary or its nominee (or any successor Depository or its nominee), will be deemed to represent Debentures having an aggregate principal amount equal to the aggregate stated liquidation amount of such Securities, with accrued and unpaid interest equal to accrued and unpaid Distributions on such Securities until such certificates are presented to the Depositor or its agent for transfer or reissuance.

(e) The Securities will not be redeemed unless all accrued and unpaid Distributions have been paid on all Securities for all quarterly Distribution periods terminating on or before the date of redemption.

(f) Redemption, Distribution and Remarketing Procedures.

(1) Holders will be given not less than 20 nor more than 60 days notice of an Optional Redemption. Holders will be given at least 30 days but not more than 60 days notice of a redemption pursuant to paragraph

4(d). Notice of distribution of Debentures in exchange for the Securities will be given by the Administrative Trustees on behalf of the Trust by mail to each Holder of Securities to be exchanged not fewer than 30 nor more than 60 days before the date fixed for exchange thereof. For purposes of the calculation of the date of redemption or exchange and the dates on which notices are given pursuant to this paragraph 4(f)(i) (other than notices in connection with a Remarketing, the terms of which shall be governed by the Remarketing Agreement), a redemption or distribution notice shall be deemed to be given on the day such notice is first mailed by first-class

mail, postage prepaid, to Holders of Securities. Each redemption or distribution notice shall be addressed to the Holders of Securities at the address of each such Holder appearing in the books and records of the Trust. No defect in the redemption or distribution notice or in the mailing of either thereof with respect to any Holder shall affect the validity of the redemption or exchange proceedings with respect to any other Holder.

(2) In the event that fewer than all the outstanding Securities are to be redeemed, the Securities to be redeemed shall be redeemed Pro Rata from each Holder of Securities, it being understood that, in respect of Preferred Securities registered in the name of and held of record by the Depositary (or any successor Depositary) or any nominee, the distribution of the proceeds of such redemption will be made to each Participant (or Person on whose behalf such nominee holds such securities) in accordance with the procedures applied by such agency or nominee.

(3) If Securities are to be redeemed and the Administrative Trustees on behalf of the Trust gives a redemption or distribution notice, which notice may only be issued if the Debentures are redeemed as set out in this paragraph 4 (which notice will be irrevocable), then (A) with respect to Preferred Securities held in book-entry form, by 10:00 a.m., New York City time, on the redemption date, to the extent funds are available, with respect to Preferred Securities held in global form, the Property Trustee will deposit irrevocably with the Depositary (or successor Depositary) funds sufficient to pay the amount payable on redemption with respect to such Preferred Securities and will give the Depositary irrevocable instructions and authority to pay the amount payable on redemption to the Holders of such Preferred Securities, and (B) with respect to Preferred Securities issued in certificated form and Common Securities, to the extent funds are available, the Property Trustee will irrevocably deposit with the Paying Agent funds sufficient to pay the amount payable on redemption to the Holders of such Securities and will give the Paying Agent irrevocable instructions and authority to pay the amount payable on redemption to the Holders thereof upon surrender of their certificates. If a redemption or distribution notice shall have been given and funds deposited as required, then on the date of such deposit, all rights of Holders of such Securities so called for redemption will cease, except the right of the Holders of such Securities to receive the Redemption Price, but without

interest on such Redemption Price, and such Securities will cease to be outstanding. Neither the Administrative Trustees nor the Trust shall be required to register or cause to be registered the transfer of any Securities that have been so called for redemption. If any date fixed for redemption of Securities is not a Business Day, then payment of the amount payable on such date will be made on the next succeeding day that is a Business Day (without any interest or other payment in respect of any such delay) except that, if such Business Day falls in the next calendar year, such payment will be made on the immediately preceding Business Day, in each case with the same force and effect as if made on such date fixed for redemption. If payment of the Redemption Price in respect of any Securities is improperly withheld or refused and not paid either by the Trust or by the Depositor as guarantor pursuant to the relevant Securities Guarantee, Distributions on such Securities will continue to accrue at the then applicable rate, from the original redemption date to the date of payment, in which case the actual payment date will be considered the date fixed for redemption for purposes of calculating the amount payable upon redemption (other than for purposes of calculating any premium).

(4) Redemption and/or distribution notices, as applicable, shall be sent by the Administrative Trustees on behalf of the Trust to (A) in the case of Preferred Securities held in book-entry form, the Depository and, in the case of Preferred Securities held in certificated form, the Holders of such certificates and (B) in respect of the Common Securities, the Holder thereof.

(5) Subject to the foregoing and applicable law (including, without limitation, United States federal securities laws), the Depositor or any of its subsidiaries may at any time and from time to time purchase outstanding Preferred Securities, including by tender, in the open market or by private agreement; provided that neither the Depositor nor any of its Affiliates may purchase Preferred Securities on the Reset Date or submit orders in the Remarketing.

##### 5. Conversion Rights.

The Holders of Securities shall have the right at any time prior to 5:00 p.m., New York City time, on the Tender Notification Date and, in the event of a Convertible Remarketing or a Final Failed Remarketing, from and after the Reset Date to and including February 1, 2030 (except that Securities called for redemption by the

Depositor will be convertible at any time prior to 5:00 p.m., New York City time on any Redemption Date), at their option, to cause the Conversion Agent to convert Securities, on behalf of the converting Holders, into shares of Common Stock (as defined in the Indenture) in the manner described herein on and subject to the following terms and conditions:

- (a) The Securities will be convertible at the office of the Conversion Agent into fully paid and nonassessable shares of Common Stock pursuant to the Holder's direction to the Conversion Agent to exchange such Securities for a portion of the Debentures theretofore held by the Trust on the basis of one Security per \$50 principal amount of Debentures, and immediately convert such amount of Debentures into fully paid and nonassessable shares of Common Stock on or prior to the Tender Notification Date, into 0.4881 shares of Common Stock per \$50 principal amount of Debentures (which is equivalent to a conversion price of \$102.4375 per share of Common Stock, subject to certain adjustments set forth in the Indenture (as so adjusted, "Initial Conversion Price")). On and after the Reset Date, the Securities may, at the option of the Trust and subject to the results of the Remarketing, become nonconvertible or convertible into a different number of shares of Common Stock.
- (b) In order to convert Securities into Common Stock the Holder shall submit to the Conversion Agent at the office referred to above an irrevocable request to convert Securities on behalf of such Holder (the "Conversion Request"), together, if the Securities are in certificated form, with such certificates. The Trust shall not cause the conversion of any Debentures except pursuant to such a Conversion Request. The Conversion Request shall (i) set forth the number of Securities to be converted and the name or names, if other than the Holder, in which the shares of Common Stock should be issued and (ii) direct the Conversion Agent (a) to exchange such Securities for a portion of the Debentures held by the Trust (at the rate of exchange specified in the preceding paragraph) and (b) to immediately convert such Debentures on behalf of such Holder, into Common Stock (at the conversion rate specified in the preceding paragraph). The Conversion Agent shall notify the Property Trustee of the Holder's election to exchange Securities for a portion of the Debentures held by the Trust and the Property Trustee shall, upon receipt of such notice, deliver to the Conversion Agent the appropriate principal amount of Debentures for exchange in accordance with this Section 5. The Conversion Agent shall thereupon notify the Depositor of the Holder's election to convert such Debentures into shares of Common Stock. Holders of Securities at the close of business on a Distribution record date will be entitled to receive the Distribution payable on such Securities on the corresponding Distribution payment date notwithstanding the conversion of such Securities following such record date but prior to such distribution payment date. Except as provided above, neither the Trust nor the Depositor will make, or be required to make, any payment, allowance or

adjustment upon any conversion on account of any accumulated and unpaid Distributions accrued on the Securities, whether or not in arrears, (including any Additional Amounts accrued thereon) surrendered for conversion, or on account of any accumulated and unpaid dividends on the shares of Common Stock issued upon such conversion, except to the extent that such shares are held of record on the record date for any such Distributions. Securities shall be deemed to have been converted immediately prior to the close of business on the day on which a Notice of Conversion relating to such Securities is received by the Trust in accordance with the foregoing provision (the "Conversion Date"). The Person or Persons entitled to receive the Common Stock issuable upon conversion of the Debentures shall be treated for all purposes as the record holder or holders of such Common Stock at such time. As promptly as practicable on or after the Conversion Date, the Depositor shall issue and deliver at the office of the Conversion Agent a certificate or certificates for the number of full shares of Common Stock issuable upon such conversion, together with the cash payment, if any, in lieu of any fraction of any share to the Person or Persons entitled to receive the same, unless otherwise directed by the Holder in the notice of conversion and the Conversion Agent shall distribute such certificate or certificates to such Person or Persons.

(c) Each Holder of a Security by his acceptance thereof appoints The Bank of New York "Conversion Agent" for the purpose of effecting the conversion of Securities in accordance with this Section 5. In effecting the conversion and transactions described in this Section 5, the Conversion Agent shall be acting as agent of the Holders of Securities directing it to effect such conversion transactions. The Conversion Agent is hereby authorized (i) to exchange Securities from time to time for Debentures held by the Trust in connection with the conversion of such Securities in accordance with this Section 5 and (ii) to convert all or a portion of the Debentures into Common Stock and thereupon to deliver such shares of Common Stock in accordance with the provisions of this Section and to deliver to the Trust a new Debenture or Debentures for any resulting unconverted principal amount.

(d) No fractional shares of Common Stock will be issued as a result of conversion, but in lieu thereof, such fractional interest will be paid in cash by the Depositor to the Trust, which in turn will make such payment to the Holder or Holders of Securities so converted.

(e) The Depositor shall at all times reserve and keep available out of its authorized and unissued Common Stock, solely for issuance upon the conversion of the Debentures, free from any preemptive or other similar rights, such number of shares of Common Stock as shall from time to time be issuable upon the conversion of all the Debentures then outstanding. Notwithstanding the foregoing, the Depositor

shall be entitled to deliver upon conversion of Debentures, shares of Common Stock reacquired and held in the treasury of the Depositor (in lieu of the issuance of authorized and unissued shares of Common Stock), so long as any such treasury shares are free and clear of all liens, charges, security interests or encumbrances. Any shares of Common Stock issued upon conversion of the Debentures shall be duly authorized, validly issued and fully paid and nonassessable. The Property Trustee shall deliver the shares of Common Stock received upon conversion of the Debentures to the converting Holder free and clear of all liens, charges, security interests and encumbrances, except for United States withholding taxes. Each of the Depositor and the Administrative Trustees on behalf of the Trust shall prepare and shall use its best efforts to obtain and keep in force such governmental or regulatory permits or other authorizations as may be required by law, and shall comply with all applicable requirements as to registration or qualification of the Common Stock (and all requirements to list the Common Stock issuable upon conversion of Debentures that are at the time applicable), in order to enable the Depositor to lawfully issue Common Stock to the Trust upon conversion of the Debentures and the Trust to lawfully deliver the Common Stock to each Holder upon conversion of the Securities.

(f) The Depositor will pay any and all taxes that may be payable in respect of the issue or delivery of shares of Common Stock on conversion of Debentures and the delivery of the shares of Common Stock by the Trust upon conversion of the Securities. The Depositor shall not, however, be required to pay any tax which may be payable in respect of any transfer involved in the issue and delivery of shares of Common Stock in a name other than that in which the Securities so converted were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Trust the amount of any such tax, or has established to the satisfaction of the Trust that such tax has been paid.

(g) Nothing in the preceding Paragraph (f) shall limit the requirement of the Trust to withhold taxes pursuant to the terms of the Securities set forth in this Annex I to the Declaration or in the Declaration itself or otherwise require the Property Trustee or the Trust to pay any amounts on account of such withholdings.

## 6. Voting Rights - Preferred Securities.

(a) Except as provided under paragraphs 6(b) and 8, as otherwise required by law, the Declaration and the Indenture, the Holders of the Preferred Securities will have no voting rights.

(b) In addition to the rights of the Holders of the Preferred Securities with respect to the enforcement of payment of principal and interest on the Debentures set

forth herein, in the Declaration or in the Indenture, if (i) a Debenture Event of Default occurs and is continuing or (ii) the Depositor defaults under the Preferred Securities Guarantee (each of (i) and (ii) being an "Appointment Event"), then the Holders of the Preferred Securities, acting as a single class, will be entitled by the vote of a Majority in liquidation amount of the Preferred Securities to appoint a Special Trustee in accordance with Section 5.06(a)(ii)(B) of the Declaration. Any Holder of Preferred Securities (other than the Depositor, or any entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Depositor) will be entitled to nominate any Person to be appointed as Special Trustee. Not later than 30 days after such right to appoint a Special Trustee arises, the Trustees (other than the Delaware Trustee) will convene a meeting for the purpose of appointing a Special Trustee. If the Trustees fail to convene such meeting within such 30-day period, the Holders of not less than 10% in aggregate liquidation amount of the Preferred Securities will be entitled to convene such meeting in accordance with Section 12.02 of the Declaration. The record date for such meeting will be the close of business on the Business Day that is one Business Day before the day on which notice of the meeting is sent to the Holders. The provisions of the Declaration relating to the convening and conduct of the meetings of the Holders will apply with respect to any such meeting.

Any Special Trustee so appointed shall cease to be a Special Trustee if the Appointment Event pursuant to which the Special Trustee was appointed and all other Appointment Events cease to be continuing. A Special Trustee may be removed without cause at any time by vote of the Holders of a Majority in liquidation amount of the Preferred Securities at a meeting of the Holders of the Preferred Securities in accordance with Section 5.06(ii)(B) of the Declaration. The Holders of 10% in liquidation amount of the Preferred Securities will be entitled to convene such a meeting in accordance with Section 12.02 of the Declaration. The record date for such meeting will be the close of business on the Business Day which is one Business Day before the day on which the notice of meeting is sent to Holders. Notwithstanding the appointment of a Special Trustee, the Depositor shall retain all rights under the Indenture, including the right to defer payments of interest by extending the interest payment period on the Debentures.

Subject to the requirements set forth in this paragraph and as long as the Debentures are held by the Trust, the Holders of a majority in liquidation amount of the outstanding Preferred Securities, voting separately as a class may, and the Trustees shall not, without obtaining the prior approval of the Holders of a Majority in aggregate liquidation amount of all Preferred Securities (i) direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee under the Indenture, or executing any trust or power conferred upon the Property Trustee with respect to the Debentures, (ii) waive any past default and its conse-

quences that is waivable under Section 5.14 of the Indenture or otherwise, (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable or (iv) consent to any amendment, modification or termination of the Indenture or the Debentures, where such consent shall be required, provided, however, that, where a consent under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of Debentures affected thereby (a "Super Majority"), the Property Trustee may only give such consent or take such action at the direction of the Holders of at least the proportion in liquidation preference of the Preferred Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. The Property Trustee shall not, and none of the other Trustees shall in any event, revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities, except by a subsequent vote of the Holders of the Preferred Securities. Other than with respect to directing the time, method and place of conducting any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Preferred Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel experienced in such matters to the effect that, as a result of such action, the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes.

If an Event of Default under the Declaration has occurred and is continuing and such event is attributable to the failure of the Debenture Issuer to pay interest or principal on the Debentures on the date such interest or principal is otherwise payable (or in the case of redemption on the redemption date), then a Holder of Preferred Securities may directly institute a legal proceeding, subject to the terms of the Indenture (including the subordination provisions set forth in Article XII thereof), for enforcement of payment to such Holder (a "Direct Action") of the principal of or interest on the Debentures having a principal amount equal to the aggregate liquidation amount of the Preferred Securities of such Holder on or after the respective due date specified in the Debentures. Except as provided in the preceding sentence, the Holders of Preferred Securities will not be able to exercise directly any other remedy available to the Holders of the Debentures. In connection with any Direct Action, the Holder of the Common Securities will be subrogated to the rights of such Holder of Preferred Securities under the Declaration to the extent of any payment made by the Debenture Issuer to such Holder of Preferred Securities in such Direct Action. In addition, if the Property Trustee fails to enforce its rights under the Debentures (other than rights arising from an Event of Default described in the immediately preceding sentence) after any Holder of Preferred Securities shall have made a written request to the Property Trustee to enforce such rights, such Holder of Preferred Securities may, to the fullest extent permitted by law, institute a direct action on behalf of the Trust to

enforce the rights of the Debenture Trustee, the Property Trustee or any other Person in accordance with the terms of the Indenture or the Declaration, as the case may be.

Any approval or direction of Holders of Preferred Securities may be given at a separate meeting of Holders of Preferred Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent. The Administrative Trustees will cause a notice of any meeting at which Holders without prior notice of Preferred Securities are entitled to vote, to be mailed to each Holder of record of Preferred Securities. Each such notice will include a statement setting forth the following information (i) the date of such meeting, (ii) a description of any resolution proposed for adoption at such meeting on which such Holders are entitled to vote and (iii) instructions for the delivery of proxies or consents.

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

Notwithstanding that Holders of Preferred Securities are entitled to vote or consent under any of the circumstances described above, any of the Preferred Securities that are owned by the Depositor, the Trustees or any Affiliate of the Depositor or the Trustee shall not be entitled to vote or consent and shall, for purposes of such vote or consent, be treated as if they were not outstanding, except that for the purposes of determining whether the Property Trustee shall be fully protected in relying on any such direction, waiver or consent, only Securities which the Property Trustee knows are so owned shall be so disregarded.

#### 7. Voting Rights - Common Securities.

(a) Except as provided under paragraphs 7(b), (c) and 8, in the Business Trust Act and as otherwise required by law and the Declaration, the Holders of the Common Securities will have no voting rights.

(b) The Holders of the Common Securities are entitled, in accordance with Article V of the Declaration, to vote to appoint, remove or replace any Trustee, subject to the exclusive right of the Holders of the Preferred Securities to appoint, remove or replace a Special Trustee unless a Debenture Event of Default shall have occurred and be continuing, in which event the Property Trustee and the Delaware Trustee may only be removed by the Holders of a Majority in liquidation amount of the Preferred Securities, voting as a class at a meeting of the Holders of the Preferred Securities; and

(c) Subject to Section 2.06 of the Declaration and only after the Event of Default with respect to the Preferred Securities has been cured, waived, or otherwise eliminated and subject to the requirements of the second to last sentence of this paragraph, the Holders of a Majority in liquidation amount of the Common Securities, voting separately as a class, may direct the time, method, and place of conducting any proceeding for any remedy available to the Property Trustee, or exercising any trust or power conferred upon the Property Trustee under the Declaration, including (i) directing the time, method, place of conducting any proceeding for any remedy available to the Debenture Trustee, or exercising any trust or power conferred on the Debenture Trustee with respect to the Debentures, (ii) waive any past default and its consequences that is waivable under Section 5.14 of the Indenture, or (iii) exercise any right to rescind or annul a declaration that the principal of all the Debentures shall be due and payable, provided that, where a consent or action under the Indenture would require the consent or act of the Holders of greater than a majority in principal amount of Debentures affected thereby (a "Super Majority"), the Property Trustee may only give such consent or take such action at the direction of the Holders of at least the proportion in liquidation amount of the Common Securities which the relevant Super Majority represents of the aggregate principal amount of the Debentures outstanding. Pursuant to this paragraph 7(c), the Property Trustee shall not revoke any action previously authorized or approved by a vote of the Holders of the Preferred Securities, except by a subsequent vote of the Holders of the Preferred Securities. Other than with respect to directing the time, method and place of conducting any remedy available to the Property Trustee or the Debenture Trustee as set forth above, the Property Trustee shall not take any action in accordance with the directions of the Holders of the Common Securities under this paragraph unless the Property Trustee has obtained an opinion of tax counsel to the effect that, as a result of such action the Trust will not fail to be classified as a grantor trust for United States federal income tax purposes. If the Property Trustee fails to enforce its rights under the Debentures after any Holder of Common Securities shall have made a written request to the Property Trustee to enforce such rights, such Holder of Common Securities may, to the fullest extent permitted by law, institute a legal proceeding directly against the Depositor, to enforce the Property Trustee's rights, as holder of the Debentures, under the Indenture, without first instituting any legal proceeding against the Property Trustee or any other Person.

Any approval or direction of Holders of Common Securities may be given at a separate meeting of Holders of Common Securities convened for such purpose, at a meeting of all of the Holders of Securities in the Trust or pursuant to written consent without prior notice. The Administrative Trustees will cause a notice of any meeting at which Holders of Common Securities are entitled to vote to be mailed to each Holder of record of Common Securities. Each such notice will include a statement setting forth (i) the date of such meeting, (ii) a description of any resolution proposed

for adoption at such meeting on which such Holders are entitled to vote and  
(iii) instructions for the delivery of proxies.

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

#### 8. Amendments to Declaration and Indenture.

(a) In addition to any requirements under Section 12.01 of the Declaration, if any proposed amendment to the Declaration provides for, or the Administrative Trustees otherwise propose to effect, (i) any action that would adversely affect the powers, preferences or rights of the Securities, whether by way of amendment to the Declaration or otherwise, or (ii) the dissolution, winding-up or termination of the Trust, other than as described in Section 8.01 of the Declaration, then the Holders of outstanding Securities will be entitled to vote on such amendment or proposal (but not on any other amendment or proposal) and such amendment or proposal shall not be effective except with the approval of the Holders of at least a Majority in liquidation amount of the Securities, voting together as a single class, provided, however, that, the rights of Holders of Preferred Securities under Article V of the Declaration to appoint, remove or replace a Special Trustee shall not be amended without the consent of each Holder of Preferred Securities; and provided further that if any amendment or proposal referred to in clause (i) above would adversely affect only the Preferred Securities or only the Common Securities, then only the affected class will be entitled to vote on such amendment or proposal and such amendment or proposal shall not be effective except with the approval of at least a Majority in liquidation amount of such class of Securities.

(b) In the event the consent of the Property Trustee as the holder of the Debentures is required under the Indenture with respect to any amendment, modification or termination of the Indenture or the Debentures, the Property Trustee shall request the direction of the Holders of the Securities with respect to such amendment, modification or termination and shall vote with respect to such amendment, modification or termination as directed by at least the same proportion in aggregate stated liquidation preference of the Securities; provided, however, that the Property Trustee shall not take any action in accordance with the directions of the Holders of the Securities under this paragraph 8(b) unless the Property Trustee has obtained an opinion of tax counsel to the effect that for the purposes of United States federal income tax the Trust will not be classified as other than a grantor trust on account of such action.

## 9. Pro Rata.

A reference in these terms of the Securities to any payment, Distribution or treatment as being "Pro Rata" shall mean pro rata to each Holder of Securities according to the aggregate liquidation amount of the Securities held by the relevant Holder in relation to the aggregate liquidation amount of all Securities outstanding unless, on any Distribution Date or redemption date an Event of Default under the Declaration has occurred and is continuing, in which case no payment of any Distribution on, or amount payable upon redemption of, any Common Security, and no other payment on account of the redemption, liquidation or other acquisition of Common Securities, shall be made unless payment in full in cash of all accumulated and unpaid Distributions on all outstanding Preferred Securities for all Distribution periods terminating on or prior thereto, or in the case of payment of the amount payable upon redemption of the Preferred Securities, the full amount of such amount in respect of all outstanding Preferred Securities shall have been made or provided for, and all funds available to the Property Trustee shall first be applied to the payment in full in cash of all Distributions on, or the amount payable upon redemption of Preferred Securities then due and payable.

## 10. Ranking.

The Preferred Securities rank pari passu and payment thereon shall be made Pro Rata with the Common Securities except that, where a Debenture Event of Default occurs and is continuing in respect of the Debentures held by the Property Trustee, the rights of Holders of the Common Securities to payment in respect of Distributions and payments upon liquidation, redemption and otherwise are subordinated to the rights to payment of the Holders of the Preferred Securities.

## 11. Acceptance of Securities Guarantee and Indenture.

Each Holder of Preferred Securities and Common Securities, by the acceptance thereof, agrees to the provisions of the Preferred Securities Guarantee and the Common Securities Guarantee, respectively, including the subordination provisions therein, and to the provisions of the Indenture including the subordination provisions therein, which are each incorporated by reference herein and which include, among other things, provisions relating to certain rights of the Holders of the Preferred Securities all as set forth therein.

## 12. No Preemptive Rights.

The Holders of the Securities shall have no preemptive or similar rights to subscribe for any additional securities.

13. Registration Rights.

The Holders of the Preferred Securities shall have all the rights and obligations set forth in the Registration Rights Agreement.

14. Miscellaneous.

These terms constitute a part of the Declaration.

The Depositor will provide a copy of the Declaration, the Preferred Securities Guarantee or the Common Securities Guarantee, as may be appropriate, and the Indenture to a Holder without charge on written request to the Depositor at its principal place of business.

**EXHIBIT A-1**

**FORM OF**

**PREFERRED SECURITY**

**[FORM OF FACE OF SECURITY]**

[Include the following Restricted Securities Legend on all Rule 144A Global Preferred Securities unless otherwise determined by the Depositor in accordance with applicable law -- EACH OF THE PREFERRED SECURITIES (OR ITS PREDECESSOR) WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933 (THE "SECURITIES ACT"), AND EACH OF THE PREFERRED SECURITIES AND ANY DEBENTURES ISSUED UPON EXCHANGE FOR THE PREFERRED SECURITIES REPRESENTED HEREBY AND ANY COMMON STOCK ISSUABLE UPON CONVERSION THEREOF MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. EACH PURCHASER OF EACH OF THE PREFERRED SECURITIES IS HEREBY NOTIFIED THAT THE SELLER OF EACH OF THE PREFERRED SECURITIES 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 PREFERRED SECURITY AGREES FOR THE BENEFIT OF THE ISSUER AND THE COMPANY THAT (A) PREFERRED SECURITY AND ANY DEBENTURES OR COMMON STOCK ISSUABLE UPON CONVERSION HEREOF MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (i) 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) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT PROVIDED BY RULE 144 THEREUNDER (IF AVAILABLE) OR (iii) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT, IN EACH OF CASES (i) THROUGH (iii) 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 PUR-

**CHASER OF EACH OF THE PREFERRED SECURITIES FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE.]**

[Include if Preferred Security is in global form and The Depository Trust Company is the Depository -- UNLESS THIS CERTIFICATE IS PRESENTED BY AN

AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE TRUST OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR 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 INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.]

[Include if Preferred Security is in global form -- TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE DECLARATION REFERRED TO BELOW.]

Certificate Number  
Number of Preferred Securities Aggregate Liquidation Value \$

**CUSIP NO.** \_\_\_\_\_

Preferred Securities  
of  
Calpine Capital Trust II

**Remarketable Term Income Deferrable Equity Securities (HIGH TIDES)\_\***  
(liquidation amount \$50 per HIGH TIDE)

Calpine Capital Trust II, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_ (the "Holder") is the registered owner of preferred securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the Remarketable Term Income Deferrable Equity Securities (HIGH TIDES)\_\*(liquidation amount \$50 per HIGH TIDE) (the "Preferred Securities"). Subject to the restrictions set forth in the Declaration (as defined below), the Preferred Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Preferred Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of January 31, 2000, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Preferred Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Holder is entitled to the benefits of the Preferred Securities Guarantee to the extent provided therein. The Depositor will provide a copy of the Declaration, the Preferred Securities Guarantee and the Indenture to a Holder without charge upon written request to the Trust at its principal place of business.

Reference is hereby made to select provisions of the Preferred Securities set forth on the reverse hereof, which select provisions shall for all purposes have the same effect as if set forth at this place.

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\* The terms Remarketable Term Income Deferrable Equity Securities (HIGH TIDES)\_ and HIGH TIDES\_ are registered servicemarks of Credit Suisse First Boston Corporation.

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

By acceptance, the Holder agrees to treat, for United States federal income tax purposes, the Debentures as indebtedness and the Preferred Securities as evidence of indirect beneficial ownership in the Debentures.

Unless the Property Trustee's (or its authorized designee's) Certificate of Authentication hereon has been properly executed, these Preferred Securities shall not be entitled to any benefit under the Declaration or be valid or obligatory for any purpose.

A-1-4

IN WITNESS WHEREOF, the Trust has executed this certificate this \_\_\_\_ day of \_\_\_\_\_, 2000.

**Calpine Capital Trust II**

By:

Name:

Title: Administrative Trustee

[CONTINUED ON NEXT PAGE]

A-1-5

**PROPERTY TRUSTEE'S CERTIFICATE OF AUTHENTICATION**

This is one of the Preferred Securities referred to in the within-mentioned Declaration.

Dated: \_\_\_\_\_, 2000

The Bank of New York, as Property Trustee

By:

**Authorized Signatory**

A-1-6

## **[FORM OF REVERSE OF SECURITY]**

Distributions payable on each Preferred Security will accrue at the Applicable Rate applied to the stated liquidation amount of \$50 per Preferred Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. The Applicable Rate will be 5 1/2% per annum (the "Initial Rate") from the date of original issuance of the Securities to be excluding the Reset Date, and the Term Rate from the Reset Date and thereafter. The Term Rate will be the rate established by the Remarketing Agent to be effective on the Reset Date. The Applicable Rate will be increased by 0.50% per annum during the continuation of a Registration Default. Distributions in arrears for more than one quarter will bear interest thereon compounded quarterly at the Applicable Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes such quarterly Distributions, additional Distributions on quarterly Distributions not paid on the applicable Distribution Date and Additional Amounts, as applicable. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, Distributions on the Preferred Securities will be cumulative, will accrue from January 31, 2000 and will be payable quarterly in arrears on February 1, May 1, August 1 and November 1, of each year (except as provided below), commencing on May 1, 2000 to Holders of record at the close of business on the fifteenth day of the month immediately preceding the applicable payment date, which payment dates shall correspond to the interest payment dates (each an "Interest Payment Date") on the Debentures. The Reset Date is any date (1) not later than February 1, 2005 (or, if such day is not a Business Day, the next succeeding Business Day), and (2) not earlier than 70 Business Days prior to February 1, 2005, as may be determined by the Remarketing Agent, in its sole discretion, for settlement of a successful remarketing. The fifteenth day of the month immediately preceding each Distribution Date is the record date for determining which holders of Preferred Securities shall be paid the Distributions and Additional Amounts, if any, payable on such Distribution Date. If the Reset Date is prior to the record date for the immediately following Distribution Date, then Distributions and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Distribution Date shall be paid on such Distribution Date to the person in whose name each Preferred Security is registered on the relevant record date, subject

to our right to initiate a Deferral Period. If the Reset Date is on or after the record date for the immediately following Distribution Date, then (1) Distributions and Additional Amounts, if any, accrued from and after the record date to but excluding the Reset Date shall be paid on the immediately following Distribution Date to the person in whose name each Preferred Security is registered on the relevant record date and (2) Distributions and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Distribution Date shall be paid on the second Distribution Date immediately following the Reset Date to the person in whose name each Preferred Security is registered on the relevant record date for such second Distribution Date, subject in each case to our right to initiate a Deferral Period. So long as no Debenture Event of Default has occurred and is continuing, the Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each a "Deferral Period") and, as a consequence of such deferral, Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Applicable Rate compounded quarterly during any such Deferral Period. Prior to the termination of any such Deferral Period, the Debenture Issuer may further extend such Deferral Period; provided that such Deferral Period together with all such previous and further deferrals thereof may not exceed 20 consecutive quarters or extend beyond (i) the maturity (whether at the stated maturity or by declaration of acceleration, call for redemption or otherwise) of the Debentures under the Indenture or (ii) in the case of a Deferral period which begins prior to the Reset Date, the Reset Date. Payments of accrued Distributions will be payable on an Interest Payment Date elected by the Company to Holders as they appear on the books and records of the Trust on the record date for such Interest Payment Date. Upon the termination of any Deferral Period and the payment of all amounts then due, the Debenture Issuer may commence a new Deferral Period, subject to the above requirements.

The Preferred Securities shall be redeemable as provided in the Declaration.

The Preferred Securities shall be convertible into shares of Common Stock, through (i) the exchange of Preferred Securities for a portion of the Debentures and (ii) the immediate conversion of such Debentures into Common Stock, in the manner and according to the terms set forth in the Declaration.

[Include if the Preferred Security contains a Restricted Securities Legend -- Holders of Restricted Preferred Securities shall have all the rights and obligations set forth in the Registration Rights Agreement.]

## **CONVERSION REQUEST**

To: The Bank of New York,  
as Property Trustee of  
Calpine Capital Trust II

The undersigned owner of these Preferred Securities hereby irrevocably exercises the option to convert these Preferred Securities, or the portion below designated, into Common Stock (as such term is defined in the Indenture, dated January 31, 2000, between Calpine Corporation and The Bank of New York, as Debenture Trustee) of CALPINE CORPORATION in accordance with the terms of the Amended and Restated Declaration of Trust (as amended from time to time, the "Declaration"), dated as of January 31, 2000, by Peter Cartwright, Ann B. Curtis and Thomas R. Mason, as Administrative Trustees, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, Calpine Corporation, as Depositor and Debenture Issuer, and by the Holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to the Declaration. Pursuant to the aforementioned exercise of the option to convert these Preferred Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Declaration) to (i) exchange such Preferred Securities for a portion of the Debentures (as that term is defined in the Declaration) held by the Trust (at the rate of exchange specified in the terms of the Securities set forth as Annex I to the Declaration) and (ii) immediately convert such Debentures on behalf of the undersigned, into Common Stock (at the conversion rate specified in the terms of the Securities set forth as Annex I to the Declaration).

The undersigned does also hereby direct the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Any holder, upon the exercise of its conversion rights in accordance with the terms of the Declaration and the Preferred Securities, agrees to be bound by the terms of the Registration Rights Agreement relating to Common Stock issuable upon conversion of the Preferred Securities.

Date: \_\_\_\_\_, \_\_\_\_\_  
in whole    in part

Number of Preferred Securities to be converted:

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If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Common Stock are to be issued, along with the address or addresses of such person or persons

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**Signature (for conversion only)**

Please Print or Typewrite Name and Address,  
Including Zip Code, and Social Security or  
Other Identifying Number

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Signature Guarantor:\*\*

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\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

## ASSIGNMENT

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

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

(Insert address and zip code of assignee)

and irrevocably appoints

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

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

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

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

Signature Guarantor:\*\*\* \_\_\_\_\_

## **CERTIFICATE TO BE DELIVERED UPON EXCHANGE OR REGISTRATION OF RESTRICTED PREFERRED SECURITIES**

\*\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

This certificate relates to \_\_\_\_\_ Preferred Securities held in (check applicable space) \_\_\_\_\_ book-entry or \_\_\_\_\_ definitive form by the undersigned.

(A) The undersigned (check one box below):

[ ] has requested the Property Trustee by written order to deliver in exchange for its beneficial interest in the Rule 144A Global Preferred Security held by the Depositary a Preferred Security or Preferred Securities in definitive, registered form in such number equal to its beneficial interest in such Rule 144A Global Preferred Security (or the number thereof indicated above); or

[ ] has requested the Property Trustee by written order to exchange its Preferred Security in definitive registered form for an interest in the Rule 144A Global Preferred Security held by the Depositary in such number equal to number of Preferred Securities in definitive registered form so held; or

[ ] has requested the Property Trustee by written order to exchange or register the transfer of a Preferred Security or Preferred Securities.

(B) The undersigned confirms that such Securities are being (check one box below):

- (1) [ ] acquired for the undersigned's own account, without transfer (in satisfaction of Section 9.02(c)(ii)(A) of the Declaration); or
- (2) [ ] transferred pursuant to and in compliance with Rule 144A under the Securities Act of 1933; or
- (3) [ ] transferred pursuant to Rule 144 of the Securities Act of 1933; or
- (4) [ ] transferred pursuant to an effective registration statement under the Securities Act.

Unless one of the boxes in (B) above is checked, the Property Trustee will refuse to register any of the Preferred Securities evidenced by this certificate in the name of any person other than the registered Holder thereof; provided, however, that if box (2) or (3) is checked, the Property Trustee may require, prior to registering any such transfer of the Preferred Securities such legal opinions, certifications and other information as the Trust has reasonably requested 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 of 1933, such as the exemption provided by Rule 144 under such Act.

**Signature**

Signature Guarantee:\*\*\*\*

Signature must be guaranteed Signature

**TO BE COMPLETED BY PURCHASER IF (2) ABOVE IS CHECKED.**

The undersigned represents and warrants that it is purchasing these Preferred Securities for its own account or an account with respect to which it exercises sole investment discretion and that it and any such account is a "qualified institutional buyer" within the meaning of Rule 144A under the Securities Act of 1933, and is aware that the sale to it is being made in reliance on Rule 144A and acknowledges that it has received such information regarding the Trust as the undersigned has requested pursuant to Rule 144A or has determined not to request such information and that it is aware that the transferor is relying upon the undersigned's foregoing representations in order to claim the exemption from registration provided by Rule 144A.

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\*\*\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

Dated:

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NOTICE: To be executed by an  
executive officer

**EXHIBIT A-2**

**FORM OF  
COMMON SECURITY**

**[FORM OF FACE OF SECURITY]**

**[THIS COMMON SECURITY HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF**

**1933 AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT PURSUANT TO AN EXEMPTION FROM REGISTRATION OR AN EFFECTIVE REGISTRATION STATEMENT.]**

**[OTHER THAN AS PROVIDED IN THE DECLARATION (AS DEFINED HEREIN), THIS**

**SECURITY MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT TO A RELATED PARTY (AS DEFINED IN THE DECLARATION) OF CALPINE CORPORATION]**

Certificate Number	Number of Common Securities
	Common Securities of Calpine Capital Trust II

**HIGH TIDES Common Securities**  
(liquidation amount \$50 per HIGH TIDES Common Security)

Calpine Capital Trust II, a statutory business trust created under the laws of the State of Delaware (the "Trust"), hereby certifies that \_\_\_\_\_ (the "Holder") is the registered owner of common securities of the Trust representing undivided beneficial interests in the assets of the Trust designated the HIGH TIDES Common Securities (liquidation amount \$50 per Remarketable Common Security) (the "Common Securities"). Subject to the restrictions set forth in the Declaration (as defined below), the Common Securities are transferable on the books and records of the Trust, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designation, rights, privileges, restrictions, preferences and other terms and provisions of the Common Securities represented hereby are issued and shall in all respects be subject to the provisions of the Amended and Restated Declaration of Trust of the Trust, dated as of January 31, 2000, as the same may be amended from time to time (the "Declaration"), including the designation of the terms of the Common

Securities as set forth in Annex I to the Declaration. Capitalized terms used herein but not defined shall have the meaning given them in the Declaration. The Depositor will provide a copy of the Declaration and the Indenture to a Holder without charge upon written request to the Depositor at its principal place of business.

Reference is hereby made to select provisions of the Common Securities set forth on the reverse hereof, which select provisions shall for all purposes have the same effect as if set forth at this place.

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

By acceptance, the Holder agrees to treat for United States federal income tax purposes the Debentures as indebtedness and the Common Securities as evidence of indirect beneficial ownership in the Debentures.

A-2-2

IN WITNESS WHEREOF, the Trust has executed this certificate this day of \_\_\_\_\_, 20\_\_.

**Calpine Capital Trust II**

By:

Name:

Title: Administrative Trustee

A-2-3

## **[FORM OF REVERSE OF SECURITY]**

Distributions payable on each Common Security will accrue at the Applicable Rate applied to the stated liquidation amount of \$50 per Common Security, such rate being the rate of interest payable on the Debentures to be held by the Property Trustee. The Applicable Rate will be 5% per annum (the "Initial Rate") from the date of original issuance of the Securities to be excluding the Reset Date, and the Term Rate from the Reset Date and thereafter. The Term Rate will be the rate established by the Remarketing Agent to be effective on the Reset Date. Distributions in arrears for more than one quarter will bear interest thereon compounded quarterly at the Applicable Rate (to the extent permitted by applicable law). The term "Distributions" as used herein includes quarterly Distributions, additional Distributions on quarterly Distributions not paid on the applicable Distribution Date and Additional Amounts, as applicable. A Distribution is payable only to the extent that payments are made in respect of the Debentures held by the Property Trustee and to the extent the Property Trustee has funds available therefor. The amount of Distributions payable for any period will be computed for any full quarterly Distribution period on the basis of a 360-day year of twelve 30-day months, and for any period shorter than a full quarterly Distribution period for which Distributions are computed, Distributions will be computed on the basis of the actual number of days elapsed per 30-day month.

Except as otherwise described below, Distributions on the Common Securities will be cumulative, will accrue from January 31, 2000 and will be payable quarterly in arrears on February 1, May 1, August 1 and November 1 of each year (except as provided below), commencing on May 1, 2000 to Holders of record at the close of business on the fifteenth day of the month immediately preceding the applicable payment date, which payment dates shall correspond to the interest payment dates (each, an "Interest Payment Date") on the Debentures. The Reset Date is any date (1) not later than February 1, 2005, or if the day is not a Business Day, the next succeeding Business Day, and (2) not earlier than 70 Business Days prior to February 1, 2005, as may be determined by the Remarketing Agent, in its sole discretion, for settlement of a successful remarketing. The fifteenth day of the month immediately preceding each Distribution Date is the record date for determining which holders of Common Securities shall be paid the Distributions and Additional Amounts, if any, payable on such Distribution Date. If the Reset Date is prior to the record date for the immediately following Distribution Date, then Distributions and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Distribution Date shall be paid on such Distribution Date to the person in whose name each Common Security is registered on the relevant record date, subject to our right to initiate a Deferral Period. If the Reset Date is on or after the record date for the immediately following Distribution Date, then (1) Distributions and Additional

Amounts, if any, accrued from and after the record date to but excluding the Reset Date shall be paid on the immediately following Distribution Date to the person in whose name each Common Security is registered on the relevant record date and (2) Distributions and Additional Amounts, if any, accrued from and after the Reset Date to but excluding the immediately following Distribution Date shall be paid on the second Distribution Date immediately following the Reset Date to the person in whose name each Common Security is registered on the relevant record date for such second Distribution Date, subject in each case to our right to initiate a Deferral Period. So long as no Debenture Event of Default has occurred and is continuing, the Debenture Issuer has the right under the Indenture to defer payments of interest by extending the interest payment period from time to time on the Debentures for a period not exceeding 20 consecutive quarters (each a "Deferral Period") and, as a consequence of such deferral, Distributions will also be deferred. Despite such deferral, quarterly Distributions will continue to accrue with interest thereon (to the extent permitted by applicable law) at the Applicable Rate compounded quarterly during any such Deferral Period. Prior to the termination of any such Deferral Period, the Debenture Issuer may further extend such Deferral Period; provided that such Deferral Period together with all such previous and further deferrals thereof may not exceed 20 consecutive quarters or extend beyond (i) the maturity (whether at the stated maturity or by declaration of acceleration, call for redemption or otherwise) of the Debentures under the Indenture or (ii) in the case of a Deferral Period which begins prior to the Reset Date, the Reset Date. Payments of accrued Distributions will be payable on an Interest Payment Date elected by the Company to Holders as they appear on the books and records of the Trust on the record date for such Interest Payment Date. Upon the termination of any Deferral Period and the payment of all amounts then due, the Debenture Issuer may commence a new Deferral Period, subject to the above requirements.

The Common Securities shall be redeemable as provided in the Declaration.

The Common Securities shall be convertible into shares of Common Stock, through (i) the exchange of Common Securities for a portion of the Debentures and (ii) the immediate conversion of such Debentures into Common Stock, in the manner and according to the terms set forth in the Declaration; provided that no Common Securities may be converted into Common Stock unless all outstanding Common Securities are converted into Common Stock, which conversion will result in the dissolution of the Trust.

## **CONVERSION REQUEST**

To: The Bank of New York,  
as Property Trustee of  
Calpine Capital Trust II

The undersigned owner of these Common Securities hereby irrevocably exercises the option to convert these Common Securities, or the portion below designated, into Common Stock (as such term is defined in the Indenture, dated January 31, 2000, between Calpine Corporation and The Bank of New York, as Debenture Trustee) of CALPINE CORPORATION in accordance with the terms of the Amended and Restated Declaration of Trust (as amended from time to time, the "Declaration"), dated as of January 31, 2000, by Peter Cartwright, Ann B. Curtis and Thomas R. Mason, as Administrative Trustees, The Bank of New York (Delaware), as Delaware Trustee, The Bank of New York, as Property Trustee, Calpine Corporation, as Depositor and Debenture Issuer, and by the Holders, from time to time, of undivided beneficial interests in the assets of the Trust to be issued pursuant to the Declaration. Pursuant to the aforementioned exercise of the option to convert these Common Securities, the undersigned hereby directs the Conversion Agent (as that term is defined in the Declaration) to (i) exchange such Common Securities for a portion of the Debentures (as that term is defined in the Declaration) held by the Trust (at the rate of exchange specified in the terms of the Securities set forth as Annex I to the Declaration) and (ii) immediately convert such Debentures on behalf of the undersigned, into Common Stock (at the conversion rate specified in the terms of the Securities set forth as Annex I to the Declaration).

The undersigned does also hereby direct the Conversion Agent that the shares issuable and deliverable upon conversion, together with any check in payment for fractional shares, be issued in the name of and delivered to the undersigned, unless a different name has been indicated in the assignment below. If shares are to be issued in the name of a person other than the undersigned, the undersigned will pay all transfer taxes payable with respect thereto.

Any holder, upon the exercise of its conversion rights in accordance with the terms of the Declaration and the Common Securities, agrees to be bound by the terms of the Registration Rights Agreement relating to Common Stock issuable upon conversion of the Common Securities.

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

in whole    in part

Number of Common Securities to be converted:

If a name or names other than the undersigned, please indicate in the spaces below the name or names in which the shares of Common Stock are to be issued, along with the address or addresses of such person or persons

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**Signature (for conversion only)**

Please Print or Typewrite Name and Address,  
Including Zip Code, and Social Security or  
Other Identifying Number

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Signature Guarantee:\*\*\*\*\*

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\*\*\*\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar,

which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

## ASSIGNMENT

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

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

(Insert address and zip code of assignee)

and irrevocably appoints

----- agent to transfer this Common Security Certificate on the books of the Trust. The agent may substitute another to act for him or her.

Date:

Signature:

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

Signature Guarantee:\*\*\*\*\* \_\_\_\_\_

\*\*\*\*\* (Signature must be guaranteed by an "eligible guarantor institution" that is, a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Registrar, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Registrar in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as

amended.)

**PREFERRED SECURITIES GUARANTEE AGREEMENT**

**BETWEEN**

**CALPINE CORPORATION**

**AND**

**THE BANK OF NEW YORK**

**DATED AS OF**

**JANUARY 31, 2000**

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**GUARANTEE AGREEMENT**, dated as of January 31, 2000, executed and delivered by Calpine Corporation, a Delaware corporation (the "Guarantor"), and The Bank of New York, a New York banking corporation, as trustee (the "Guarantee Trustee"), for the benefit of the Holders (as defined herein) from time to time of the HIGH TIDES (as defined herein) of Calpine Capital Trust II, a Delaware statutory business trust (the "Trust").

WHEREAS pursuant to an Amended and Restated Declaration of Trust (the "Declaration"), dated as of January 31, 2000, executed by the Guarantor, 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, the Trust is issuing \$300,000,000 (\$360,000,000 including the aggregate liquidation amount of its 5% Convertible Preferred Securities, Remarketable Term Income Deferred Equity Securities (HIGH TIDES), liquidation amount \$50 per security (the "HIGH TIDES") and \$9,278,400 (\$11,134,100 including the option) aggregate liquidation amount of its Common Securities, liquidation amount \$50 per security (the "Common Securities" and collectively with the HIGH TIDES, the "Trust Securities") representing undivided beneficial interests in the assets of the Trust and having the terms set forth in the Declaration;

WHEREAS the Trust Securities will be issued by the Trust and the proceeds thereof will be used to purchase the Convertible Subordinated Debentures due 2030 (the "Debentures") of the Guarantor which will be deposited with The Bank of New York as Property Trustee under the Declaration, as trust assets; and

WHEREAS as incentive for the Holders to purchase HIGH TIDES, the Guarantor desires irrevocably and unconditionally to agree, to the extent set forth herein, to pay to the Holders of the HIGH TIDES the Guarantee Payments (as defined herein) and to make certain other payments on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the purchase by each Holder of HIGH TIDES, which purchase the Guarantor hereby agrees shall benefit the Guarantor, the Guarantor executes and delivers this Guarantee Agreement for the benefit of the Holders from time to time of the HIGH TIDES.

## **ARTICLE I**

### **Definitions**

**SECTION 1.01. Definitions.** As used in this Guarantee Agreement, the terms set forth below shall, unless the context otherwise requires, have the following meanings. Capitalized or otherwise defined terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Declaration as in effect on the date hereof.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person; provided, however, that the Trust shall be deemed not to be an Affiliate of the Guarantor. For the purposes of this definition, "control" when used with respect to any specified Person means 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; the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Common Securities" shall have the meaning specified in the first recital of this Guarantee Agreement.

"Debt" means (i) the principal of and premium, if any, and unpaid interest on indebtedness for money borrowed, (ii) purchase money and similar obligations, (iii) obligations under capital leases, (iv) guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the Guarantor is responsible for the payment of such indebtedness of others, (v) renewals, extensions and refunding of any such indebtedness, (vi) interest or obligations in respect of any such indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings and  
(vii) net obligations associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts and similar arrangements.

"Declaration" shall have the meaning specified in the first recital to this Guarantee Agreement.

"Event of Default" means a default by the Guarantor on any of its payment or other obligations under this Guarantee Agreement; provided, however, that, except with respect to a default in payment of any Guarantee Payments, the Guarantor shall have received notice of default and shall not have cured such default within 60 days after receipt of such notice.

"Guarantee Payments" means the following payments or distributions, without duplication, with respect to the HIGH TIDES, to the extent not paid or made by or on behalf of the Trust: (i) any accrued and unpaid Distributions required to be paid on the HIGH TIDES, to the extent the Trust shall have funds on hand available therefor at such time, (ii) the applicable Redemption Price, with respect to the HIGH TIDES called for redemption by the Trust to the extent the Trust shall have funds on hand available therefor at such time, and (iii) upon a voluntary or involuntary dissolution, winding-up or liquidation of the Trust, unless Debentures are distributed to the Holders of the HIGH TIDES or all the HIGH TIDES are redeemed, the lesser of (a) the aggregate of the liquidation amount of \$50 per HIGH TIDES plus accrued and unpaid Distributions on the HIGH TIDES to the date of payment (the "Liquidation Distribution") to the extent the Trust shall have funds on hand available to make such payment at such time and (b) the amount of assets of the Trust remaining available for distribution to Holders of the HIGH TIDES upon liquidation of the Trust after satisfaction of liabilities to creditors of the Trust as required by applicable law.

"Guarantee Trustee" means The Bank of New York, a New York banking corporation, until a Successor Guarantee Trustee has been appointed and has accepted such appointment pursuant to the terms of this Guarantee Agreement and thereafter means each such Successor Guarantee Trustee.

"Guarantor" shall have the meaning specified in the first paragraph of this Guarantee Agreement.

"HIGH TIDES" shall have the meaning specified in the first recital of this Guarantee Agreement.

"Debentures" shall have the meaning specified in the second recital of this Guarantee Agreement.

"Holder" means any holder, as registered on the books and records of the Trust, of any HIGH TIDES; provided, however, that in determining whether the holders of the requisite percentage of HIGH TIDES have given any request, notice, consent or waiver hereunder, "Holder" shall not include the Guarantor, the Guarantee Trustee, or any Affiliate of the Guarantor or the Guarantee Trustee.

"Indenture" means the Indenture dated as of January 31, 1999 as amended or supplemented, between the Guarantor and The Bank of New York, as trustee, relating to the issuance of Debentures.

"List of Holders" has the meaning specified in Section 2.02(a).

"Majority in liquidation amount of the HIGH TIDES" means, except as provided in the terms of the HIGH TIDES or by the Trust Indenture Act, a vote by the Holder(s), voting separately as a class, of more than 50% of the aggregate liquidation amount (including the stated amount that would be paid on redemption, liquidation or otherwise, plus accrued and unpaid distributions to the date upon which the voting percentages are determined) of all then outstanding HIGH TIDES.

"Officers' Certificate" means, with respect to any Person, a certificate signed by the Chairman and Chief Executive Officer, President or a Vice President, and by the Treasurer, an Associate Treasurer, an Assistant Treasurer, the Controller, the Secretary or an Assistant Secretary of such Person, and delivered to the Guarantee Trustee. Any Officers' Certificate delivered with respect to compliance with a condition or covenant provided for in this Guarantee Agreement shall include:

- (a) a statement that each officer signing the Officers' Certificate has read the covenant or condition and the definitions relating thereto;
- (b) a brief statement of the nature and scope of the examination or investigation undertaken by each officer in rendering the Officers' Certificate;
- (c) a statement that each officer has made such examination or investigation as, in such officer's opinion, is necessary to enable such officer to

express an informed opinion as to whether or not such covenant or condition has been complied with; and

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

"Person" means a legal person, including any individual, corporation, estate, partnership, joint venture, association, joint stock company, limited liability company, trust, unincorporated association, or government or any agency or political subdivision thereof, or any other entity of whatever nature.

"Responsible Officer" when used with respect to the Guarantee Trustee means any officer assigned to the Corporate Trust Office, including any vice president, assistant vice president, assistant treasurer, assistant secretary or any other officer of the Guarantee Trustee customarily performing functions similar to those performed by any of the above designated officers, and having direct responsibility for the administration of this Guarantee Agreement, and also, with respect to a particular matter, any other officer to whom such matter is referred because of such officer's knowledge of and familiarity with the particular subject.

"Senior Debt" means (i) indebtedness evidenced by securities, debentures, bonds or other similar instruments issued by the Company, (ii) all obligations to make net payment pursuant to the terms of financial instruments, such as (a) securities contracts and foreign currency exchange contracts, (b) derivative instruments, such as swap agreements (including interest rate and foreign exchange rate swap agreements), cap agreements, floor agreements, collar agreements, interest rate agreements, foreign exchange agreements, options, commodity futures contracts and commodity options contracts, and (c) similar financial instruments; except, in the case of (i) above, such indebtedness and obligations that are expressly stated to rank junior in right of payment to, or pari passu in right of payment with, the Debentures, (iii) and indebtedness or obligations of others of the kind described in (i) and (ii) above for the payment of which the Company is responsible or liable as guarantor or otherwise and (iv) deferrals, renewals or extensions of any such Senior Debt; provided, however, that Senior Debt shall not be deemed to include (a) any Debt of the Company which, when incurred and without respect to any election under Section 1111(b) of the United States Bankruptcy Code of 1978, was without recourse to the Company, (b) trade accounts payable in the ordinary course of business, which will not constitute debt for purposes of the HIGH TIDES, (c) any Debt of the Company to any of its subsidiaries, except to the extent incurred for the benefit of third parties, (d) Debt to any employee of the Company and (e) Debt that expressly provides that it is not senior in right of payment to the HIGH TIDES.

"Successor Guarantee Trustee" means a successor Guarantee Trustee possessing the qualifications to act as Guarantee Trustee under Section 4.01.

"Trust" shall have the meaning specified in the first paragraph of this Guarantee Agreement.

"Trust Indenture Act" means the Trust Indenture Act of 1939 (15 U.S.C. Sections 77aaa-77bbbb), as amended, and the rules and regulations promulgated thereunder.

"Trust Securities" shall have the meaning specified in the first recital of this Guarantee Agreement.

## **ARTICLE II**

### **Trust Indenture Act**

**SECTION 2.01. Trust Indenture Act; Application.** (a) This Guarantee Agreement is, or upon qualification under the Trust Indenture Act will be, = subject to the provisions of the Trust Indenture Act that are required to be part of this Guarantee Agreement, which are incorporated by reference in and made part of this Guarantee Agreement and shall, to the extent applicable, be governed by such provisions. This Guarantee Agreement will not be qualified under the Trust Indenture Act except upon the effectiveness of the Shelf Registration Statement.

(b) Until such time as this Guarantee Agreement is qualified under the Trust Indenture Act, the parties hereto agree that the provisions of Sections 310-317, inclusive, of the Trust Indenture Act shall be incorporated herein by reference, subject to the provisions of this Guarantee Agreement and to the extent that any provision of this Guarantee Agreement limits, qualifies or conflicts with the duties imposed by Sections 310 to 317, inclusive, of the Trust Indenture Act, such imposed duties shall control.

**SECTION 2.02. Lists of Holders of Securities.** (a) The Guarantor shall provide the Guarantee Trustee (i) within 14 days after each record date for payment of Distributions, a list, in such form as the Guarantee Trustee may reasonably require, of the names and addresses of the Holders of the HIGH TIDES ("List of Holders") as of such record date, provided that the Guarantor shall not be obligated to provide such List of Holders at any time the List of Holders does not differ from the most recent List of Holders given to the Guarantee Trustee by the Guarantor on behalf of the Trust, and (ii) at any other time, within 30 days of receipt by the Trust of a written request for a List of Holders as of a date no more than 14 days before such List of Holders is given to the Guarantee Trustee.

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

**SECTION 2.03. Reports by the Guarantee Trustee.** Within 60 days after May 15 of each year, commencing May 15, 2000, the Guarantee Trustee shall provide to the Holders of the HIGH TIDES such reports as are required by Section 313 of the Trust Indenture Act, if any, in the form and in the manner provided by Section 313 of the Trust Indenture Act. The Guarantee Trustee shall also comply with the requirements of Section 313(d) of the Trust Indenture Act.

**SECTION 2.04. Periodic Reports to The Guarantee Trustee.** The Guarantor shall provide to the Guarantee Trustee such documents, reports and

information as required by Section 314 of the Trust Indenture Act (if any) and the compliance certificate required by Section 314 of the Trust Indenture Act in the form, in the manner and at the times required by Section 314 of the Trust Indenture Act.

**SECTION 2.05.** Evidence of Compliance with Conditions Precedent. The Guarantor shall provide to the Guarantee Trustee such evidence of compliance with such conditions precedent, if any, provided for in this Guarantee Agreement that relate to any of the matters set forth in Section 314(c) of the Trust Indenture Act. Any certificate or opinion required to be given by any officer pursuant to Section 314(c)(1) may be given in the form of an Officers' Certificate.

**SECTION 2.06.** Events of Default; Waiver. The Holders of a Majority in liquidation amount of the HIGH TIDES may, by vote, on behalf of all the Holders, waive any past Event of Default and its consequences. Upon such waiver, any such Event of Default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Guarantee Agreement, but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent therefrom.

**SECTION 2.07.** Event of Default; Notice. (a) The Guarantee Trustee shall, within 10 days after the occurrence of an Event of Default, transmit by mail, first class postage prepaid, to the Holders, notices of all Events of Default known to the Guarantee Trustee, unless such Events of Default have been cured before the giving of such notice; provided, that, except in the case of a default in the payment of a Guarantee Payment, the Guarantee Trustee shall be protected in withholding such notice if and so long as the Board of Directors, the executive committee or a trust committee of directors and/or Responsible Officers of the Guarantee Trustee in good faith determine that the withholding of such notice is in the interests of the Holders.

(b) The Guarantee Trustee shall not be deemed to have knowledge of any Event of Default unless a Responsible Officer of the Guarantee Trustee shall have received written notice of such Event of Default.

**SECTION 2.08.** Conflicting Interests. The Declaration shall be deemed to be specifically described in this Guarantee Agreement for the purposes of clause (i) of the first proviso contained in Section 310(b) of the Trust Indenture Act.

### **ARTICLE III**

#### Powers, Duties and Rights of the Guarantee Trustee

**SECTION 3.01. Powers and Duties of the Guarantee Trustee.** (a) This Guarantee Agreement shall be held by the Guarantee Trustee for the benefit of the Holders, and the Guarantee Trustee shall not transfer this Guarantee Agreement to any Person except a Holder exercising his or her rights pursuant to

Section 5.04(iv) or to a Successor Guarantee Trustee on acceptance by such Successor Guarantee Trustee of its appointment to act as Successor Guarantee Trustee. The right, title and interest of the Guarantee Trustee shall automatically vest in any Successor Guarantee Trustee, upon acceptance by such Successor Guarantee Trustee of its appointment hereunder, and such vesting and cessation of title shall be effective whether or not conveyancing documents have been executed and delivered pursuant to the appointment of such Successor Guarantee Trustee.

(b) If an Event of Default has occurred and is continuing, the Guarantee Trustee shall enforce this Guarantee Agreement for the benefit of the Holders.

(c) The Guarantee Trustee, before the occurrence of any Event of Default and after the curing of all Events of Default that may have occurred, shall undertake to perform only such duties as are specifically set forth in this Guarantee Agreement, and no implied covenants shall be read into this Guarantee Agreement against the Guarantee Trustee. In case an Event of Default has occurred (that has not been cured or waived pursuant to Section 2.06), the Guarantee Trustee shall exercise such of the rights and powers vested in it by this Guarantee Agreement, and use the same degree of care and skill in its exercise thereof, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

(d) No provision of this Guarantee Agreement shall be construed to relieve the Guarantee Trustee from liability for its own negligent action, its own negligent failure to act or its own wilful misconduct, except that:

(i) prior to the occurrence of any Event of Default and after the curing or waiving of all such Events of Default that may have occurred:

(A) the duties and obligations of the Guarantee Trustee shall be determined solely by the express provisions of this Guarantee Agreement, and the Guarantee Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Guarantee Agreement; and

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

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

(iii) the Guarantee Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of not less than a Majority in liquidation amount of the HIGH TIDES relating to the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee, or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and

(iv) no provision of this Guarantee Agreement shall require the Guarantee Trustee to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

SECTION 3.02. Certain Rights of Guarantee Trustee. (a) Subject to the provisions of Section 3.01:

(i) The Guarantee Trustee may conclusively rely and shall be fully protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document reasonably believed by it to be genuine and to have been signed, sent or presented by the proper party or parties.

(ii) Any direction or act of the Guarantor contemplated by this Guarantee Agreement shall be sufficiently evidenced by an Officers' Certificate unless otherwise prescribed herein.

(iii) Whenever, in the administration of this Guarantee Agreement, the Guarantee Trustee shall deem it desirable that a matter relating to compliance by the Guarantor with any of its obligations contained in this Guarantee Agreement be proved or established before taking, suffering or omitting to take any action hereunder, the Guarantee Trustee (unless other evidence is herein specifically prescribed) may, in the absence of bad faith on its part, request and conclusively rely upon an Officers' Certificate (with respect to the Guarantor) which, upon receipt of such request from the Guarantee Trustee, shall be promptly delivered by the Guarantor.

(iv) The Guarantee Trustee may consult with legal counsel of its selection, and the advice or opinion of such legal counsel with respect to legal matters shall be full and complete authorization and protection in respect of any action taken, suffered or omitted to be taken by it hereunder in good faith and in accordance with such advice or opinion. Such legal counsel may be legal counsel to the Guarantor or any of its Affiliates and may be one of its employees. The Guarantee Trustee

shall have the right at any time to seek instructions concerning the administration of this Guarantee Agreement from any court of competent jurisdiction.

(v) The Guarantee Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Guarantee Agreement at the request or direction of any Holder, unless such Holder shall have provided to the Guarantee Trustee such security and indemnity reasonably satisfactory to it, against the costs, expenses (including attorneys' fees and expenses) and liabilities that might be incurred by it in complying with such request or direction, including such reasonable advances as may be requested by the Guarantee Trustee; provided, that nothing contained in this Section 3.02(a)(v) shall be taken to relieve the Guarantee Trustee, upon the occurrence of an Event of Default, of its obligation to exercise the rights and powers vested in it by this Guarantee Agreement.

(vi) The Guarantee Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order, bond, debenture, note, other evidence of indebtedness or other paper or document, but the Guarantee Trustee, in its discretion, may make such further inquiry or investigation into such facts or matters as it may see fit.

(vii) The Guarantee Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder either directly or by or through its agents or attorneys, and the Guarantee Trustee shall not be responsible for any misconduct or negligence on the part of any such agent or attorney appointed with due care by it hereunder.

(viii) Whenever in the administration of this Guarantee Agreement the Guarantee Trustee shall deem it desirable to receive instructions with respect to enforcing any remedy or right or taking any other action hereunder, the Guarantee Trustee (A) may request instructions from the Holders, (B) may refrain from enforcing such remedy or right or taking such other action until such instructions are received and (C) shall be fully protected in acting in accordance with such instructions.

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

**SECTION 3.03. Indemnity.** The Guarantor agrees to indemnify the Guarantee Trustee and its directors, officers, agents and employees for, and to hold them harmless against, any and all loss, damage, claim, liability or expense incurred without negligence or bad faith on the part of the Guarantee Trustee, arising out of or in

connection with the acceptance or administration of this Guarantee Agreement, including the costs and expenses of defending itself against any claim or liability in connection with the exercise or performance of any of its powers or duties hereunder. The Guarantor shall be entitled to participate in the defense of any action arising hereunder and, to the extent it may wish, assume the defense thereof, with counsel satisfactory to the Guarantee Trustee (who shall not, except with the consent of the Guarantee Trustee, be counsel to Guarantor). Upon assuming such defense, the Guarantor shall not be liable for any legal or other expenses subsequently incurred by the Guarantee Trustee in connection with the defense thereof, other than reasonable costs of investigation. The Guarantor shall not, without the prior written consent of the Guarantee Trustee, effect any settlement of any pending or threatened action in respect of which the Guarantee Trustee is or could have been a party and indemnity could have been sought hereunder by the Guarantee Trustee unless such settlement (i) includes an unconditional release of the Guarantee Trustee from all liability on any claims that are the subject matter of such action and (ii) does not include a statement as to, or an admission of, fault, culpability or a failure to act by or on behalf of the Guarantee Trustee. The Guarantee Trustee will not claim or exact any lien or charge on any Guarantee Payments as a result of any amount due to it under this Guarantee Agreement. This indemnity shall survive the termination of this Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

**SECTION 3.04. Expenses.** The Guarantor shall from time to time reimburse the Guarantee Trustee for its expenses and costs incurred in connection with the performance of its duties hereunder. This reimbursement obligation shall survive the termination of this Guarantee Agreement or the resignation or removal of the Guarantee Trustee.

## **ARTICLE IV**

### **Guarantee Trustee**

**SECTION 4.01. Guarantee Trustee; Eligibility.** (a) There shall at all times be a Guarantee Trustee which shall:

- (i) not be an Affiliate of the Guarantor; and
  - (ii) be a Person that is eligible pursuant to the Trust Indenture Act to act as such and has a combined capital and surplus of at least \$50,000,000, and shall be a corporation meeting the requirements of Section 310(c) of the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of the supervising or examining authority, then, for the purposes of this Section and to the extent permitted by the Trust Indenture Act, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published.
- (b) If at any time the Guarantee Trustee shall cease to be eligible to so act under Section 4.01(a), the Guarantee Trustee shall immediately resign in the manner and with the effect set out in Section 4.02(c).

(c) If the Guarantee Trustee has or shall acquire any "conflicting interest" within the meaning of Section 310(b) of the Trust Indenture Act, the Guarantee Trustee and Guarantor shall in all respects comply with the provisions of Section 310(b) of the Trust Indenture Act.

SECTION 4.02. Appointment, Removal and Resignation of the Guarantee Trustee. (a) Subject to Section 4.02(b), in the absence of the existence of an Event of Default, the Guarantee Trustee may be appointed or removed without cause at any time by the Guarantor.

(b) The Guarantee Trustee shall not be removed until a Successor Guarantee Trustee has been appointed and has accepted such appointment by written instrument executed by such Successor Guarantee Trustee and delivered to the Guarantor.

(c) The Guarantee Trustee appointed hereunder shall hold office until a Successor Guarantee Trustee shall have been appointed or until its removal or resignation. The Guarantee Trustee may resign from office (without need for prior or subsequent accounting) by an instrument in writing executed by the Guarantee Trustee and delivered to the Guarantor, which resignation shall not take effect until a Successor Guarantee Trustee has been appointed and has accepted such appointment by instrument in writing executed by such Successor Guarantee Trustee and delivered to the Guarantor and the resigning Guarantee Trustee.

(d) If no Successor Guarantee Trustee shall have been appointed and accepted appointment as provided in this Section 4.02 within 30 days after delivery to the Guarantor of an instrument of resignation or notice of removal by the Guarantor, the retiring Guarantee Trustee may petition, at the expense of the Guarantor, any court of competent jurisdiction for appointment of a Successor Guarantee Trustee. Such court may thereupon, after prescribing such notice, if any, as it may deem proper, appoint a Successor Guarantee Trustee.

## **ARTICLE V**

### **Guarantee**

SECTION 5.01. Guarantee. The Guarantor irrevocably and unconditionally agrees to pay in full to the Holders the Guarantee Payments (without duplication of amounts theretofore paid by or on behalf of the Trust), as and when due, regardless of any defense, right of set-off or counterclaim which the Trust may have or assert. The Guarantor's obligation to make a Guarantee Payment may be satisfied by direct payment of the required amounts by the Guarantor to the Holders or by causing the Trust to pay such amounts to the Holders. The Guarantor shall give written notice to the Guarantee Trustee as promptly as practicable in the event it makes any direct payment hereunder.

SECTION 5.02. Waiver of Notice and Demand. The Guarantor hereby waives notice of acceptance of the Guarantee Agreement and, with respect to its

obligations under Section 5.01, hereby waives presentment, demand for payment, any right to require a proceeding first against the Guarantee Trustee, Trust or any other Person before proceeding against the Guarantor, protest, notice of nonpayment, notice of dishonor, notice of redemption and all other notices and demands.

**SECTION 5.03. Obligations Not Affected.** The obligations, covenants, agreements and duties of the Guarantor under this Guarantee Agreement shall in no way be affected or impaired by reason of the happening from time to time of any of the following:

- (a) the release or waiver, by operation of law or otherwise, of the performance or observance by the Trust of any express or implied agreement, covenant, term or condition relating to the HIGH TIDES to be performed or observed by the Trust;
- (b) the extension of time for the payment by the Trust of all or any portion of the Distributions (other than any extension of time for payment of Distributions that results from the extension of any interest payment period on the Debentures as so provided in the Indenture), Redemption Price, Liquidation Distribution or any other sums payable under the terms of the HIGH TIDES or the extension of time for the performance of any other obligation under, arising out of, or in connection with, the HIGH TIDES;
- (c) any failure, omission, delay or lack of diligence on the part of the Holders to enforce, assert or exercise any right, privilege, power or remedy conferred on the Holders pursuant to the terms of the HIGH TIDES, or any action on the part of the Trust granting indulgence or extension of any kind;
- (d) the voluntary or involuntary liquidation, dissolution, sale of any collateral, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of debt of, or other similar proceedings affecting, the Trust or any of the assets of the Trust;
- (e) any invalidity of, or defect or deficiency in, the HIGH TIDES;
- (f) the settlement or compromise of any obligation guaranteed hereby or hereby incurred; or
- (g) any other circumstance whatsoever that might otherwise constitute a legal or equitable discharge or defense of a guarantor, it being the intent of this Section 5.03 that the obligations of the Guarantor hereunder shall be absolute and unconditional under any and all circumstances.

There shall be no obligation of the Holders to give notice to, or obtain the consent of, the Guarantor with respect to the happening of any of the foregoing.

**SECTION 5.04. Rights of Holders.** The Guarantor expressly acknowledges that: (i) this Guarantee Agreement will be deposited with the Guarantee

Trustee to be held for the benefit of the Holders; (ii) the Guarantee Trustee has the right to enforce this Guarantee Agreement on behalf of the Holders;

(iii) the Holders of a Majority in liquidation amount of the HIGH TIDES have the right among themselves, the other Holders, if any, and the Guarantee Trustee to direct the time, method and place of conducting any proceeding for any remedy available to the Guarantee Trustee in respect of this Guarantee Agreement or exercising any trust or power conferred upon the Guarantee Trustee under this Guarantee Agreement; and (iv) any Holder may institute a legal proceeding directly against the Guarantor to enforce, subject to the subordination provisions hereof, its rights under this Guarantee Agreement, without first instituting a legal proceeding against the Trust or any other Person.

**SECTION 5.05. Guarantee of Payment.** This Guarantee Agreement creates a guarantee of payment and not of collection. This Guarantee Agreement will not be discharged except by payment of the Guarantee Payments in full (without duplication of amounts theretofore paid by the Trust) or upon distribution of Debentures to Holders as provided in the Declaration.

**SECTION 5.06. Subrogation.** The Guarantor shall be subrogated to all (if any) rights of the Holders against the Trust in respect of any amounts paid to the Holders by the Guarantor under this Guarantee Agreement and shall have the right to waive payment by the Trust pursuant to Section 5.01; provided, however, that the Guarantor shall not (except to the extent required by mandatory provisions of law) be entitled to enforce or exercise any rights which it may acquire by way of subrogation or any indemnity, reimbursement or other agreement, in all cases as a result of payment under this Guarantee Agreement, if at the time of any such payment, any amounts are due and unpaid under this Guarantee Agreement. If any amount shall be paid to the Guarantor in violation of the preceding sentence, the Guarantor agrees to hold such amount in trust for the Holders and to pay over such amount to the Holders. Any amounts paid over to and not subsequently recovered from the Holders pursuant to any insolvency law shall be deemed to have been applied by the Holders to the Guarantee Payments.

**SECTION 5.07. Independent Obligations.** The Guarantor acknowledges that its obligations hereunder are independent of the obligations of the Trust with respect to the HIGH TIDES and that the Guarantor shall (without duplication of amounts paid by or on behalf of the Trust) be liable as principal and as debtor hereunder to make Guarantee Payments pursuant to the terms of this Guarantee Agreement notwithstanding the occurrence of any event referred to in subsections (a) through (g), inclusive, of Section 5.03 hereof, but subject to Section 6.01 hereof.

## **ARTICLE VI**

### **Covenants and Subordination**

**SECTION 6.01.** Subordination. This Guarantee Agreement will constitute an unsecured obligation of the Guarantor and will rank subordinate and junior in right of payment to all Senior Debt of the Guarantor in accordance with the terms of Article XII of the Indenture, which terms (including the definitions of all defined terms used therein) are incorporated herein, mutatis mutandis, by this reference (it being understood and agreed that each notice from holders of Senior Debt (or their agent or representative) to the Trustee under the Indenture shall constitute a notice to the Guarantee Trustee hereunder).

**SECTION 6.02.** Pari Passu Guarantees. This Guarantee Agreement shall rank pari passu with any similar guarantee agreements issued by the Guarantor on behalf of the holders of trust securities issued by a trust created by the Guarantor similar to Calpine Capital Trust II.

## **ARTICLE VII**

### **Termination**

**SECTION 7.01.** Termination. This Guarantee Agreement shall terminate and be of no further force and effect upon (i) full payment of the Redemption Price of all HIGH TIDES, (ii) the distribution of Debentures to the Holders in exchange for all of the HIGH TIDES, (iii) full payment of the amounts payable in accordance with the Declaration upon liquidation of the Trust or (iv) distribution of the Guarantor's common stock to the Holders in respect of the conversion of all of the HIGH TIDES. Notwithstanding the foregoing, this Guarantee Agreement will continue to be effective or will be reinstated, as the case may be, if at any time any Holder must repay any sums paid with respect to HIGH TIDES or this Guarantee Agreement.

## **ARTICLE VIII**

### **Miscellaneous**

**SECTION 8.01.** Successors and Assigns. All guarantees and agreements contained in this Guarantee Agreement shall bind the successors, assigns, receivers, trustees and representatives of the Guarantor and shall inure to the benefit of the Holders of the HIGH TIDES then outstanding. Except in connection with a consolidation, merger or sale involving the Guarantor that is permitted under Article VIII of the Indenture and pursuant to which the assignee agrees in writing to perform the Guarantor's obligations hereunder, the Guarantor shall not assign its obligations hereunder.

**SECTION 8.02.** Amendments. Except with respect to any changes which do not adversely affect the rights of the Holders in any material respect (in which case no consent of the Holders will be required), this Guarantee Agreement may only be amended with the prior approval of the Holders of not less than a Majority in liquidation amount of the HIGH TIDES. The provisions of Article XII of the Declaration concerning meetings of the Holders shall apply to the giving of such approval.

SECTION 8.03. Notices. Any notice, request or other communication required or permitted to be given hereunder shall be in writing, duly signed by the party giving such notice, and delivered, telecopied (confirmed by delivery of the original) or mailed by first class mail as follows:

(a) if given to the Guarantor, to the address set forth below or such other address, facsimile number or to the attention of such other Person as the Guarantor may give notice to the Holders:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113

Telephone: (408) 995-5115 Facsimile No.: (408) 995-0505 Attention: Corporate Secretary

(b) if given to the Trust, in care of the Guarantor, at the Trust's (and the Guarantee Trustee's) address set forth below or such other address as the Trust may, at the Trust's direction, give notice to the Holders:

Calpine Capital Trust II c/o Calpine Corporation 50 West San Fernando Street San Jose, California 95113

Telephone: (408) 995-5115 Facsimile No.: (408) 995-0505 Attention: Secretary

with a copy to:

The Bank of New York 101 Barclay Street Floor 21 West  
New York, NY 10286 Facsimile No.: (212) 815-5915 Attention: Corporate Trust Administration

(c) if given to the Guarantee Trustee:

The Bank of New York 101 Barclay Street Floor 21 West  
New York, NY 10286 Facsimile No.: (212) 815-5915 Attention: Corporate Trust Administration

(d) if given to any Holder, at the address set forth on the books and records of the Trust.

All notices hereunder shall be deemed to have been given when received in person, telecopied with receipt confirmed, or mailed by first class mail, postage prepaid, except that if a notice or other document is refused delivery or cannot be delivered because of a changed address of which no notice was given, such notice or other document shall be deemed to have been delivered on the date of such refusal or inability to deliver.

**SECTION 8.04. Benefit.** This Guarantee Agreement is solely for the benefit of the Holders (subject to the benefits inuring to the holders of Senior Debt pursuant to the subordination provisions hereof) and is not separately transferable from the HIGH TIDES.

**SECTION 8.05. Interpretation.** In this Guarantee Agreement, unless the context otherwise requires:

- (a) capitalized terms used in this Guarantee Agreement but not defined in the preamble hereto have the respective meanings assigned to them in Section 1.01;
- (b) a term defined anywhere in this Guarantee Agreement has the same meaning throughout;
- (c) all references to "the Guarantee Agreement" or "this Guarantee Agreement" are to this Guarantee Agreement as modified, supplemented or amended from time to time;

- (d) all references in this Guarantee Agreement to Articles and Sections are to Articles and Sections of this Guarantee Agreement unless otherwise specified;
- (e) a term defined in the Trust Indenture Act has the same meaning when used in this Guarantee Agreement unless otherwise defined in this Guarantee Agreement or unless the context otherwise requires;
- (f) a reference to the singular includes the plural and vice versa; and
- (g) the masculine, feminine or neuter genders used herein shall include the masculine, feminine and neuter genders.

**SECTION 8.06 Governing Law. THIS GUARANTEE AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK WITHOUT REGARD TO THE CONFLICT OF LAW PRINCIPLES THEREOF.**

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

**[SIGNATURE PAGE FOLLOWS]**

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

**Calpine Corporation**

by

Name:

Title:

The Bank of New York, as Guarantee Trustee,

by

Name:

Title:

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**CCPA - CALPINE RIGHT OF ENTRY AND LICENSE AGREEMENT**

**EXHIBIT A**

**DESCRIPTION OF PROPERTY**

Twelve geothermal steam and injection wells named and located as follows:

Township	Range	Section	Wells
12N	9W	35	Prati 8, Prati 9
12N	9W	36	Prati 2, Prati 4, Prati 5, Prati 14, Prati 50, Prati State 1
11N	9W	1	Prati State 10, Prati State 12, Prati State 24, Prati State 54

and roads as needed to access these well locations.

**EXHIBIT 10.2.1**

**CREDIT AGREEMENT**

among

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**

a Delaware limited partnership  
(Borrower)

and

THE BANK OF NOVA SCOTIA  
(Lead Arranger, LC Bank and  
Administrative Agent)

CREDIT SUISSE FIRST BOSTON  
(Lead Arranger, Syndication Agent  
and Bookrunner)

and

**TD SECURITIES (USA) INC.**  
(Co-Arranger and Co-Documentation Agent)

and

**CIBC WORLD MARKETS CORP.**  
(Co-Arranger and Co-Documentation Agent)

and

**THE BANKS PARTIES HERETO**

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THIS CREDIT AGREEMENT (this "Agreement") dated as of October 20, 1999, is entered into among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership, as Borrower, the financial institutions listed on Exhibit H hereto (the "Banks"), CREDIT SUISSE FIRST BOSTON, as Lead Arranger, Syndication Agent and Bookrunner, THE BANK OF NOVA SCOTIA, as Lead Arranger, LC Bank and Administrative Agent, TD SECURITIES (USA) INC., as Co-Arranger and Co-Documentation Agent, and CIBC WORLD MARKETS CORP., as Co-Arranger and Co-Documentation Agent.

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 "Loan" and collectively the "Loans"), in an aggregate principal amount which, when added to 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 Loans from time to time during the Loan Availability Period.

(b) **Notice of Borrowing.** Borrower shall request Loans by delivering to Administrative Agent a written notice in the form of Exhibit C-1, appropriately completed (a "Notice of 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 Loan") and/or (2) Section 2.1.1(c)(ii) (individually, a "LIBOR Loan");

(ii) The amount of the requested Borrowing, which shall be in the minimum amount of \$1,000,000 or an integral multiple of \$10,000 in excess thereof;

(iii) The date of the requested Borrowing, which shall be a Banking Day;

(iv) If the requested Borrowing is to consist of LIBOR Loans, the initial Interest Periods selected by Borrower for such Loans; and

(v) The Project(s) to which such Borrowing relates.

Borrower shall give each Notice of Borrowing relating to Loans to Administrative Agent so as to provide the Minimum Notice Period applicable to Loans of the Type requested. Any Notice of Borrowing may be modified or revoked by Borrower through the Banking Day prior to the Minimum Notice Period, and shall thereafter be irrevocable.

(c) Loan Interest. Borrower shall pay interest on the unpaid principal amount of each Loan from the date of such Loan until the maturity or prepayment thereof at the following rates per annum:

(i) With respect to the principal portion of such Loan which is, and during such periods as such Loan is, a Base Rate 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 Loan which is, and during such portion of such periods as such Loan is, a LIBOR Loan, at a rate per annum, at all times during each Interest Period for such LIBOR Loan, equal to the LBO Rate for such Interest Period plus the Applicable Margin.

(d) 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 Loans made by such Bank.

#### 2.1.2 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 2.1.2(b)(i). Thereafter, each subsequent Interest Period (including any Interest Period referenced in the proviso of the first sentence of this Section 2.1.2(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 2.1.2(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 2.1.5, 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-2, 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 2.1.2(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.

**2.1.3 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.

**2.1.4 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.

**2.1.5 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 \$100,000 or more. Borrower shall request such a conversion by a written notice to Administrative Agent in the form of Exhibit C-3, 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 2.1.2(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.

#### **2.1.6 Prepayments.**

(a) **Terms of All Prepayments.** Upon the prepayment of any Loan (whether such prepayment is an optional prepayment under Section 2.1.6(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 2.1.6(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 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, make Letter(s) of Credit available to Borrower solely to enable Borrower to provide security for its 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 an irrevocable written notice in the form of Exhibit C-4, 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. LC Bank may request the Banks to pay to LC Bank their respective Proportionate Shares of all or any portion of any Drawing Payment made or to be made by LC Bank under any Letter of Credit by contacting each Bank and Administrative Agent telephonically (promptly confirmed in writing) at any time after LC Bank has received notice of or request for such Drawing Payment, and specifying the amount of such Drawing Payment, such Bank's Proportionate Share thereof, and the date on which such Drawing Payment is to be made or was made; provided, however, that LC Bank 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 LC Bank, each Bank shall pay to LC Bank 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. Each Bank's obligation to make each such payment to LC Bank 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 (i) 12:01 a.m., on the Expiration Date stated therein (which shall be no later than the earlier of one year from the date such Letter of Credit is issued 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  
(ii) cancellation of such Letter of Credit pursuant to Section 2.2.6(b); provided, however, that no Letter of Credit shall expire after the Loan Maturity Date.

## 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 \$1,000,000,000 or, if such amount is reduced by Borrower pursuant to Section 2.3.3, 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 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 \$50,000,000, or, if such amount is reduced by Borrower pursuant to Section 2.3.3, such lower amount (such amount, as so reduced from time to time, the "Total Letter of Credit Commitment").

2.3.3 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 and/or the Total Letter of Credit Commitment. Notwithstanding the foregoing, Borrower may not reduce or cancel the Total Loan Commitment and/or the Total Letter of Credit Commitment if, after giving effect to such reduction or cancellation, (i) 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, (ii) 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 (iii) such reduction or cancellation would cause a violation of any other provision of this Agreement, the other Credit Documents, any Project Documents or have a Material Adverse Effect. 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 or the Total Letter of Credit Commitment pursuant to this Section 2.3.3 shall be applied ratably to each Bank's respective Commitments in accordance with Section 2.7.1.

#### 2.4 Fees.

2.4.1 Fee Letter. Borrower shall pay to the Lead Arrangers, and Administrative Agent solely for the Lead Arrangers' and Administrative Agent's respective accounts the fees described in that certain letter from Borrower to the Lead 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 (i) 0.50% times (ii) the daily average Available Loan Commitment for such quarter (or portion thereof) times (iii) 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 Fee. Concurrently with the first Borrowing in respect of each Subsequent 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 Subsequent Project less any Contributions by Calpine previously applied to pay Project Costs for such Subsequent Project as reflected in such Subsequent Project's Project Budget.

#### 2.5 Letter of Credit Fees.

2.5.1 On the last Banking Day in each calendar quarter (or portion thereof) commencing on or after the Closing Date and ending on the Loan Maturity Date and on the Expiration Date of each Letter of Credit, 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) 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) 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 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 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 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 Nova Scotia, Federal Reserve Bank of New York ABA#026002532, for further credit to account #0610135-BNS San Francisco Loan Servicing Account; Reference: Calpine Construction Finance Company, 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.

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 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 2.1.5, 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 2.1.6 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), or (d) 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 2.1.6 (and subject to Section 2.3.3) 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 2.1.6 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 Borrower and each of the Partners, Calpine and Affiliated Major Project Participants with respect to the Initial Projects, 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 Operative Documents with respect to the Initial Projects 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 the Managing Partner of Borrower and from each of the Partners, Calpine and Affiliated Major Project Participants with respect to the Initial Projects, 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 Operative Documents with respect to the Initial Projects 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 Partnership Agreement, certified by the secretary or an assistant secretary of the Managing Partner of Borrower as being true, current and complete on the Closing Date, and any related agreements or certificates filed in accordance with applicable state law, and (b) copies of the articles of incorporation or certificate of incorporation or charter or other state certified constituent documents of each Major Project Participant with respect to the Initial Projects other than Borrower, certified, if requested by the Lead Arrangers, by the secretary of state of the state of formation, and (c) copies of the Bylaws or other comparable constituent documents of each of the Partners, Calpine and Affiliated Major Project Participants with respect to the Initial Projects, certified by its secretary or an assistant secretary.

**3.1.4 Good Standing Certificates.** With respect to each Major Project Participant with respect to the Initial Projects, delivery to the Lead Arrangers of certificates issued by the secretary of state of the state in which the applicable 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.

**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), 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 Operative Documents.**

- (a) Delivery to the Lead Arrangers of executed originals of each Credit Document, including the Completion Guaranty and all Collateral Documents (except for Consents listed on Exhibit L, M, N or O or Consents relating to any Subsequent Projects). All actions shall have been taken to provide the Banks with a valid Lien on all Collateral and a valid and perfected first priority Lien on the Collateral comprising the Initial Projects, including, without limitation, the execution, delivery and recordation of Deeds of Trust and fixture filings in the appropriate locations and the filing of UCC-1 financing statements with appropriate secretaries of state and/or other filing offices.
- (b) Delivery to the Lead Arrangers of a certified list of and true and correct copies of, each Project Document with respect to the Initial Projects then in effect, and any supplements or amendments thereto.
- (c) All Major Project Documents with respect to the Initial Projects (other than Major Gas Supply Contracts (other than Affiliated Fuel Supply Agreements), Major Gas Transportation Contracts and Major Power Purchase Agreements) shall have been executed and delivered and shall be in full force and effect.
- (d) All the documents specified in clauses (a), (b) and (c) above shall be in form and substance satisfactory to the Lead Arrangers, shall have been duly authorized, executed and delivered by the parties 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 Closing Date pursuant to the certificates delivered as provided in the following paragraph, which certificate shall state that neither Borrower 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.

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 Borrower, its respective Affiliates that are party to any Operative Agreements and each Major Project Participant and each counterparty to a material water supply agreement with respect to the Initial Projects (other than with respect to the matters referred to in Section 3.2.5), in form and substance satisfactory to the Lead Arrangers.

3.1.9 Certificate of Insurance Consultant. Delivery to the Lead Arrangers of the Insurance Consultant's certificate with respect to the Initial Projects, in substantially the form of Exhibit F-2, with the Insurance Consultant's report with respect to the Initial Projects, confirming the adequacy of the insurance described on Exhibit K or otherwise in form and substance satisfactory to the Lead Arrangers, attached thereto.

3.1.10 Insurance. Insurance with respect to the Initial Projects complying with Exhibit K shall be in full force and effect and the Lead Arrangers shall have received (a) a certificate from Borrower's insurance broker(s), dated as of the Closing 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 through the Loan Maturity Date 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 Lead Arrangers.

3.1.11 Certificate of the Independent Engineer. Delivery to the Lead Arrangers of the Independent Engineer's certificate with respect to the Initial Projects, in substantially the form of Exhibit F-3, with the Independent Engineer's report with respect to the Initial Projects attached thereto, confirming, in form and substance satisfactory to the Lead Arrangers, that the projected Project Costs, the projected Project Schedule, the projected O&M Costs, the design and other technical aspects of each such Project, and the projected performance (output, heat rate, environmental and Permit compliance and availability) of the Initial Projects as reflected in the Base Case Project Projections delivered to the Lead Arrangers in accordance with Section 3.1.24 hereof are reasonable and achievable in a manner consistent with the Project Budgets and Project Schedules for the Initial Projects and that the revenue assumptions approved by the Power Marketing Consultant in its report delivered to the Lead Arrangers pursuant to Section 3.1.14 and the fuel price assumptions approved by the Fuel Consultant in its report delivered to the Lead Arrangers pursuant to Section 3.1.13 have been properly incorporated into the Base Case Project Projections.

3.1.12 Reports of the Environmental Consultant. Delivery to the Lead Arrangers of Borrower's Environmental Consultant's Phase I reports with respect to each Initial Project and, if a Phase II environmental review is warranted by any of such Phase I reports, delivery to the Lead Arrangers of Phase II report(s), in each case, along with the corresponding reliance

letter from such Environmental Consultant, in form and substance satisfactory to the Lead Arrangers, either (i) confirming that no Hazardous Substances were found in, on or under the Site or Easements of the Initial Projects or (ii) disclosing matters that are otherwise satisfactory to the Lead Arrangers.

3.1.13 Certificate of the Fuel Consultant. Delivery to the Lead Arrangers of the Fuel Consultant's certificate with respect to the Initial Projects, in substantially the form of Exhibit F-4, with the Fuel Consultant's report with respect to the Initial Projects attached thereto, confirming, in form and substance satisfactory to the Lead Arrangers, that there is sufficient fuel available to the Initial Projects to operate the Initial Projects in the manner contemplated by and in accordance with the fuel price assumptions incorporated in the Base Case Project Projections delivered to the Lead Arrangers in accordance with Section 3.1.24 and that the Fuel Plans delivered to the Lead Arrangers in accordance with Section 3.1.16 for the Initial Projects constitute reasonable plans for the supply and transportation of fuel for the Initial Projects under existing and expected market conditions affecting the Initial Projects and consistent with the intended operation thereof.

3.1.14 Certificate of Power Marketing Consultant. Delivery to the Lead Arrangers of the Power Marketing Consultants' certificate with respect to the Initial Projects, in substantially the form of Exhibit F-5, with the Power Marketing Consultants' report with respect to the Initial Projects attached thereto, confirming, in form and substance satisfactory to the Lead Arrangers, that the revenue assumptions incorporated in the Base Case Project Projections delivered to the Lead Arrangers in accordance with Section 3.1.24 are reasonable in light of existing and expected market conditions affecting the Initial Projects.

3.1.15 Power Marketing Plan. Delivery to the Lead Arrangers of plans with respect to power marketing for each Initial Project setting forth Borrower's good faith assessment of the projected sales of power with respect to each of the Initial Projects, which plans shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of Appendices G-2A through G-2D.

3.1.16 Fuel Plan. Delivery to the Lead Arrangers of plans with respect to fuel for each Initial Project setting forth Borrower's good faith assessment of each of the Initial Projects' projected fuel consumption needs and fuel supply and transportation strategy, which plans shall not in any way be construed to modify or limit Borrower's rights and obligations set forth herein, substantially in the form of Appendices G-9A through G-9D.

3.1.17 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.

3.1.18 Absence of Litigation. (a) No action, suit, proceeding or investigation shall have been instituted or threatened against Borrower and (b) except for the applicability of the FPA solely by reason of Borrower 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, Borrower 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.

3.1.19 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.

3.1.20 Financial Statements. The Lead Arrangers 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 other Major Project Participant with respect to the Initial Projects (or their respective parent corporations), together (in the case of Borrower and the Affiliated Major Project Participants with respect to the Initial Projects) 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 the Lead Arrangers.

3.1.21 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 with respect to the Initial Projects, 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 the Initial Projects 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.

3.1.22 Project Budgets. Borrower shall have furnished the Lead Arrangers budgets in substantially the form of Appendices G-4A through G-4E 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, 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 project budgets shall be satisfactory to the Lead Arrangers.

3.1.23 Project Schedules. Borrower shall have furnished a project schedule for each Initial Project other than the Sutter Project in substantially the form of Appendices G-6A through G-6C.

3.1.24 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-5 and in form and substance satisfactory to the Lead Arrangers.

3.1.25 No Material Adverse Change. Since May 28, 1999, in the reasonable judgment of the Lead Arrangers, there shall not have occurred any change in the Project Budgets, Project Schedules 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 financial condition, business, prospects or property of any Major Project Participants with respect to the Initial Projects, which could reasonably be expected to have a Material Adverse Effect.

3.1.26 A.L.T.A. Surveys. The Lead Arrangers shall (a) be satisfied that Borrower has obtained all real estate rights necessary for construction and operation of the Initial Projects other than (i) such rights as can be obtained through eminent domain proceedings, (ii) rights, the procurement of which, in the Lead Arrangers' reasonable judgment, is not subject to the discretion of any third party or (iii) rights which, in the Lead Arrangers' reasonable opinion, Borrower will be able to obtain at a cost and in a time frame consistent with the Project Budget and Project Schedule for such Project, and in the case of clause (i), (ii) or (iii) above, the Lead Arrangers 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 Sites and, unless not required by Lead Arrangers, the Easements with respect to the Initial Projects in existence on the Closing Date, satisfactory in form and substance to the Lead Arrangers and the Title Insurer, reasonably current and certified to the Lead Arrangers by a licensed surveyor satisfactory to the Lead Arrangers, showing (i) as to such Sites, 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 Closing 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 Closing Date;

(iii) the existing utility facilities servicing the Initial Projects (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 Sites 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 the Initial Projects; provided, however, that the matters described in clause (v) may be shown by separate maps, surveys, or other information reasonably satisfactory to the Lead Arrangers.

3.1.27 Title Policies. With respect to each Initial Project, Borrower shall have delivered to the Lead Arrangers a lender's A.L.T.A. policy of title insurance, together with such endorsements as are required by the Lead Arrangers, or commitment to issue such policy, dated as of the Closing Date in an amount, for each such Initial Project, equal to 55% 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 Lead Arrangers) and with such reinsurance as is

satisfactory to the Lead Arrangers, issued by the Title Insurer in form and substance satisfactory to the Lead Arrangers, insuring (or agreeing to insure) that:

(a) Borrower 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 each Initial Project in existence on the Closing Date, free and clear of liens, encumbrances or other exceptions to title except those exceptions satisfactory to the Lead Arrangers 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 3.1.27(a).

3.1.28 Regulatory Status. Each of the Initial Projects shall (a) have complied with the requirements of 18 C.F.R. Section 292.207 required to be complied with as of the Closing Date and delivered to the Lead Arrangers, in form and substance satisfactory to the Lead Arrangers, 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 Borrower 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 the Lead Arrangers shall have received a legal opinion of counsel to Borrower in form and substance satisfactory to the Lead Arrangers to the effect that there exists no reasonable basis for FERC to deny an application filed by Borrower pursuant to Section 5.12.1 for Exempt Wholesale Generator status.

3.1.29 Establishment of Accounts. The Accounts required under Article 7 shall have been established to the satisfaction of the Lead Arrangers.

3.1.30 Representations and Warranties of Partners, Calpine and Borrower. Each representation and warranty of the Partners and Calpine under the Credit Documents and each representation and warranty of Borrower under the Operative Documents shall be true and correct in all material respects.

3.1.31 Utilities. The Lead Arrangers shall have received evidence acceptable to the Lead Arrangers that all necessary gas and electrical interconnections and utility services are either contracted for, or will be readily available on reasonable economic terms, at the Initial Projects.

3.1.32 Mechanics' Lien Indemnity. Calpine shall have executed and delivered an indemnity or indemnities in favor of the Banks with respect to mechanics' liens which (a) could gain priority over the Deeds of Trust with respect to the Initial Projects and (b) are not insured against in the title policies delivered pursuant to Section 3.1.27.

3.1.33 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.

3.2 Conditions Precedent to the Initial Funding of the Initial Projects. The obligation of the Banks to make the initial 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 Sections 5.17.1 (including Section 5.17.1(b), if applicable) and 5.17.2 hereof shall have been funded and applied in accordance with Section 5.1.

3.2.2 No Change in Tax Laws. No change shall have occurred, since the Closing Date, in any law or regulation or interpretation thereof that would subject any Bank to any material unreimbursed Tax or Other Tax.

3.2.3 Base Case Project Projections. Delivery of Base Case Project Projections for the Initial Projects showing a projected Four-Quarter Portfolio Interest Coverage Ratio that is not materially different than that reflected in the Base Case Project Projections delivered pursuant to Section 3.1.24 over the same period.

3.2.4 Calpine Compliance. No "event of default" (as defined therein) under any agreement or instrument documenting or evidencing any of Calpine's Debt obligations shall have occurred and be continuing.

3.2.5 Schedule of Applicable Permits and Applicable Third Party Permits. Delivery to the Lead Arrangers of Appendices G-3A through G-3D, as applicable, the schedule(s) of Permits required to construct, own and operate the Initial Project(s) for which Loans are requested, or required to be obtained by any Person (other than Borrower) that is party to any Project Document with respect to each such Initial Project in order to perform its obligations thereunder, satisfactory in form and substance to the Lead Arrangers, together with (i) copies of each Applicable Permit and Applicable Third Party Permit listed on Parts I(A) and I(B) of Appendices G-3A through G-3D, as applicable, each satisfactory in form and substance to the Lead Arrangers and (ii) legal opinions of counsel to Borrower with respect to the matters described in the next two sentences, in form and substance satisfactory to the Lead Arrangers. Borrower shall have duly obtained or been assigned (or, in the case of Permits not yet assigned to Borrower by an Affiliate of Calpine, shall have the right to have assigned at a cost consistent with the applicable Project Budget without material difficulty or delay as reasonably determined by Administrative Agent) and there shall be (or will be upon assignment) in full force and effect in Borrower's name, and, except as otherwise approved by the Lead Arrangers, 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, except as otherwise approved by the Lead Arrangers, all applicable appeal periods shall have expired with respect to, the Applicable Permits set forth on Parts I(A) and I(B) of Appendices G-3A through G-3D, respectively, constituting in the Lead Arrangers' reasonable opinion all of the Applicable Permits as of the Closing Date. Each Major Project Participant with respect to which responsibility for an Applicable Third Party Permit is indicated in Part I(B) of any such exhibit, 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, except as otherwise approved by the Lead Arrangers, 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, except as otherwise approved by the Lead Arrangers, all applicable appeal periods shall have expired with respect to, each Applicable Third Party Permit set forth on Part I(B) of Appendices G-3A through G-3D, constituting in the Lead Arrangers' reasonable opinion all of the Applicable Third Party Permits as of the Closing Date. Part II(A) of the applicable appendix shall list all other Permits required by Borrower to construct, own and operate such Initial Project as contemplated by the Operative Documents. Part II(B) of each of Appendices G-3A through G-3D shall list all other material Permits required by any other Major Project Participant to perform its obligations under the Operative Documents with respect to the Initial Projects to which it is a party. The Permits listed in Parts II(A) and II(B) of the applicable Appendix G-3A through G-3D shall, in the Lead Arrangers' reasonable opinion, be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay by Borrower or the applicable other Major Project Participant, respectively. Except as disclosed in the applicable Appendix G-3A through G-3D, the Permits listed in Part I(A) and I(B) of such appendix 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 Project or result in any of the Initial Projects being operated in a manner not substantially as assumed in the Base Cost Project Projections.

3.2.6 Calpine Corporation Credit Rating. Calpine shall be rated at least Ba3 and BB or Ba2 and BB- by Moody's and S&P, respectively.

3.2.7 Notice to Proceed. Each Contractor with respect to the Initial Project(s) for which the Loans are requested shall have been given an unconditional notice to proceed or otherwise been unconditionally directed to begin performance under the Construction Contracts to which it is a party, and shall have acknowledged receipt thereof, on or prior to the Closing Date.

3.2.8 Real Estate Rights. The Lead Arrangers shall be satisfied that Borrower has obtained all real estate rights necessary for construction and operation of the Initial Project(s) for which the Loans are requested other than

(i) such rights as can be obtained through eminent domain proceedings or (ii) rights, the procurement of which, in the Lead Arrangers' reasonable judgment, is not subject to the discretion of any third party, and in the case of either clause (i) or (ii) above, the Lead Arrangers 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.

3.2.9 Project Pre-Funding Requirements. All of the Pre-Funding Requirements applicable to such Initial Project shall have been satisfied; provided, however, that notwithstanding that one or more Initial Projects has not satisfied its Pre-Funding Requirements, Borrower shall be entitled, at the time of the initial funding of Loans for the first Initial Project, to obtain reimbursement of closing costs and fees paid on the Closing Date.

3.3 Conditions Precedent to the Initial Funding of the Subsequent Projects. The obligation of the Banks to make the initial Loans with respect to a particular Subsequent Project is subject to the prior satisfaction of each of the following conditions:

3.3.1 Subsequent Project. In the case of a Subsequent Project that is only partially owned by Borrower, (a) Administrative Agent on behalf of the Banks shall have received all joint venture, joint tenancy or other documents relating to the joint ownership 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 Borrower to fund such obligations if any of the Joint Venturers fail to do so, (ii) permitting Borrower to grant a Lien (including the Liens granted on the Closing Date pursuant to the Collateral Documents) on its interest in the 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 Borrower's interest in the Subsequent Project and (b) such Joint Venture Agreement (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.

3.3.2 Resolutions. Delivery to Administrative Agent on behalf of the Banks of a copy of one or more resolutions or other authorizations of Borrower and each of the Partners, Calpine and Affiliated Major Project Participants 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 Borrowings herein provided for with respect to such Subsequent Project and 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.

3.3.3 Incumbency. Delivery to Administrative Agent on behalf of the Banks of a certificate satisfactory in form and substance to the Technical Committee, from the Managing Partner of Borrower and from each of the Partners, Calpine and Affiliated Major Project Participants 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.

3.3.4 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 each Major Project Participant with respect to such Subsequent Project other than Borrower, certified, if requested by the Technical Committee, by the secretary of state of the state of formation, and (b) copies of the Bylaws or other comparable constituent documents of the Affiliated Major Project Participants with respect to such Subsequent Project, certified by its secretary or an assistant secretary.

3.3.5 Good Standing Certificates. For Borrower 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 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.

3.3.6 Satisfactory Proceedings. All corporate, partnership and legal proceedings and all instruments in connection with the transactions contemplated by this Agreement with respect to such 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, 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.

### 3.3.7 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 Subsequent Project (or additional Collateral Documents if reasonably requested by the Technical Committee) considered necessary by the Technical Committee to ensure that all rights and assets related to such Subsequent Project, including all real property (unless such Subsequent Project is an Additional Subsequent Project) and personal property comprising such Subsequent Project and all rights of Borrower under any Joint Venture Agreement relating to such Subsequent Project, have been pledged to Administrative Agent and the Banks.
- (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 and Major Power Purchase 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 similar to the corresponding documents in respect of the Initial Projects with conforming changes to address the specifics of such Subsequent Project 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 entering into Project Documents with respect to such Subsequent Project considered necessary by the Technical Committee to subordinate certain O&M Costs that Borrower 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 Borrower and be subordinated to the Obligations to the same extent as O&M Costs are subordinated to the Obligations in the corresponding documents in respect of the Initial Projects or otherwise to the extent satisfactory to the Technical Committee.

(b) 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 filing of UCC-2 or UCC-3 financing statements, as applicable, with respect to the Collateral with the Secretary of State and/or other appropriate filing office in the state in which such Subsequent Project is located or in which Borrower's principal place of business is located.

(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 any supplements or amendments thereto.

(d) All the Major Project Documents (other than Major Gas Supply Contracts (other than Affiliated Fuel Supply Agreements) and Major Power Purchase Agreements), electric transmission and interconnection agreements and material water supply agreements shall be substantially similar to the corresponding documents in respect of the Initial Projects (to the extent there are such corresponding documents) with counterparties reasonably acceptable to the Technical Committee and conforming changes to address the specifics of the 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, and all of which Project Documents described in clause

(c) above 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 following paragraph, which certificates shall state that neither Borrower 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.

3.3.8 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-1.

3.3.9 Legal Opinions. Delivery to Administrative Agent on behalf of the Banks of legal opinions of counsel to Borrower, its respective Affiliates that are party to Operative Documents relating to such Subsequent Project and each Major Project Participant and each counterparty to a material water supply agreement with respect to such Subsequent Project, substantially similar to the corresponding opinions in respect of the Initial Projects delivered pursuant to

Section 3.1.8 with conforming changes to address the specifics of such Subsequent Project or otherwise in form and substance satisfactory to the Technical Committee.

3.3.10 Certificate of Insurance Consultant. Delivery to Administrative Agent on behalf of the Banks of the Insurance Consultant's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-2, 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.

3.3.11 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 through the Loan Maturity Date 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.

3.3.12 Certificate of the Independent Engineer. Delivery to Administrative Agent on behalf of the Banks of the Independent Engineer's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-3, 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 projected Project Costs, the projected Project Schedule, the projected O&M Costs, the design and other technical aspects of such Project, and the projected performance (output, heat rate, environmental and Permit compliance, and availability) 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 3.3.26 hereof are reasonable and achievable in a manner consistent with the applicable Project Budget and Project Schedule and 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 3.3.15 and fuel price assumptions approved by the Fuel Consultant in its report delivered to Administrative Agent on behalf of the Banks pursuant to Section 3.3.14 have been properly incorporated in to the Base Case Project Projections.

3.3.13 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, in form and substance satisfactory to the Technical Committee, 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.

3.3.14 Certificate of the Fuel Consultant. Delivery to Administrative Agent on behalf of the Banks of the Fuel Consultant's certificate with respect to such Subsequent Project, in substantially the form of Exhibit F-4, 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 3.3.26 and that the Fuel Plan delivered to Administrative Agent on behalf of the Banks as contemplated in Section 3.3.17 for such Subsequent Project constitutes a reasonable plan for the supply and transportation of fuel for such Subsequent Project under existing and expected market conditions affecting such Subsequent Project and consistent with the intended operation thereof.

3.3.15 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 Subsequent Project, in substantially the form of Exhibit F-5, 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 3.3.26 are reasonable in light of existing and expected market conditions affecting such Subsequent Project.

3.3.16 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 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 delivered in accordance with Section 3.1.15 and with such additional changes satisfactory in form and substance to the Technical Committee as may be appropriate under the circumstances.

3.3.17 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 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 pursuant to Section 3.1.16 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.

3.3.18 Schedule of Applicable Permits and Applicable Third Party Permits. Delivery to Administrative Agent on behalf of the Banks of a supplemental appendix to Exhibit G-3 showing the schedule of Permits required to construct, own and operate such Subsequent Project or required to be obtained by any Person that is party to any Project Document with respect to such Subsequent Project in order to perform its obligations thereunder, satisfactory in form and substance to the Technical Committee, together with copies of each Applicable Permit and Applicable Third Party Permit listed on Parts I(A) and I(B) of such supplemental appendix, each satisfactory in form and substance to the Technical Committee.

Borrower (or 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 Borrower's (or other Person responsible for constructing and operating such Subsequent Project's) 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 supplemental appendix to Exhibit G-3, 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 such Subsequent Project with respect to which responsibility for an Applicable Third Party Permit is indicated in Part I(B) of such supplemental appendix, 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 Subsequent Project set forth on Part I(B) of such supplemental appendix, 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 supplemental appendix to Exhibit G-3 shall list all other Permits required by Borrower (or Borrower 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 with respect to such Subsequent Project. Part II(B) of such supplemental appendix to Exhibit G-3 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 supplemental appendix to Exhibit G-3 in respect of such Subsequent Project shall, in the Technical Committee's reasonable opinion, be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay by Borrower (or Borrower and its Joint Venturers, if applicable) or the applicable other Major Project Participant, respectively. Except as disclosed in such supplemental appendix the Permits listed in Part I(A) and I(B) of such supplemental appendix 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 Case Project Projections.

3.3.19 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.

3.3.20 Absence of Litigation. (a) No action, suit, proceeding or investigation shall have been instituted or threatened against Borrower in respect of such Subsequent Project and (b) except for the applicability of the FPA solely by reason of Borrower 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, Borrower 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.

3.3.21 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.

3.3.22 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 and each other Major Project Participant with respect to such Subsequent Project (or, their respective parent corporations), together (in the case of Borrower 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.

3.3.23 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 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.

3.3.24 Project Budgets. Borrower shall have furnished Administrative Agent on behalf of the Banks a budget in substantially the form of the Project Budgets delivered pursuant to Section 3.1.22 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 budget 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 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 budget shall be in form and substance satisfactory to the Technical Committee.

3.3.25 Project Schedule. Borrower shall have furnished a project schedule with respect to such Subsequent Project in substantially the form of the Project Schedules delivered pursuant to Section 3.1.23 but with such changes as are required to address the specifics of such Subsequent Project and showing a guaranteed completion date for such Project that is on or before the Loan Maturity Date and which is otherwise in form and substance satisfactory to the Technical Committee and Independent Engineer.

3.3.26 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 the Projects (including such Subsequent Project) showing a minimum projected annual Four-Quarter Portfolio Interest Coverage Ratio of no less than [\*] (which ratio shall be supported by the projections set forth in the Independent Consultant's reports delivered pursuant to Sections 3.3.12, 3.3.14 and 3.3.15) in substantially the form (including the duration thereof) of those projections delivered pursuant to Section 3.1.24 and in form and substance satisfactory to the Technical Committee.

3.3.27 No Material Adverse Change. No event or circumstance having a Material Adverse Effect with respect to Borrower or the Projects, taken as a whole, has occurred since the Closing Date, and, with respect to the relevant Subsequent Project, no event or circumstance having a Material Adverse Effect with respect to such Subsequent Project shall have occurred.

3.3.28 A.L.T.A. Surveys. Administrative Agent on behalf of the Banks shall (a) be satisfied that Borrower (or other Person who holds the 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

[\*] Throughout this document, this symbol indicates that material has been omitted pursuant to a request for confidential treatment. The request for confidential treatment and the omitted material have been filed separately with the Securities and Exchange Commission. Roughly 200 pages of material have been omitted pursuant to the request for confidential treatment.

respect to such Subsequent Project; provided, however, that the matters described in clause (v) may be shown by separate maps, surveys or other information reasonably satisfactory to the Technical Committee.

3.3.29 Title Policies. Except if such Subsequent Project is an Additional Subsequent Project, 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, 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) Borrower 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 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 3.3.29(a).

3.3.30 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 Borrower 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 Borrower has previously filed an application with FERC for a determination that Borrower 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 Supplemental Project filed by Borrower with FERC and (y) the Technical Committee shall have received a legal opinion of counsel to Borrower in form and substance satisfactory to the Technical Committee to the effect that (i) if FERC has previously determined that Borrower is an Exempt Wholesale Generator, such Subsequent Project will not adversely impact Borrower's status as an Exempt Wholesale Generator or (ii) if FERC has not yet determined that Borrower is an Exempt Wholesale Generator, there exists no reasonable basis for FERC to deny an application filed by Borrower pursuant to Section 5.12.1 for Exempt Wholesale Generator status.

3.3.31 Notice to Proceed. Each 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 Construction Contract to which it is a party, and shall have acknowledged receipt thereof, on or prior to the Funding Date.

3.3.32 Representations and Warranties of Partners, Calpine and Borrower. Each representation and warranty of the Partners and Calpine under the Credit Documents and each representation and warranty of Borrower under the Operative Documents 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.

3.3.33 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.

3.3.34 Mechanics' Lien Indemnity. Calpine shall have executed and delivered an indemnity (in substantially similar form to the indemnity executed pursuant to Section 3.1.32) in favor of the Banks with respect to mechanics' liens which (a) could gain priority over the Deed of Trust with respect to such Subsequent Project, if any, and (b) are not insured against in the title policy, if any, delivered pursuant to Section 3.3.28.

3.3.35 Calpine Compliance. No "event of default" (as defined therein) under any agreement or instrument documenting or evidencing any of Calpine's Debt obligations shall have occurred and be continuing.

3.3.36 Calpine Guaranty. Calpine shall have executed (a) an acknowledgment, in form and substance satisfactory to the Technical Committee, that such Subsequent Project shall be included with the obligations undertaken pursuant to the Completion Guaranty and (b) an Affiliated Party Agreement Guaranty in respect of each Project Document entered into between Borrower and an Affiliate of Borrower for such Project.

3.3.37 Debt to Capitalization Ratio. Borrower shall have paid sufficient Project Costs for such Subsequent Project (which Project Costs are consistent with the Project Budget delivered pursuant to Section 3.3.24) so that Borrower's Debt to Capitalization Ratio (calculated without taking into account the Contributions to Borrower with respect to Initial Projects which have not satisfied their Pre-Funding Requirements) on the date of initial funding of Loans for such Subsequent Project, and through the Loan Maturity Date (assuming all further Project Costs for such Subsequent Project (and each other Subsequent Project the initial funding of Loans for which has been made) are paid with the proceeds of Loans), shall be no more than the Maximum Debt to Capitalization Ratio.

3.3.38 Debt to Collateral Value Ratio. Borrower shall have paid sufficient Project Costs for such Subsequent Project (which Project Costs are consistent with the Project Budget delivered pursuant to Section 3.3.24) so that Borrower's Debt to Collateral Value Ratio (calculated without taking into account the Contributions to Borrower with respect to Initial Projects which have not satisfied their Pre-Funding Requirements) on the date of initial funding of Loans for such Subsequent Project, and through the Loan Maturity Date (assuming all further

Project Costs for such Subsequent Project (and each other Subsequent Project for which the initial funding of Loans has been made) are paid with the proceeds of Loans), shall be no more than [\*] to 1.00.

3.3.39 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 3.3.13, (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.

3.3.40 Diversification Requirements. Such Subsequent Project satisfies the Diversification Requirements.

3.3.41 Calpine Corporation Credit Rating. Calpine shall be rated at least Ba3 and BB or Ba2 and BB- by Moody's and S&P, respectively.

3.4 Conditions Precedent to Each Credit Event. The obligation of the Banks to make each Loan (including the initial Loans for each Initial Project and each of the Subsequent Projects) (a "Credit Event"), is subject to the prior satisfaction of each of the following conditions:

3.4.1 Monthly Drawdown Frequency. Loans shall be made no more frequently than two times per month.

3.4.2 Notice of Borrowing. Borrower shall have delivered a Notice of Borrowing to Administrative Agent in accordance with the procedures specified in Section 2.1.

3.4.3 Drawdown Certificate and Engineer's Certificate. (i) At least 10 Banking Days prior to each Credit Event, Borrower shall have provided Administrative Agent with a certificate, dated the date of the proposed occurrence of such Credit Event and signed by Borrower, substantially in the form of Exhibit C-5, in respect of each Project for which a disbursement of funds are being requested and (ii) at least four Banking Days prior to each Credit Event, the Independent Engineer shall have provided Administrative Agent with a certificate of the Independent Engineer, substantially in the form of Exhibit C-6. Such certificates shall certify, among other things, that (A) the aggregate amount of Project Costs for each Project for which the disbursement of funds is being requested will not exceed 110% of the anticipated aggregate amount of Project Costs for such Project as set forth in such Project's Project Budget and (B) the aggregate amount of Project Costs for all Initial Projects and Funded Subsequent Projects then under construction will not exceed 105% of the anticipated aggregate amount of Project Costs for all such Projects as set forth in the respective Project Budgets; 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. Loans shall be in such amounts as shall ensure that uncommitted funds remaining in the Construction Account 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 Credit Event to issue to Administrative Agent a date-down endorsement of the relevant Title Policies, if any, to the date of such 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 Loan or other Borrowing.

3.4.7 Applicable Permits. Except as disclosed in the Exhibit G-3 appendix applicable to the relevant Project, all Applicable Permits and Applicable Third Party Permits with respect to the construction and operation of the relevant Project required to have been obtained by Borrower (or Borrower and its Joint Venturers, if applicable) or any other applicable Major Project Participant by the date of such 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 of such Permits not yet obtained and listed in Part II(A) or II(B) of the applicable Exhibit G-3 appendix, no facts or circumstances exist which indicate that any such Permit will not be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay by Borrower (or Borrower and its Joint Venturers, if applicable) or the applicable Major Project Participant, respectively, prior to the time that it becomes an Applicable Permit or Applicable Third Party Permit, as applicable. Except as disclosed in the applicable Exhibit G-3 appendix, such Permits which have been obtained by Borrower (or Borrower 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 Credit Event, there shall be redelivery of such matters as are described in Sections 3.1.1 through 3.1.4 and 3.1.6 or Sections 3.3.2 through 3.3.5 and 3.3.7, 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 3.1.8 and 3.1.20 or Sections 3.3.9 and 3.3.22, 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 Borrower 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 Loan or other Borrowing, 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 Borrower, any Partner 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 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. 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 Partners and Calpine under the Credit Documents and each representation and warranty of Borrower under the Operative Documents 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 has occurred and is continuing or will result from such Credit Event and no Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default in respect of the Project for which funds are being requested has occurred and is continuing or will result from such 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 and Major Power Purchase Agreements), electric transmission and interconnection agreement, material water supply agreement, Additional Major Project Document, Applicable Permit and Applicable Third Party Permit related to the Project for which 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 or the Projects, taken as a whole, 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 Borrower, each Person (other than Borrower) 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 Borrower) has funded such costs on such Person's behalf.

3.4.20 Debt to Capitalization Ratio. Borrower's Debt to Capitalization Ratio, calculated without taking into account the Contributions to Borrower with respect to Initial Projects which have not satisfied all of their Pre-Funding Requirements, shall be no more than the Maximum Debt to Capitalization Ratio.

3.4.21 Debt to Collateral Value Ratio. Borrower's Debt to Collateral Value Ratio, calculated without taking into account the Contributions to Borrower with respect to Initial Projects which have not satisfied all of their Pre-Funding Requirements, shall be no more than [\*] to 1.00.

3.4.22 Interest Coverage Ratio. From and after 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 equal or exceed [\*] to 1.00.

3.5 Conditions Precedent to Final Completion. Final Completion with respect to a Project shall not occur until the following conditions shall have been satisfied:

3.5.1 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 Borrower (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 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 Borrower's liability to such contractors, subcontractors or other persons, Administrative Agent shall waive the applicable filing periods referred to herein.

3.5.2 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.

3.5.3 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.

3.5.4 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.

3.5.5 Applicable Permits and Applicable Third Party Permits. Borrower 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.

**3.5.6 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 clause (v) may be shown by separate maps, surveys or other information reasonably satisfactory to Administrative Agent.

**3.5.7 Title Policy.** Except with respect to the Additional Subsequent Projects, 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 3.1.27 or Section 3.3.29, 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 3.1.27 or Section 3.3.29, 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) and as to such other matters as Administrative Agent may reasonably request, and containing only relevant Permitted Encumbrances, such Permitted Liens 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 3.1.27 or Section 3.3.29, as the case may be, reasonably satisfactory to Administrative Agent reflecting the items referred to above.

3.5.8 Project Pre-Completion Requirements. All of the Pre-Completion Requirements applicable to such Project, if any, shall have been satisfied.

3.5.9 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.

3.6 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 is subject to the prior satisfaction of each of the following conditions:

3.6.1 Representations and Warranties True and Correct. Each representation and warranty of the Partners and Calpine under the Credit Documents and each representation and warranty of Borrower under the Operative Documents 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.

3.6.2 No Event of Default or Inchoate Default. No Event of Default or Inchoate Default has occurred and is continuing or will result from such Credit Event 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 Credit Event.

3.6.3 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.

3.6.4 No Material Adverse Effect. No event or circumstance having a Material Adverse Effect with respect to Borrower or the Projects, taken as a whole, 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).

3.6.5 Interest Coverage Ratio. From and after 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 equal or exceed [\*] to 1.00.

3.6.6 Project Pre-Funding Requirements. All of the Pre-Funding Requirements applicable to such Project, if any, shall have been satisfied.

3.6.7 Debt to Collateral Value Ratio. Borrower's Debt to Collateral Value Ratio, calculated without taking into account the Contributions to Borrower with respect to Initial Projects which have not satisfied all of their Pre-Funding Requirements, shall be no more than [\*] to 1.00.

3.6.8 Project Status. The Project with respect to which such Letter of Credit is issued is an Initial Project or a Funded Subsequent Project.

3.7 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, in which case the provisions of Section 3.7(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) Borrower shall calculate the Four-Quarter Portfolio Interest Coverage Ratio, the Debt to Capitalization Ratio and the Debt to Collateral Value Ratio (A) without taking into account the EBITDA produced by the Project or Borrower's Contributions with respect to the Project with respect to which the Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default has occurred and (B) in the case of the Debt to Capitalization Ratio and Debt to Collateral Value Ratio only, without taking into account Borrower's Contributions with respect to any Initial Project which has not satisfied all of its Pre-Funding Requirements.

(ii) In the event that (A) the Four-Quarter Portfolio Interest Coverage Ratio calculated pursuant to clause (i) above 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 Section 3.1.24, (B) the Debt to Capitalization Ratio calculated pursuant to clause (i) above yields a maximum projected ratio that is no higher than the Maximum Debt to Capitalization Ratio at any time through the Loan Maturity Date and (C) the Debt to Collateral Value Ratio calculated pursuant to clause (i) above yields a maximum projected ratio that is no higher than [\*] to 1.00 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.

(iii) In the event that (A) the Four-Quarter Portfolio Interest Coverage Ratio calculated pursuant to clause (i) above yields a minimum projected ratio of less than [\*] to 1.00 through the same term of the Base Case Project Projections delivered pursuant to Section 3.1.24, (B) the Debt to Capitalization Ratio calculated pursuant to clause (i) above

yields a maximum projected ratio that is higher than the Maximum Debt to Capitalization Ratio at any time through the Construction Loan Maturity Date or

(C) the Debt to Collateral Value Ratio calculated pursuant to clause (i) above yields a maximum projected ratio that is higher than [\*] to 1.00 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, the Debt to Capitalization Ratio and the Debt to Collateral Value Ratio calculated pursuant to clause (i) above 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.

3.8 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 Project 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-5, in respect of the Project 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-6, relating to such disbursement; provided, however, that 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 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, funds deposited by Borrower into the Construction Account with respect to such Project shall be released notwithstanding failure to satisfy the conditions set forth in 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, 3.4.21 and 3.4.22 with respect to such Project.

(b) In the event that Borrower makes a Contribution as contemplated in paragraph (a) above or otherwise 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) after all Initial Projects have satisfied all of their respective Pre-Funding Requirements, (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 Collateral Value Ratio as of the end of the most recent calendar quarter was no more than [\*] to 1.00, obtain reimbursement of or repayment of, as the case may be, such Contributions described in paragraph (a) above 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 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(b).

3.9 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.

3.10 Waiver of Funding; Adjustment of Drawdown Requests. Notwithstanding the foregoing, the Required Banks, without waiving any of the Banks' rights hereunder, shall have the right to effect a Credit Event 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 Project 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 Project Costs were properly included in such Drawdown Certificate, Loans in the amount requested but not initially made shall forthwith be made.

## **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 Credit Event and each date on which a Letter of Credit is issued, extended or increased in Stated Amount. 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 partnership 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 all of the states where the Projects are located and 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 in respect of the Projects. On the Closing Date, Calpine CCFC GP, Inc., a Delaware corporation, is the sole general partner of Borrower and the limited partners of Borrower are the specific Persons identified by name under the definition of "Limited Partners."

4.1.2 Calpine CCFC GP, Inc., a Delaware corporation (a) is a corporation duly organized and 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 the State of Delaware to enter into the Partnership Agreement and as the general partner of 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 state where the Projects are located and 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 Partnership Agreement to execute and deliver, on behalf of Borrower, each Operative Document to which Borrower is a party.

4.2 Authorization; No Conflict. Borrower has duly authorized, executed and delivered, or has been properly assigned, each Operative Document to which Borrower is a party and neither Borrower'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 Borrower 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 Borrower 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 Borrower is a party is a legal, valid and binding obligation of Borrower enforceable against Borrower 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 Borrower is a party has been amended or modified except in accordance with this Agreement.

4.4 Compliance with Law. There are no violations by Borrower, any Partner 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 have been issued, entered or received by Borrower, any Partner or, to Borrower's knowledge, Calpine.

#### 4.5 Business, Debt, Contracts, Joint Ventures Etc.

4.5.1 Neither any Partner nor Borrower 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 Borrower is not (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) with respect to Subsequent Projects which are at least fifty percent (50%) owned by Borrower or  
(ii) as permitted pursuant to Section 6.4.2 hereof in connection with the Magic Valley Project.

4.5.3 Neither Borrower nor any Partner thereof has any subsidiaries (other than Borrower in the case of the Partners).

4.6 Adverse Change. 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 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 May 28, 1999 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 the Closing Date (or, with respect to a Subsequent Project, since such Subsequent Project's Funding Date).

4.7 Investment Company Act, Etc. Neither Borrower nor any Partner is an investment company or a company controlled by an investment company, within the meaning of the Investment Company Act of 1940, and neither Borrower nor any Partner 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 Borrower or any member of the Controlled Group or (b) Borrower 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 Borrower 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 Borrower'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 Initial Project and Funded Subsequent Project:

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 appendix to Exhibit G-3 hereto. Except as disclosed therein, each Applicable Permit listed in Part I(A) of the applicable appendix to Exhibit G-3 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 such Project, and all applicable appeal periods with respect thereto have expired. Each Permit listed in Part II(A) of the applicable appendix to Exhibit G-3 is of a type that is routinely granted upon application and that would not normally be obtained before contemplated by Borrower. No fact or circumstance exists, to Borrower's knowledge, which

indicates that any Permit identified in Part II(A) of the applicable appendix to Exhibit G-3 shall not be timely obtainable at a cost consistent with the applicable Project Budget without material difficulty or delay by Borrower before it becomes an Applicable Permit. Borrower 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 appendix to Exhibit G-3 hereto (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 appendix to Exhibit G-3 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 appendix to Exhibit G-3 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.

4.10 Qualifying Facility/Exempt Wholesale Generator. Each 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 the first Project, Borrower will be an Exempt Wholesale Generator.

#### 4.11 Hazardous Substance.

4.11.1 Except as set forth in Exhibit G-8: (a) neither Borrower nor any Partner nor Calpine (the "Subject Companies"), with respect to the Sites, Improvements or other Mortgaged Properties owned or leased by Borrower, 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 Borrower to perform its obligations under the Operative Documents; (b) none of the Subject Companies nor, to the best knowledge of the Partners 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 Borrower, 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 Borrower; (d) there are no Hazardous Substances used, stored or present at, on or, to

the best knowledge of Borrower and the Partners, near the Sites, Improvements or other Mortgaged Properties owned or leased by Borrower, 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 Borrower and the Partners, 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 Borrower.

4.11.3 Neither Borrower nor any Partner 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 Borrower.

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 Borrower, any Partner, Calpine, or, to the best knowledge of Borrower, any other Major Project Participant or a Project is a party or is subject, or by which any of them or any of their properties or a Project are bound, which if adversely determined to or against Borrower, any other Major Project Participant or a Project could reasonably be expected to have a Material Adverse Effect on any Initial Project or Funded Subsequent Project or Borrower.

4.13 Labor Disputes and Acts of God. Neither the business nor the properties of Borrower, any Partner, Calpine, or, to the best knowledge of Borrower, any other Major Project Participant 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 or Funded Subsequent Project or Borrower.

#### 4.14 Project Documents.

4.14.1 Copies of all of the Project Documents in effect with respect to the Initial Projects or the Funded Subsequent Projects 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 relating to the Initial Projects and the Funded Subsequent Projects none of the Project Documents 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 and the Funded Subsequent Projects 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 Borrower in connection with the transactions contemplated by this Agreement, the other Project Documents or the design, description, testing or operation of a Project, 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 or any Initial Project or 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 or any Initial Project or 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, Texas, California, Maine, Arizona, Delaware 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. Borrower and each Partner 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, Borrower is a partnership 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 Borrower being an Exempt Wholesale Generator or the owner of a Qualifying Facility, none of Borrower, any Partner, 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, 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. Borrower is not 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 Borrower of any of the Obligations or the execution, delivery and performance by Borrower of the Operative Documents. Borrower 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.

4.19 Regulation U, Etc. Borrower is not 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 Borrower 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 Budget and the Base Case Project Projections and are responsible for developing the assumptions on which the Project Budget and the Base Case Project Projections are based; and the Project Budget 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 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 Borrower, the Partners, Calpine, and any Affiliated Major Project Participants delivered pursuant to Sections 3.1.20, 3.3.22 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 Borrower, the Partners, 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. Borrower is not in default under any material term of any Operative Document relating to the Initial Projects and the Funded Subsequent Projects or any agreement relating to any obligation of Borrower for or with respect to borrowed money, and to the best of Borrower's knowledge, no other party to any Project Document 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 California from time to time) of Borrower is located in San Jose, California. Borrower's federal employer identification number is 77-0520679.

4.24.2 With respect to each Project, all of the 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 Borrower's books of accounts and records are located at 50 West San Fernando Street, San Jose, California 95113.

4.25 Title and Liens. (a) With respect to each Initial Project and Funded Subsequent Project (other than Projects in which Borrower holds a partial undivided ownership interest), Borrower has good, marketable and insurable (as to real property) title to such Project, and all of the Collateral relating to such Project, and good, marketable and insurable (as to real property) 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.

(b) With respect to each Initial Project and Funded Subsequent Project in which Borrower holds a partial undivided ownership interest, Borrower has good, marketable and insurable (as to real property) title to the applicable undivided portion of such Project, and all of the Collateral relating to such Project, and good, marketable and insurable (as to real property) 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.

(c) The Lien of the Collateral Documents constitutes a valid lien on all Collateral relating to the Initial Projects and the Funded Subsequent Projects. The Lien of the Collateral Documents 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 (other than the Additional Subsequent Projects) described in the Deeds of Trust and, a first priority perfected security interest in all the personal property relating to the Initial Projects and the Funded Subsequent Projects 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. With respect to the Additional Subsequent Projects, no Lien exists on the real property comprising such Projects, other than Permitted Liens.

4.26 Trademarks. Borrower 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 Borrower 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 Borrower 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 Borrower which could reasonably have a Material Adverse Effect on Borrower or such related Project.

4.27 Collateral. The security interests granted to Administrative Agent pursuant to the Collateral Documents in the Collateral related to the Initial Projects and Funded Subsequent Projects (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, 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 Projects and Funded Subsequent Projects 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. 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 Project and Funded Subsequent Projects, and all such filings or recordings will have been made to the extent Administrative Agent's security interest can be perfected by filing. Borrower 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 Borrower;

(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 Project, at such time as Borrower 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 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 Year 2000 Compliance. With respect to Borrower and each Initial Project and Funded Subsequent Project, all equipment, products, systems or computer programs that are part of such Project will be able to, without manual intervention or interruption (a) correctly handle and process date information before, during and after January 1, 2000 accepting date input, providing date output and performing calculations, including sorting and sequencing, on dates or

portions of dates; (b) function according to the documentation during and after January 1, 2000, without changes in operation resulting from the advent of the calendar year 2000; (c) where appropriate, respond to two-digit date input in a way that resolves any ambiguity as to century in a disclosed, defined and predetermined manner; and (d) store and provide input of date information in ways that are unambiguous as to century.

**4.34 Acquisition of Real Property.** Borrower has not 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 6.24.

## **ARTICLE 5** **COVENANTS OF BORROWER**

Borrower covenants and agrees that so long as this Agreement is in effect, it will:

### **5.1 Use of Proceeds and Project Revenues.**

**5.1.1 Proceeds.** With respect to each Initial Project and Funded Subsequent Project, unless otherwise applied by Administrative Agent pursuant to this Agreement, deposit the proceeds of the Loans advanced for such Project, the Additional Borrower Equity and the other Contributions made pursuant to Section 3.8(a) in the relevant Construction Sub-Account, and except to the extent permitted in Section 3.8(b), (a) hold such proceeds as a trust fund for the payment of Project Costs of such Project, and (b) use them solely to pay Project Costs of such Project.

**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 Borrower 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 Borrower 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.

### **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.** With respect to each Initial Project and Funded Subsequent Project, pay all obligations due under the Project Documents, 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 materially adversely affect such Project, the Banks' Liens in the Collateral, Borrower 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) Borrower's trade payables which shall be paid in the ordinary course of business.

5.3 Warranty of Title. Maintain (a) with respect to each Initial Project and Funded Subsequent 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 and (b) good, 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 Borrower, threatened against Borrower and involving claims against Borrower or any Initial Project or Funded Subsequent Project 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 Borrower and any Governmental Authority and which involve (a) claims against Borrower which exceed \$2,000,000 individually or \$5,000,000 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 or a Funded Subsequent Project 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 Borrower, its employees, agents, contractors, consultants or representatives, or of any other Person if such casualty, damage or loss affects Borrower or any Initial Project or Funded Subsequent Project, in excess of \$500,000 for any one casualty or loss or \$2,000,000 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 Borrower'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 Borrower 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 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 or Funded Subsequent Project, 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;

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 and, to the extent requested by Administrative Agent, copies of invoices or statements which are reasonably available to Borrower under such Construction 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 or such other Project Document;

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 Borrower's knowledge, threatened, Environmental Claim against Borrower or to Borrower'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 a partner of Borrower or the occurrence of any other change in or transfer of ownership interests in Borrower or any Project, notice thereof, which notice shall identify such partner and such partner's interest in Borrower 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;

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 Borrower 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 Borrower, copies of (a) all Applicable Permits relating to an Initial Project or a Funded Subsequent Project obtained by Borrower or any Partner 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 Borrower after the Closing Date and (c) all material notices relating to any Initial Project or Funded Subsequent Project received by Borrower 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 March 31, 1999), an unaudited balance sheet of Borrower, the Partners, 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 Borrower, the Partners, 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 Borrower, each Partner, 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.

5.5.2 Each time the financial statements are delivered under

Section 5.5.1(a) above for Borrower, the Partners, 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 Borrower, 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 Borrower, 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 Borrower and each such Project, and make such alterations to such Projects and Sites as may be required for such compliance.

5.8 Reports. With respect to each Initial Project and Funded Subsequent Project:

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 3.2.4 in respect of such Project, substantially in the form of the 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 Partners, 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 and, to the extent reasonably available, the Major Project Participants 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 Borrower 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 or (c) any other purchaser under a Power Purchase Document.

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) maintain and preserve its existence as a limited partnership 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) 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 to which it is party or by which it is bound, (c) 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, (d) 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, (e) 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, (f) engage only in the business contemplated by the Operative Documents and (g) 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 Borrower required to be delivered pursuant to Section 5.5.1, 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 Debt to Capitalization Ratio calculation 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, a Debt to Capitalization Ratio of no more than the Maximum Debt to Capitalization Ratio.

## 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, or any Project, except for claims by Borrower 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 Borrower, any Partner 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 Borrower's 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 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 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 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.

5.12.1 On or before the earlier of: (x) 75 days prior to the anticipated commencement of commercial operations of the first Project to commence commercial operations and (y) January 4, 2001, file, in good faith, an application with FERC requesting that FERC certify Borrower as an Exempt Wholesale Generator.

5.12.2 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 the first Project to commence commercial operations, either be a Qualifying Facility engaged exclusively in the generation of electric energy exclusively for sale at wholesale 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 Borrower being the owner of a Qualifying Facility or an Exempt Wholesale Generator, to maintain Borrower'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 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 90 days prior to the beginning of each calendar year, beginning with the calendar year in which Completion of such Project occurs or is anticipated to occur, adopt an 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 ensuing calendar year 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. Copies of each draft Annual

Operating Budget shall be promptly furnished to Administrative Agent for its review and reasonable approval. Failure by Administrative Agent to approve or disapprove such draft Annual Operating Budget within 45 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 45 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 Borrower 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 Borrower under each and every material Project Document relating to the Initial Projects and the Funded Subsequent Projects, including prosecution of suits to enforce any right of Borrower 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 Borrower fails to take the requested actions within five Banking Days and such failure reasonably could be expected to have a Material Adverse Effect on Borrower or any Project, Administrative Agent may enforce in its own name or in Borrower's name, such rights of Borrower.

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 shareholders to grant a first priority Lien to Administrative Agent in all the ownership interests in Borrower, 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, and to the extent permitted without any waivers under the Calpine Indenture, if Borrower shall at any time acquire any real property or leasehold or other interest in real property related to an Initial Project or a Funded Subsequent Project not covered by the Deeds of Trust, promptly upon such acquisition (or on the Closing Date if such acquisition occurred prior thereto) execute, deliver and record a supplement to the applicable Deed of Trust or 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. 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.

5.17 Project Equity.

5.17.1 (a) On or prior to the initial advance of Loans hereunder, make or cause to be made, from time to time as and when needed to pay Project Costs for a particular Project, Contributions in an aggregate amount equal to

[\*] (including Contributions used to pay Project Costs incurred or paid prior to the date upon which initial Loans are made pursuant to Section 3.2 and approved as valid by the Independent Engineer), (b) in addition, in the event that Calpine shall, at the time of funding of the initial Loans hereunder, not be rated at least Ba2 by Moody's and BB by S&P, then on or prior to such initial funding of Loans, make or cause to be made Contributions in an amount equal to the difference between (i) [\*] of the aggregate amount of Project Costs set forth in the Project Budgets for the Initial Projects (after giving effect to the amendment to the Project Budgets contemplated in Section 6.21(a)), less (ii) [\*] (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 3.8. 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 Project Costs upon the satisfaction of the requirements set forth in Section 3.8(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 3.8(a), to pay Project Costs.

5.18 Maintenance of Insurance. With respect to each Initial Project and Funded Subsequent Project, 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 "VIII," 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 and Funded Subsequent Project, 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 Borrower or such Project, including sales and use taxes and real estate taxes, all other charges incurred in the operation, maintenance, use, occupancy and upkeep of such Project 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. In furtherance of the foregoing, Borrower shall engage a qualified Person or Persons to confirm Borrower's compliance with all tax laws and regulations and to implement any required programs and procedures to ensure continued compliance with the same. Borrower 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 Borrower is 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 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 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 Initial Project and Funded Subsequent Project, comply in all material respects with the provisions of the Power Marketing Plan and Fuel Plan delivered to and approved by Administrative Agent and/or 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 Borrower or such Project.

5.23 Project Document Scope of Liability. Use good faith reasonable efforts to include, or cause to be included, in each Major Project Document entered into after the date hereof, provisions to the effect that the counterparty's recourse against Borrower under such Project Document will be limited to the Project, or Borrower's interest in the Project, to which such Project Document relates.

5.24 Funded Subsequent Projects. Cause, within 24 months after the Closing Date, not less than two wholly owned Subsequent Projects or three wholly or partially owned Subsequent Projects to become Funded Subsequent Projects in accordance with this Agreement. Of such Funded Subsequent Projects, (i) at least two Funded Subsequent Projects (whether wholly owned or partially owned) may not be Additional Subsequent Projects and (ii) the first Subsequent Project (whether wholly owned or partially owned) to become a Funded Subsequent Project may not be an Additional Subsequent Project.

## **ARTICLE 6** **NEGATIVE COVENANTS**

Borrower covenants and agrees that so long as this Agreement is in effect, it will not:

6.1 Contingent Liabilities. Except as provided in this Agreement, 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 Initial Project or Funded Subsequent Project 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 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, or (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.

6.4.2 (a) Borrower shall be permitted to implement the sale-leaseback financing contemplated in the South Point Lease on the conditions that (i) at the time of the closing of such sale-leaseback financing, all the Initial Projects shall have satisfied all of their Pre-Funding Requirements, (ii) at least two wholly owned or three partially or wholly owned Subsequent Projects have become Funded Subsequent Projects, (iii) concurrently with the closing of such sale-leaseback financing Borrower use all of the net proceeds of such financing and, to the extent necessary, make additional Contributions to prepay the Loans in an amount equal to the greater of (A) the book value of the South Point Project calculated in accordance with GAAP and (B) the net proceeds of such sale-leaseback, (iv) no Inchoate Default or Event of Default has occurred and is continuing and (v) Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall equal or exceed [\*] to 1.00. 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, as reasonably may be necessary to release the Liens on the South Point Project Collateral granted to the Banks pursuant to the South Point Deed of Trust and the other Collateral Documents.

(b) [\*]

(c)[\*]

[\*]

(d) Borrower shall have the right in its sole discretion to have any of the Designated Subsequent Projects released from the Liens of the Collateral Documents and to transfer ownership of such Projects to another Person at any time prior to such Project becoming a Funded Subsequent Project, and the Banks shall promptly release any or all of the Designated Subsequent Projects and shall consent to their transfer to another Person or Persons without payment of additional consideration or any mandatory prepayment of Loans, upon written notice to Administrative Agent from Borrower, notwithstanding the existence of an Event of Default or Inchoate Default or any other circumstance or condition whatsoever. Upon receipt of such notice requesting the release of any or all of such Projects, Administrative Agent shall promptly execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Projects from the Liens of the Collateral Documents and to permit such transfer of ownership.

(e) Borrower shall have the right in its sole discretion to have any Subsequent Project that is a Qualifying Facility where selling electric capacity or energy on a wholesale basis is not economically advantageous to Borrower or is not permitted by any Project Document and, as a consequence, whose development or operation on a retail basis is reasonably likely to become an Event of Default under Section 8.1.8 released from the Liens of the Collateral

Documents and to transfer ownership of such Project to another Person at any time prior to Commercial Operation of such Project, and the Banks shall consent to such release and transfer, notwithstanding the existence of any other Event of Default or Inchoate Default, except that, if such Project is a Funded Subsequent Project, Borrower shall prepay Loans in an amount equal to the greater of (i) the book value of such Project or (ii) the aggregate principal amount of all Loans made hereunder to pay Project Costs related to such Project. Upon satisfaction of such condition, Administrative Agent shall execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Project from the Liens of the Collateral Documents and to permit such transfer of ownership.

(f) In the event that Borrower is unable, after using commercially reasonable efforts, (i) to obtain any consents, agreements or undertakings with respect to an Unfunded Subsequent Project (A) from one or more Joint Venturers with respect to a partially owned Unfunded Subsequent Project or (B) from a steam or other thermal host, ground lessor or other Person with the right, power or ability to compel or prevent construction of such Subsequent Project, that in either case are necessary to satisfy the conditions precedent for initial funding of such Subsequent Project under Section 3.3, or (ii) to satisfy the conditions precedent for initial funding of a Subsequent Project under Section 3.3 with respect to any Subsequent Project, and in the case of either clause (i) or (ii) above the failure to satisfy the conditions precedent for initial funding of such Subsequent Project is not otherwise waived in accordance with this Agreement, Borrower shall have the right in its discretion to have such Subsequent Project released from the Liens of the Collateral Documents and to transfer ownership of such Subsequent Project to another Person or Persons at any time prior to such Project becoming a Funded Subsequent Project, and the Banks shall promptly release such Project and consent to its transfer to another Person or Persons without payment of additional consideration or any mandatory prepayment of Loans, upon written notice to Administrative Agent, notwithstanding the existence of an Event of Default or Inchoate Default or any other circumstance or condition whatsoever. Upon receipt of such notice requesting the release of any such Project, Administrative Agent shall promptly execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Subsequent Project from the Liens of the Collateral Documents 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 released from the Liens of the Collateral Documents and to transfer such Project to another Person, and the Banks shall promptly release such Project and consent to the transfer of such Project, on the conditions that (i) at the time of such release, all of the Initial Projects have satisfied all of their Pre-Funding Requirements, (ii) no Inchoate Default or Event of Default has occurred and is continuing, (iii) Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall equal or exceed [\*] to 1.00 and (iv) the Debt to Collateral Value Ratio as of the most recent calendar quarter shall be no more than [\*] to 1.00. Upon satisfaction of the foregoing conditions, Administrative Agent shall execute and deliver to Borrower such documents and instruments as may be reasonably necessary to release such Project from the Liens of the Collateral Documents and to permit such transfer of ownership.

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.

6.6 Distributions. 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 (including any transfers of any tax benefits) unless:

- (a) 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;
- (b) 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;
- (c) such distribution is made at Waterfall Level 8;
- (d) no Material Adverse Effect with respect to Borrower has occurred and is continuing;
- (e) 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 in excess of the sum of (x) [\*] plus (y) any Contributions required to be contributed to Borrower pursuant to Sections 5.17.1(b) and 5.17.2 plus (z) Contributions in connection with the release of Collateral pursuant to Section 6.4.2;
- (f) at the time of such proposed distribution or payment, all the Initial Projects shall have satisfied all of their respective Pre-Funding Requirements; and
- (g) Borrower's Four-Quarter Portfolio Interest Coverage Ratio as of the most recent calendar quarter shall equal or exceed [\*] to 1.00.

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.

6.8 Transactions With Affiliates. Except for (a) the Equity Documents, the Project Documents in effect on the Closing Date or substantially similar Additional Project Documents for Subsequent Projects and the transactions permitted thereby, (b) arms-length transactions in the ordinary course of business, and (c) as otherwise expressly permitted by this Agreement and the other Credit Documents, directly or indirectly enter into any transaction or series of transactions relating to an Initial Project or a Funded Subsequent Project with or for the benefit of an Affiliate without the prior written approval of Administrative Agent; provided, Borrower shall, subject to Sections 3.1 and 3.3, cause (i) any Affiliate entering into a Project Document with Borrower for

the supply of goods or services to any such Project to deliver to Administrative Agent a duly executed Affiliated Subordination Agreement substantially similar to the corresponding documents in respect of the Initial Projects 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 same extent as O&M Costs are subordinated in the corresponding documents in respect of the Initial Project or otherwise to the extent satisfactory to Administrative Agent, that Borrower may incur pursuant to such Project Document to the Obligations and (ii) Calpine to deliver to Administrative Agent a duly executed Affiliated Party Agreement Guaranty (or, if applicable, amend an existing Affiliated Party Agreement Guaranty) in order to evidence Calpine's guaranty of such Affiliate's performance under such Project Document in favor of Borrower.

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, a member in any limited liability company or create and hold stock in any subsidiary 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, 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) of, any of the provisions of, or give any consent under, (a) any of 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 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 or Funded Subsequent Project, 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 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 if such change order:

- (a) 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 \$1,000,000 in the aggregate (exclusive of increases reimbursed by insurance awards, condemnation awards or contractual damage awards);
- (b) is reasonably likely to delay Completion of any Project beyond the Loan Maturity Date;
- (c) 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 if such modification or impairment could reasonably be expected to have a Material Adverse Effect on such Project;
- (d) is reasonably likely, in the opinion of the Independent Engineer, to impair or reduce the maximum capacity, value, efficiency, utility, output, performance, reliability, durability or availability of any Initial Project or Funded Subsequent Project, 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;
- (e) is not permitted by any Major Project Document relating to an Initial Project or a Funded Subsequent Project or would (i) materially diminish any obligation of any Major Project Participant or (ii) materially increase any obligation of Borrower thereunder;
- (f) 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;
- (g) may cause any Initial Project or Funded Subsequent Project not to comply or lessen any such Project's ability to comply with Legal Requirements; or
- (h) relates to a Major Construction Contract between Borrower 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 to conform the equipment or services provided by such Contractor to the intellectual property rights of others if such action could reasonably be expected to materially and adversely affect Borrower's continued use of any Initial Project or Funded Subsequent Project or

(b) to the settlement by any Contractor of any claim or proceeding which could reasonably be expected to materially adversely affect Borrower's rights relating to an Initial Project or a Funded Subsequent Project.

6.13.5 Direct any Major Contractor to suspend the work being performed under any Construction Contract relating to an Initial Project or a Funded Subsequent Project 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 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 or 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 Borrower 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, or under any of the Project Documents relating to an Initial Project or a Funded Subsequent Project, to any Person except as permitted under this Agreement and the other Credit Documents.

6.18 Abandonment of Project. Voluntarily cease or abandon the development, construction or operation of any Initial Project or Funded Subsequent Project.

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 Administrative Agent) on the Closing Date (with respect to the Initial Projects) or the Funding Date (with respect to Subsequent Projects), except (a) with the prior written consent of Administrative Agent acting at the direction of the Required Banks, 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 Required Banks shall not be required for Borrower to enter into Additional Project Documents (i) with Persons other than Affiliates of Borrower and (ii) pursuant to which Borrower 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, except that in the event that Calpine shall, at the time of funding of the initial Loans hereunder, not be rated at least Ba2 by Moody's and BB by S&P, then prior to such initial funding of Loans Borrower shall revise the Project Budgets to increase the "contingency" Line Items thereof so that it equals or exceeds 5% of the Project Costs with respect to the relevant 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) unless Borrower shall have delivered to Administrative Agent on behalf of the Banks Environmental Consultant's Phase I environmental report with respect to such real property and, if Phase II environmental review is warranted, as reasonably determined by the Technical Committee, by such Phase I report, delivered to Administrative Agent on behalf of the Banks a Phase II environmental report, in each case, along with a corresponding reliance letter from Environmental Consultant, confirming, in form and substance satisfactory to Administrative Agent, either (i) that no Hazardous Substances were found in, on or under such real property or (ii) matters otherwise satisfactory to Administrative Agent.

## **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 Depositary Agent's New York office and within the Construction Account, a sub-account for each Project. On or prior to the initial funding of Loans in respect of a Subsequent Project, Borrower, and Administrative Agent shall establish a sub-account within the Construction Account for such Subsequent Project (each sub-account established pursuant to the two preceding sentences being referred to as a "Construction Sub-Account"). There shall be deposited into each Construction Sub-Account the proceeds of all Loans made hereunder in respect of the corresponding Project and all amounts required to be deposited in such Construction Sub-Account pursuant to Sections 3.8(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 subject to the satisfaction (or waiver) of the applicable provisions of Article 3 in respect of the applicable Project and this Section 7.1. Borrower shall have the right to cause Administrative Agent to disburse amounts from the Construction Sub-Account of 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 Drawdown Certificate. Borrower agrees that 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 for amounts due and owing to such Contractor under the relevant Construction Contract, or any other materialmen or subcontractors in payment of amounts due and owing to such parties in respect of the applicable Project without further authorization from Borrower; provided, however, that if Borrower has notified Administrative Agent that it is contesting a claim for payment by a Contractor 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,

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 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 Revenue Account.

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 Depositary Agent's New York office and within the Revenue Account, a sub-account for each 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 Depositary 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 7.2.4 below;
- (7) 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 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.

**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-6 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) 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. Notwithstanding anything to the contrary in this Agreement, in no event shall the "Annual Base Fee" (as defined in the O&M Agreements) be greater than the amount specified therefor in the then-applicable 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 Completion Date for a Project, Borrower 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 the provisions of the Waterfall Levels, Borrower shall cause to be transferred to the Operating Accounts the amounts specified in Sections 7.2.1 and 7.2.2.

7.3.3 Withdrawals. Borrower shall be entitled to withdraw amounts from an Operating Account 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 which are not, for any reason, applied to 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. Borrower 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 Depositary Agent's New York Office the Loss Proceeds Account. All Insurance Proceeds, Eminent Domain Proceeds and damage payments described in Section 7.7 shall be deposited 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 Borrower hereunder ("Insurance Proceeds") shall be applied as provided in this Section 7.5. All Insurance Proceeds (or, in the case of a Project that is not wholly owned by Borrower, Borrower'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 Borrower, Calpine or any other Person with respect to any Project by any insurer, such Insurance Proceeds shall be received only in trust for Administrative Agent, shall be segregated from other funds of Borrower, 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 Borrower (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 and 7.5.4) 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 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, if applicable, the Joint Venturer to make repairs and restorations; provided, however, that if such Project is not wholly owned by Borrower, then the Joint Venture Agreement shall 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 and the Independent Engineer certify, 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 Borrower for any single loss not in excess of \$1,000,000 are payable, such Insurance Proceeds received by Borrower 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 Borrower for any single loss in excess of \$1,000,000, but not 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.

7.5.6 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 Borrower 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 Borrower 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 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 Borrower, Borrower'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 Borrower, Borrower'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 2.1.6 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 Borrower, Borrower'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 any contractors or subcontractors or other Persons involved in the construction and operation of a Project (or in the case of a Project that is not wholly owned by

Borrower, Borrower'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 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 Depositary Agent's New York office.

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.

7.8.3 Withdrawals. Borrower shall be entitled to submit a duly executed Reserve Account Disbursement Requisition in substantially the form of Exhibit C-8 (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.

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 Borrower 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.

## **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 \$10,000,000 or more individually or in the aggregate or (ii) Borrower or any Partner 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 or the Projects, taken as a whole.

8.1.3 Misstatements; Omissions. Any financial statement, representation, warranty or certificate made or prepared by, under the control of or on behalf of Borrower 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 or the Projects, taken as a whole.

8.1.4 Bankruptcy; Insolvency. Any of Borrower, the Partners, 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 or the Projects, taken as a whole), any Fuel Supplier (so long as such party's Bankruptcy Event could reasonably be expected to have a Material Adverse Effect on Borrower or the Projects, taken as a whole) or any Major Contractor, Major Gas Transporter or counterparty to any electrical transmission or interconnection agreement or material water supply agreement (so long as such Major Contractor, Major Gas Transporter or counterparty has outstanding or unperformed obligations under the 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 or the Projects, taken as a whole) shall become subject to a Bankruptcy Event; provided that, solely with respect to a Bankruptcy Event affecting any entity other than Borrower, the Partners, and Calpine, no Event of Default shall occur as a result of such Bankruptcy Event if Borrower obtains a Replacement Obligor (or, in the case of the occurrence of a Bankruptcy Event with respect to a Joint Venturer, if Borrower or another Person acquired such Person's interest in such Project) 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 or the Projects, taken as a whole.

8.1.5 Debt Cross Default. Borrower, 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 Borrower 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 Borrower 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 Borrower and all members of the Controlled Group, shall exceed \$500,000.

#### 8.1.7 Breach of Terms of Agreement.

- (a) Borrower shall fail to perform or observe any of the covenants set forth in Section 5.1, 5.9(a), 5.9(f), 5.10, 5.11, 5.17, 5.18, or Article 6 (other than Section 6.7, 6.8, 6.14, 6.15 or 6.20).
- (b) Borrower shall fail to perform or observe any of the covenants 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) Borrower 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 or the Projects, taken as a whole 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 Borrower 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 Borrower diligently to cure such failure.

(c) Calpine shall be in breach of, or in default under, the Completion Guarantee.

#### 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 or the Projects, taken as a whole (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) Borrower or any Partner shall lose the exemption from regulation under PUHCA.

### 8.1.9 Abandonment.

- (a) At any time prior to the Completion of any Initial Project or Funded Subsequent Project, Borrower 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 Borrower 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, Borrower 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 and the Funded Subsequent Projects, 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 Borrower.

8.1.11 Loss of Control. (a) Calpine shall cease to own directly or indirectly 100% of the partnership interests in Borrower or (b) except for (x) Subsequent Projects approved pursuant to Section 3.3 which are at least fifty percent (50%) owned by Borrower, (y) Unfunded Subsequent Projects or (z) as permitted in Section 6.4.2, Borrower shall cease to own 100% of any Project.

### 8.1.12 Loss of or Failure to Obtain Applicable Permits or Applicable Third Party Permits.

- (a) Borrower 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 requested by Borrower 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 and the Projects, taken as a whole.

(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 Borrower is not able to (i) 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 the Projects, taken as a whole, or (ii) obtain a Replacement Obligor for such Major Project Participant, where prior to Borrower 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 or the Projects, taken as a whole.

8.1.13 Loss of Collateral. Any substantial portion of Borrower's property relating to an Initial Project or Funded Subsequent Project is damaged, 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 Borrower in Administrative Agent's reasonable judgment to continue satisfying its obligations hereunder and under the other Operative Documents.

8.1.14 Non-Fundamental Project Default. A Non-Fundamental Project Default has occurred, is continuing, and could reasonably be expected to have a Material Adverse Effect with respect to Borrower and the Projects, taken as a whole.

8.1.15 Pledge of Borrower Ownership Interest. Any Lien in favor of any Person other than Administrative Agent encumbers any direct ownership interests in Borrower.

## 8.2 Remedies.

Upon the occurrence and during the continuation of an Event of Default, but subject to Section 1(a) of the 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, 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. Prepay Loans 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 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 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. Enter into possession of any Project and perform any and all work and labor necessary to complete such Project substantially according to the Plans and Specifications or to operate and maintain such Project, 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, notwithstanding that such expenditures may, together with amounts advanced under this Agreement, exceed the aggregate amount of the Total 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 any Partners, Calpine or any of their respective Affiliates (other than Borrower), shareholders, officers, directors or employees (collectively the "Nonrecourse Persons"), and the Banks' recourse against Borrower shall be limited to the Collateral, the Projects (and all portions thereof and rights or appurtenances thereto), all Project Revenues, all Proceeds, and all income or revenues of the foregoing; 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 Borrower 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 Borrower 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 Borrower 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 Borrower 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 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 Borrower; and (e) nothing contained herein shall limit the liability of (i) any Person who is a party to any Project Document 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 (but subject to any limitation of liability in such Project Document), 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 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 Borrower, its Affiliates or Partners 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 Borrower, its Affiliates or its Partners 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 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 Borrower 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 Borrower 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 Borrower, its Affiliates or Partners 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 Borrower, its Affiliates or Partners.

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, 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 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 gross negligence or willful misconduct. Administrative Agent 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 promptly upon demand for its ratable share of any out-of-pocket expenses (including counsel fees) incurred by Administrative Agent 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 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 Borrower is 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, Co-Arrangers and Co-Documentation Agents. With respect to its Commitment, the Loans made by it and any Note issued to it, the financial institution acting as Administrative Agent 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. The term "Bank" or "Banks" shall, unless otherwise expressly indicated, include Administrative Agent in its individual capacity. The financial institution acting as Administrative Agent and its 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 Co-Arrangers and the Co-Documentation Agents shall not, in such capacities (but not in their capacities as Banks), have any 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), 2.7, 2.8, 2.9, 5.1, 5.17, 6.17, 6.22, 7.1 through 7.13, 8.1.10, 10.1, 10.13, 10.14 or 10.17; or
- (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 Borrower or a Project 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;
- (xi) Terminate the Completion Guaranty except in accordance with its terms; or
- (xii) Subordinate the Loans to any other Indebtedness.

#### 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, 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 an appropriate agreement evidencing such sale, assignment, transfer or other disposition, (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 the Lead Arrangers and each of the Co-Documentation Agents 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 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 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 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) certificates of the Insurance Consultant, Independent Engineer, Fuel Consultant and Power Marketing Consultant delivered on and dated as of the Closing Date as described in Section 3.1, respectively, and containing the matters set out therein;

(b) after the Closing Date, all certificates to be delivered pursuant to Sections 3.2, 3.3, 3.4, 3.5 and 3.6, 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-8; and

(c) monthly after the Closing Date, a full report and status of the progress of each Project to that date, a complete assessment of Project Costs to Final Completion of such Project and such other information and certification as Administrative Agent may reasonably require from time to time.

11.3.2 Following Final Completion, 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 each 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:

The Bank of Nova Scotia  
600 Peachtree Street, N.E., Suite 2700  
Atlanta, Georgia 30308  
Attn: Michael Silveira  
Telephone No.: (404) 877-1522  
Telecopy No.: (404) 888-8998

If to Borrower:

Calpine Construction Finance Company, L.P.  
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  
580 California Street, Suite 2100  
San Francisco, California 94104  
Attn: Jon Burckin  
Telephone No.: (415) 986-1100  
Telecopy No.: (415) 397-0791

The Bank of Nova Scotia  
600 Peachtree Street, N.E., Suite 2700  
Atlanta, Georgia 30308  
Attn: Michael Silveira  
Telephone No.: (404) 877-1522  
Telecopy No.: (404) 888-8998

Credit Suisse First Boston  
Eleven Madison Avenue  
New York, New York 10010-3629  
Attn: Portfolio Management  
Telephone No. (212) 325-9126  
Telecopy No.: (212) 325-8321

CIBC Inc.  
425 Lexington Avenue  
New York, New York 10017  
Attn: Eric Klaussmann  
Telephone: (212) 856-3828  
Telecopy: (212) 885-4911

TD Securities (USA) Inc.  
31 West 52nd Street  
New York, New York 10019  
Attn: Deborah Gravinese  
Telephone: (212) 827-7777  
Telecopy: (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 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 written 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 Borrower 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 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 attorneys retained by Administrative Agent 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 incurred in connection with this Agreement or the Loans subsequent to the Closing Date, and the travel and out-of-pocket costs incurred by Administrative Agent following the Closing Date, and Borrower further agrees to pay Administrative Agent the out-of-pocket costs and travel costs incurred by Adminimstrative Agent 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' (other than Adminimstrative Agent's) attorneys. Borrower will reimburse Adminimstrative Agent for all costs and expenses, including reasonable attorneys' fees, expended or incurred by Adminimstrative Agent 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 Adminimstrative Agent 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 and the other Project participants has been provided to potential Banks and participants. Borrower agrees to cooperate and to cause the Partners and Calpine to cooperate in the syndication of the Loans and Commitments in all respects reasonably requested by Adminimstrative Agent, including participation in bank meetings held in connection with such syndication, and to provide, for inclusion in any additional package, all information which Adminimstrative Agent may request from it or which Adminimstrative Agent or Borrower may consider material to a lender or participant, or necessary or appropriate for accurate and complete disclosure. Upon request of Adminimstrative Agent, Borrower shall represent to Adminimstrative Agent, and indemnify Adminimstrative Agent for claims relating to, the accuracy and completeness of such disclosure, upon terms acceptable to Adminimstrative Agent.

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, Adminimstrative 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 Borrower or any other Person with respect to any Project 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 and to perform all obligations and other agreements and contracts relating to any Project shall be the sole responsibility of Borrower.

12.12 Deed of Trust/Collateral Documents. The Loans are secured in part by the Deeds of Trust encumbering certain properties in the States of Alabama, Arizona, California, Connecticut, Florida, Maine, Mississippi, New York, Pennsylvania and Texas. 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 Borrower 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 Borrower, any Partner 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: Sony Ben-Moshe 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, 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 Borrower or a Partner 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, L.P.,**  
a Delaware limited partnership

By: Calpine CCFC GP, Inc.,  
a Delaware corporation, its General  
Partner

*By: /s/ ROHN CRABTREE*

-----  
*Name: ROHN CRABTREE*  
*Title: VICE-PRESIDENT*

**CREDIT SUISSE FIRST BOSTON,**  
as Lead Arranger, Syndication Agent,  
Bookrunner and Bank

By:

Name:

Title:

By:

Name:

Title:

**THE BANK OF NOVA SCOTIA**  
as Lead Arranger, LC Bank, Administrative  
Agent and Bank

*By: /s/ JOHN BURCKIN*

-----  
*Name: JOHN BURCKIN*  
*Title: RELATIONSHIP MANAGER*

**CREDIT AGREEMENT S-1**

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, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation, its General  
Partner

By:

Name:

Title:

**CREDIT SUISSE FIRST BOSTON,**  
as Lead Arranger, Syndication Agent,  
Bookrunner and Bank

*By: /s/ LOUIS D. IACONETTI*

-----  
*Name: Louis D. Iaconetti*  
*Title: Vice President*

*By: /s/ SANTINO BASILE*

-----  
*Name: Santino Basile*  
*Title: Vice President*

**THE BANK OF NOVA SCOTIA,**  
as Lead Arranger, LC Bank,  
Administrative Agent and Bank

By:

Name:

Title:

**CREDIT AGREEMENT S-1**

**CIBC WORLD MARKETS CORP.**  
as Co-Arranger and Co-Documentation  
Agent

*By: /s/ DENIS P. O'MEARA*

-----  
*Name: Denis P. O'Meara*  
*Title: Executive Director*  
*CIBC World Markets Corp. As*  
*Agent*

**CREDIT AGREEMENT**

**TD SECURITIES (USA) INC.**  
as Co-Arranger and Co-Documentation  
Agent

*By: /s/ DEBORAH GRAVINESE*

-----

*Name: Deborah Gravinese*  
*Title: Managing Director*

**CREDIT AGREEMENT**

**BANK OF MONTREAL**

/s/ *CAHAL B. CARMODY*

By: \_\_\_\_\_  
Name: *Cahal B. Carmody*  
Title: *Director*

**CREDIT AGREEMENT S-1**

**BANQUE NATIONALE DE PARIS**

By: /s/ *JAMES P. CULHANE*

-----  
Name: *James P. Culhane, CFA*  
Title: *Assistant Vice President*

By: /s/ *GORDON R. COOK*

-----  
Name: *Gordon R. Cook*  
Title: *Vice President*

**CREDIT AGREEMENT S-2**

**BAYERISCHE LANDESBANK  
CAYMAN ISLANDS BRANCH**

*By: /s/ CHRISTOPHER STOLARSKI*

-----  
*Name: Christopher Stolarski*  
*Title: Vice President*

*By: /s/ DIETMAR RIEG*

-----  
*Name: Dietmar Rieg*  
*Title: First Vice President*

**CREDIT AGREEMENT S-3**

**CIBC INC.**

*By: /s/ DENIS P. O'MEARA*

-----  
*Name: Denis P. O'Meara  
Title: Executive Director  
CIBC World Markets Corp.  
As Agent*

By:  
Name:

Title:

**CREDIT AGREEMENT S-4**

**CoBank, ACB**

*By: /s/ GAIL NOFSINGER*

-----  
*Name: Gail Nofsinger*  
*Title: Vice President*

**CREDIT AGREEMENT S-5**

**CREDIT LYONNAIS NEW YORK BRANCH**

*By: /s/ MARTIN C. LIVINGSTON*

-----

*Name: Martin C. Livingston*

*Title: Vice President*

**CREDIT AGREEMENT S-6**

**DG BANK DEUTSCHE  
GENOSSENSCHAFTSBANK AG,  
CAYMAN ISLAND BRANCH**

*By: /s/ RICHARD L. HAGEMANN*

-----  
*Name: Richard L. Hagemann*  
*Title: Vice President*

*By: /s/ ROBERT SULLIVAN*

-----  
*Name: Robert Sullivan*  
*Title: Assistant Vice President*

**CREDIT AGREEMENT S-7**

**DRESDNER BANK AG NEW YORK AND  
GRAND CAYMAN BRANCHES**

*By: /s/ FREDERIC O. LAHNER*

-----  
*Name: Frederic O. Lahner*  
*Title: Assistant Vice President*

*By: /s/ KWON-KYUN CHUNG*

-----  
*Name: Kwon-Kyun Chung*  
*Title: Assistant Treasurer*

**CREDIT AGREEMENT S-8**

**EXPORT DEVELOPMENT CORPORATION**

*By: /s/ JONATHAN ROBINSON*

-----  
*Name: Jonathan Robinson*  
*Title: Project Finance*

*By: /s/ FRANK KELLY*

-----  
*Name: Frank Kelly*  
*Title: Mining & Power*

**CREDIT AGREEMENT S-9**

**BAYERISCHE HYPO-UND VEREINSBANK AG  
--NEW YORK BRANCH**

*By: /s/ ANDREW G. MATHEWS*

-----  
*Name: Andrew G. Mathews*  
*Title: Managing Director*

*By: /s/ PAUL J. COLATRELLA*

-----  
*Name: Paul J. Colatrella*  
*Title: Director*

**CREDIT AGREEMENT S-10**

**CITICORP USA, INC.**

*By: /s/ DALE R. GONCHER*

-----  
*Name: Dale R. Goncher*  
*Title: Attorney-In-Fact*

**CREDIT AGREEMENT S-11**

**ING (U.S.) CAPITAL LLC**

*By: /s/ ERWIN THOMET*

-----  
*Name: Erwin Thomet*  
*Title: Managing Director*

*By: /s/ DIEDERIK VAN DEN BERG*

-----  
*Name: Diederik Van Den Berg*  
*Title: Vice President*

**CREDIT AGREEMENT S-12**

**LANDESBANK HESSEN-THURINGEN  
GIROZENTRALE**

*By: /s/ DOROTHY A. LACHER*

-----  
*Name: Dorothy A. Lacher*  
*Title: Senior Vice President*

*By: /s/ MARTIN STEINEBACH*

-----  
*Name: Martin Steinebach*  
*Title: Assistant Vice President*

**CREDIT AGREEMENT S-13**

**MEESPIERSON CAPITAL CORP.**

*By: /s/ JOHN C. PRENETA*

-----  
*Name: John C. Preneta*  
*Title: Executive Vice President*

*By: /s/ JOHN T. CONNORS*

-----  
*Name: John T. Connors*  
*Title: President and*  
*Chief Operating Officer*

**CREDIT AGREEMENT S-14**

**NEWCOURT CAPITAL USA INC.**

*By: /s/ DANIEL M. MORASH*

-----  
*Name: Daniel M. Morash*  
*Title: Managing Director*

*By: /s/ GUY A. PIAZZA*

-----  
*Name: Guy A. Piazza*  
*Title: Senior Director*

**CREDIT AGREEMENT S-15**

**TORONTO DOMINION (TEXAS) INC.**

*By: /s/ LYNN CHASIN*

-----  
*Name: Lynn Chasin*  
*Title: Vice President*

By:

Name:

Title:

**CREDIT AGREEMENT S-16**

**UNION BANK OF CALIFORNIA, N.A.**

*By: /s/ HENRY S. PARK*

-----  
*Name: Henry S. Park*  
*Title: Senior Vice President*

*By: /s/ ALLAN MAJOTRA*

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*Name: Allan Majotra*  
*Title: Vice President*

**CREDIT AGREEMENT S-17**

**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.

"Activation Fee" has the meaning given 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 Borrower and any other Person, or assigned to Borrower, subsequent to the Closing Date. Without in any way limiting the foregoing, all such contracts and agreements providing for the payment by Borrower of \$1,000,000 or more, or the provision to Borrower of \$1,000,000 in value of goods or services, shall be deemed to constitute an Additional Project Document, provided, however, that no agreement with respect to a Subsequent Project that has been approved by the Technical Committee in accordance with Section 3.3 of the Credit Agreement shall be deemed to be an Additional Project Document.

"Additional Subsequent Projects" means, collectively, the Subsequent Projects described on Appendices G-1E, G-1K, G-1L, G-1M and G-1N of the Credit Agreement.

"Administrative Agent" means The Bank of Nova Scotia, 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 each Partner, Calpine and any Affiliate of any Partner or Calpine (other than Borrower).

"Affiliated Fuel Supplier" means any wholly owned Subsidiary of Calpine approved by the Lead Arrangers or the Technical Committee in accordance with  
Section 3.1 or

3.3, as the case may be, of the Credit Agreement in its capacity as fuel supplier under an Affiliated Fuel Supply Agreement.

"Affiliated Fuel Supply Agreement" means, collectively, for each Project, the contract or agreement approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, Borrower with an Affiliated Fuel Supplier for the provision or supply of fuel for any Project, including (a) the Magic Valley Gas Supply Agreement, (b) the South Point Gas Supply Agreement, (c) the Sutter Gas Supply Agreement, and (d) the Westbrook Gas Supply Agreement.

"Affiliated Fuel Supplier Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8A to the Credit Agreement between Administrative Agent and Affiliated Fuel Supplier.

"Affiliated Major Project Participant" means Calpine and each Major Project Participant (other than Borrower) that is an Affiliate of Calpine.

"Affiliated Party Agreement Guaranty" means, collectively, for each Project, the contract or agreement approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or 3.3, as the case may be, of the Credit Agreement or as otherwise required thereby entered into by Calpine in favor of Borrower guarantying the obligations of Affiliates pursuant to Project Documents to which such Affiliates are party, including (a) the Magic Valley Affiliated Party Agreement Guaranty, (b) the South Point Affiliated Party Agreement Guaranty, (c) the Sutter Affiliated Party Agreement Guaranty and (d) the Westbrook Affiliated Party Agreement Guaranty.

"Affiliated Subordination Agreement" means, collectively, for each Affiliate of Borrower providing goods or services to a Project, the contract or agreement approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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, including (a) the Calpine Eastern Corporation Subordination Agreement, (b) the Calpine Central Subordination Agreement, (c) the Calpine Corporation Subordination Agreement, (d) the CPSC Subordination Agreement, (e) the CPN Central Fuels Subordination Agreement, (f) the CPN East Fuels Subordination Agreement and (g) the CPN Gas Marketing Company Subordination Agreement.

"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 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 then in effect

without taking into account Contributions of Borrower with respect to Projects which have not satisfied their Pre-Funding Requirements):

LEVEL	DEBT TO CAPITALIZATION RATIO $(\lambda) < 50\%$	BASE RATE, (% P.A.) 0.75%	LIBO RATE (% P.A.) 1.50%
I	-	-	-
II	$50\% < (\lambda) < 60\%$	1.00%	1.75%
III	$60\% < (\lambda)$	1.375%	2.125%

"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 Borrower at any given time 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 Borrower 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, 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 the Schedule of Applicable Permits and Applicable Third Party Permits attached to the Credit Agreement as Exhibit G-3 or any of its appendices.

"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 Borrower) 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 the Schedule of Applicable Permits and Applicable Third Party Permits attached to the Credit Agreement as Exhibit G-3 or any of its appendices.

"Available Construction Funds" means, at any time and without duplication, the sum of (a) amounts in the Construction Account and all subaccounts thereunder (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, if any, (c) undisbursed Insurance Proceeds which are available for payment of Project Costs, (d) any delay liquidated

damages which Borrower has received under any Construction Contract, (e) any other liquidated damages which Borrower has received under the other Project Documents and which, by the terms of the Credit Agreement, are available for the payment of Project Costs, and (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 3.8(a) of 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 Closing Date, 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, which projections are attached as Exhibit G-5 to 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 The Bank of Nova Scotia at its New York office or (b) the Federal Funds Rate plus 0.50%.

"Base Rate Loan" has the meaning given in Section 2.1.1(b)(i) of the Credit Agreement.

"Baytown Project" means the approximately 780 MW gas-fired combined cycle cogeneration facility to be located in Baytown, Chambers County, Texas.

"Beneficiary" has the meaning given in the granting clause of the Deed of Trust.

"Borrower" means Calpine Construction Finance Company, L.P., a Delaware limited partnership.

"Borrower's Environmental Consultant" means with respect to any Project, the Person providing environmental consulting services and site assessment report(s) to the Borrower and who provides a reliance letter in form and substance reasonably acceptable to Administrative Agent.

"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.

"Calpine" means Calpine Corporation, a Delaware corporation.

"Calpine Central" means Calpine Central L.P., a Delaware limited partnership.

"Calpine Central Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8A to the Credit Agreement between Administrative Agent and Calpine Central.

"Calpine Corporation Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8B to the Credit Agreement between Administrative Agent and Calpine.

"Calpine Eastern Corporation" means Calpine Eastern Corporation, a Delaware corporation.

"Calpine Eastern Corporation Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8C to the Credit Agreement between Administrative Agent and Calpine Eastern Corporation.

"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 Shawmut Bank Connecticut, as trustee; (b) that certain Indenture dated as of April 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 Fleet National Bank, as trustee; (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, by and between Calpine and The Bank of New York, a trustee; (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, by and between Calpine Corporation and the Bank of New York, as trustee; (e) that certain Indenture, dated as of March 26, 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; and (f) 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 Borrower at such time and (y) the Net Worth of Borrower at such time. The Debt and Net Worth of Borrower with respect to partially owned Projects shall be determined in accordance with GAAP.

"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.

"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; provided, however, that, with respect to the Additional Subsequent Projects the "Collateral" shall

not include any interest in real property (whether fee or leasehold) relating to such Additional Subsequent Project.

"Collateral Documents" means the Deeds of Trust, the Depositary Agreement, the Credit Agreement, the Security Agreement, the Consents, the Equity Documents, the Affiliated Subordination Agreements, the Debt Subordination Agreements, the Magic Valley Subordination Agreement, 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.

"Collateral Value" means, as of any date, the aggregate Project Costs incurred and paid to such date minus the aggregate Project Costs incurred and paid to such date for assets which are not the subject of a security interest in favor of the Banks.

"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 and Letter of Credit Commitment, and with respect to all Banks, the Total Loan Commitment and the Total Letter of Credit Commitment.

"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) with respect to each Initial Project, all Pre-Completion Requirements applicable to such Project have been satisfied, (vi) 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," (vii) 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 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 (viii) all real estate rights necessary for the completion of the foregoing and the continued operation of such Project shall have been obtained, all 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.

"Completion Guaranty" means the Completion Guaranty dated as of October 20, 1999 on substantially the form of Exhibit D-2E to the Credit Agreement executed by Calpine in favor of Administrative Agent, on behalf of the Banks.

"Confirmation of Interest Period Selection" has the meaning given in Section 2.1.2(b)(ii) of the Credit Agreement.

"Consents" means the consents specified on Exhibit E-2 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 Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, Borrower with a Contractor for the construction of all or any portion of any Project, or the supply or provision of any goods or services relating to the construction of any Project, including (a) the Magic Valley Construction Contracts, (b) the South Point Construction Contracts, (c) the Sutter Construction Contracts, and (d) the Westbrook Construction Contracts.

"Construction Management Agreement" means, collectively, for each Project, the contract or agreement approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, Borrower with a Construction Manager for the provision of construction management services for any Project, including (a) the Magic Valley Construction Management Agreement,

(b) the South Point Construction Management Agreement, (c) the Sutter Construction Management Agreement, and (d) the Westbrook Construction Management Agreement.

"Construction Manager" means any wholly owned Subsidiary of Calpine approved by the lead Arrangers or the Technical Committee in accordance with Section 3.1 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, including, for purposes of Section 6.6 of the Credit Agreement only, amounts considered to be Contributions pursuant to the definition of Deemed Interest, in each case as permitted pursuant to the Credit Agreement.

"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 Borrower, are treated as a single employer under Sections 414(b), (c), (m) or (o) of the Code.

"CPN Central Fuels" means CPN Central Fuels, L.P., a Delaware limited partnership.

"CPN Central Fuels Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8D to the Credit Agreement between Administrative Agent and CPN Central Fuels.

"CPN East Fuels" means CPN East Fuels, LLC, a Delaware limited liability company.

"CPN East Fuels Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8D to the Credit Agreement between Administrative Agent and CPN East Fuels.

"CPN Gas Marketing Company" means CPN Gas Marketing Company, a Delaware corporation.

"CPN Gas Marketing Company Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8D to the Credit Agreement between Administrative Agent and CPN Gas Marketing Company.

"CPSC" means Calpine Power Services Company, a California corporation.

"CPSC Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8G to the Credit Agreement between Administrative Agent and CPSC, a California corporation.

"Credit Agreement" means the Credit Agreement dated as of October 20, 1999 by and among Borrower, Administrative Agent, Lead Arrangers, LC Bank, Co-Docummentation Agents, Syndication Agent, Bookrunner and the Banks.

"Credit Documents" means the Credit Agreement, the 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.

"Credit Event" has the meaning given in Section 3.4 of the Credit Agreement.

"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 aggregate outstanding principal amount of Debt of Borrower (except Debt consisting of Contributions made in the form of subordinated loans) at a given time divided by the Capitalization of Borrower at such time.

"Debt to Collateral Value Ratio" means the aggregate outstanding principal amount of Debt of Borrower (except Debt consisting of Contributions made in the form of subordinated loans) at a given time divided by the Collateral Value of Borrower at such time.

"Debt Subordination Agreement" means a Subordination Agreement executed by a Partner 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.

"Deeds of Trust" means, collectively, for each Project, other than each Additional Subsequent Project, the deed of trust or mortgage encumbering any one or more of the Sites and/or Easements as security for the Obligations, including (a) the Magic Valley Deed of Trust, (b) the South Point Deed of Trust, (c) the Sutter Deed of Trust, and (d) the Westbrook Deed of Trust.

"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 prior to Completion thereof, Deemed Interest thereon shall accrue but not be payable until Completion of such 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.

"Depository Agent" means The Bank of Nova Scotia, in its capacity as depositary agent under the Depositary Agreement.

"Depositary Agreement" means the Depositary Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-1 to the Credit Agreement among Borrower, Administrative Agent and Depository Agent.

"Designated Subsequent Projects" means, collectively, the Subsequent Projects described in Appendices G-1E, G-1Q, G-1R and G-1S to the Credit Agreement.

"Disbursement Requisition" means a request for disbursement of funds submitted by Borrower to Administrative Agent in the form of Exhibit C-6 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 certificate delivered to Administrative Agent substantially in the form of Exhibit C-5 to the Credit Agreement.

"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 Borrower 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 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, for each Project, the contract or agreement approved by the Lead Arrangers or the Technical Committee in accordance with  
Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, Borrower for the supply of engineering or design services for a Project, including the Magic Valley Engineering Contract.

"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, for each Project, the environmental reports delivered to Administrative Agent on behalf of the Banks with respect to such Project, including (a) the Magic Valley Environmental Reports, (b) the South Point Environmental Reports, (c) the Sutter Environmental Reports, and (d) the Westbrook Environmental Reports.

"EPC Equivalent Damages" means, with respect to each Project, an amount equal to [\*] of the aggregate contract price under the Prime Construction Contract, the Power Island Supply Contract and the Engineering Contract for such Project.

"Equipment" has the meaning given in the granting clause of the Deeds of Trust.

"Equity Documents" means the Completion Guaranty and any other guaranty executed from time to time by 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 Borrower 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 3.5 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) Borrower's interest expense allocated to such Projects 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).

"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, including (i) with respect to the Magic Valley, South Point, and Sutter Projects, Navigant Consulting, Inc. and (ii) with respect to the Westbrook Project, CC Pace, or their respective successors appointed pursuant to the Credit Agreement.

"Fuel Manager" means any wholly owned Subsidiary of Calpine approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or 3.3, as the case may be, of the Credit Agreement in its capacity as fuel manager under a Fuel Management Agreement.

"Fuel Manager Subordination Agreement" means the Affiliated Subordination Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-8F to the Credit Agreement between Administrative Agent and Fuel Manager.

"Fuel Management Agreement" means, for each Project, the fuel management agreement approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement and entered into by Borrower, including (a) the Magic Valley Fuel Management Agreement, (b) the South Point Fuel Management Agreement, (c) the Sutter Fuel Management Agreement, and (d) the Westbrook Fuel Management Agreement.

"Fuel Plans" means, collectively, the fuel plans delivered by Borrower pursuant to Sections 3.1.16 and 3.3.17 of the Credit Agreement.

"Fuel Supplier" means any Person who is supplying fuel and/or related services to a Project pursuant to a Gas Supply Contract.

"Funded Subsequent Project" means a Subsequent Project that has qualified for initial funding pursuant to Section 3.3 of the Credit Agreement.

"Funding Date" means each date of an initial funding of Loans for a Subsequent Project pursuant to Section 3.3 of the Credit Agreement.

"GAAP" means generally accepted accounting principles in the United States consistently applied.

"Gas Supply Contracts" means the contracts or agreements entered into in accordance with the Credit Agreement by, or on behalf of, Borrower with a Fuel Supplier for the supply of fuel and/or related services for a Project, including  
(a) the Magic Valley Gas Supply

Contracts, (b) the South Point Gas Supply Contracts, (c), the Sutter Gas Supply Contracts, and (d) the Westbrook Gas Supply Contracts.

"Gas Transportation Agreements" means the contracts or agreements entered into in accordance with the Credit Agreement by, or on behalf of, Borrower with a Gas Transporter for the supply of fuel transportation services for a Project, including (a) the Magic Valley Gas Transportation Agreements, (b) the South Point Gas Transportation Agreements, (c) the Sutter Gas Transportation Agreements, and (d) the Westbrook Gas Transportation Agreements.

"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.

"General Partner" means any Person who is a general partner in the Borrower.

"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 and Credit Agreement prepared by Lead Arrangers in consultation with Borrower for use in connection with the syndication of the Commitments.

"Initial Projects" means, collectively, the Magic Valley Project, the South Point Project, Sutter Project and the Westbrook Project; each individually, an "Initial Project."

"Insurance Consultant" means Sedgwick James or its successor appointed pursuant to the Credit Agreement.

"Insurance Proceeds" has the meaning given in Section 7.5.1 of the Credit Agreement.

"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 Borrower.

"Joint Venture Agreement" has the meaning given in Section 3.3.1 of the Credit Agreement.

"Joint Venturers" has the meaning given in Section 3.3.1 of the Credit Agreement.

"LC Bank" means The Bank of Nova Scotia 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 and The Bank of Nova Scotia as the lead arrangers of the Commitments.

"Leases" mean all contracts or agreements approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by or on behalf of Borrower for the leasing of a Site for a Project, including the South Point Lease.

"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, for any LIBOR Loan, a rate per annum (rounded upwards if necessary, to the nearest 1/16th of 1%) determined by Administrative Agent (which determination shall, absent manifest error, be conclusive) to be equal to (a)(i) the offered rate for deposits in Dollars (in the approximate amount and having approximately the same maturity as the LIBOR Loan to be made) in the London Interbank Market at approximately 11:00 a.m. (London time), which appears on the Telerate Screen, or, (ii) if such rate does not appear on the Telerate Screen, such rate as determined in good faith by Administrative Agent, two Banking Days prior to the first day of the Interest Period for such LIBOR Loan, divided by (b) 100% minus (c) the Reserve Requirement (expressed as a percentage) for such LIBOR Loan for such Interest Period.

"LIBOR Loan" has the meaning given in Section 2.1.1(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.

"Limited Partners" means (i) Calpine CCFC LP, Inc., a Delaware corporation, (ii) Calpine Magic Valley Generation, Inc., a Delaware corporation, (iii) Calpine MVG, Inc., a Delaware corporation, (iv) CPN Westbrook I, Inc., a Delaware corporation, (v) Calpine Westbrook, Inc., a Delaware corporation, (vi) Calpine Sutter, Inc., a Delaware corporation, (vii) Calpine South Point, Inc., a Delaware corporation, and (viii) any other entity that becomes a limited partner in Borrower in accordance with the Credit Agreement.

"Liquidation Costs" has the meaning given in Section 2.9 of the Credit Agreement.

"Loan" has the meaning given in Section 2.1.1(a) of the Credit Agreement.

"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.

"Loss Proceeds Account" has the meaning given in Section 1.1 of the Depositary Agreement.

"Magic Valley Affiliated Party Agreement Guaranty" means the Affiliated Party Agreement Guaranty dated as of October 20, 1999 in substantially the form of Exhibit D-2A to the Credit Agreement executed by Calpine in favor of Borrower.

"Magic Valley Construction Contracts" means, collectively, (a) the Magic Valley Construction Management Agreement, (b) the Magic Valley Prime Construction Contract for Construction Services, (c) the Magic Valley Engineering Contract, (d) the Magic Valley Power Island Supply Contract, and (e) any other contract or agreement entered into by, or on behalf of Borrower for the construction of all or any portion of the Magic Valley Project, or the supply or provision of any goods or services relating to the construction of the Magic Valley Project.

"Magic Valley Construction Management Agreement" means that certain Magic Valley Construction Management Agreement, dated as of October 20, 1999 between Borrower and Calpine Central.

"Magic Valley Deed of Trust" means the Deed of Trust, Assignment of Rents and Security Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-3 to the Credit Agreement executed by Borrower, as trustor, to Stewart Title Company, as trustee, in favor of Administrative Agent, as beneficiary.

"Magic Valley Engineering Contract" means the Contract for Professional Services dated as of December 8, 1998 between Borrower and Sargent & Lundy, L.L.C.

"Magic Valley Environmental Report" means (a) the Phase I Environmental Site Assessment at the proposed Magic Valley combined-cycle facility located at Hidalgo County, Texas, dated April 1999, prepared by Environmental Consulting Technology.

"Magic Valley Electric Interconnection Documents" means, collectively, (a) the Electric Interconnection Agreement dated as of February 25, 1999 between Central Power and Light Company and Borrower, (b) the Letter of Authorization to Proceed with Engineering and Construction of Transmission Line Relocation dated December 17, 1998 between Central and South West Services, Inc. and Borrower, (c) the Letter of Authorization to Proceed with Engineering and Procurement and Construction of Interconnection Facilities Dated February 25, 1999 between Central and South West Services, Inc. and Borrower and (d) any other contract or agreement entered into by, or on behalf of, Borrower for electrical interconnection services to the Magic Valley Project.

"Magic Valley Fuel Management Agreement" means the Magic Valley Fuel Management Agreement dated as of October 20, 1999, between Borrower and CPN Central Fuels.

"Magic Valley Gas Supply Agreement" means that certain Magic Valley Gas Supply Agreement, dated as of October 20, 1999 between Borrower and CPN Central Fuels.

"Magic Valley Gas Supply Contracts" means, collectively, (a) the Magic Valley Gas Supply Agreement, (b) the Fuel Management Services Agreement, dated as of May 1, 1998

between CCNG, Inc. and Borrower and (c) and any other agreement or document entered into by or on behalf of Borrower for the supply of fuel to the Magic Valley Project.

"Magic Valley Gas Transportation Agreements" means any agreement or document entered into by or on behalf of Borrower for the supply of fuel transportation services to the Magic Valley Project.

"Magic Valley Maintenance Contract" means the Maintenance Contract dated as of June 30, 1998, between Borrower and Westinghouse Power Generation, a division of CBS Corporation, a Pennsylvania corporation.

"Magic Valley Operating and Maintenance Agreement" means the Magic Valley Operation and Maintenance Agreement dated as of October 20, 1999 between Borrower and Calpine Central.

"Magic Valley Power Island Supply Contract" means the Purchase Contract dated as of June 30, 1998 between Borrower and Westinghouse Power Generation, a division of CBS Corporation, a Pennsylvania corporation.

"Magic Valley Power Marketing Agreement" means the Magic Valley Power Marketing Agreement dated as of October 20, 1999, between Borrower and CPSC.

"Magic Valley Power Purchase Agreement" means the Power Purchase and Sale Agreement, dated as of May 22, 1998 between Borrower and Magic Valley Electric Cooperative, Inc., a Texas corporation.

"Magic Valley Power Purchase Documents" means (a) the Magic Valley Power Purchase Agreement, and (b) any other contracts or agreements entered into by Borrower for the sale of electric energy and/or capacity from the Magic Valley Project.

"Magic Valley Prime Construction Contract" means the Contract for Construction dated as of March 26, 1999 between Borrower and Zachry Construction Corporation.

"Magic Valley Project" means, the approximately 700 MW (gross) combined cycle facility located on the Magic Valley Site, all as further described in Appendix G-1A to the Credit Agreement, together with all buildings, structures or improvements erected on the Magic Valley Site and the Easements with respect to the Magic Valley Site, 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 Borrower and placed upon or used in connection with the electric and steam generation plant located upon the Magic Valley Site and the Easements with respect to the Magic Valley Site.

"Magic Valley Project Documents" means, collectively, the Magic Valley Construction Contracts, the Magic Valley Gas Supply Contracts, the Magic Valley Power Purchase Documents, the Magic Valley Operating and Maintenance Agreement, the Magic Valley Project Management Agreement, the Magic Valley Maintenance Contract, the Magic Valley Power Marketing Agreement, the Magic Valley Gas Transportation Agreements, the Magic Valley Fuel Management Agreement, the Magic Valley Affiliated Party Agreement Guaranty, the Magic Valley Water Documents, the Magic Valley Electric Interconnection Documents, the Franchise Agreement, dated as of May 14, 1999, by and between the City of Edinburg, Texas and the Borrower and any other agreement or document relating to the development, construction or operation of the Magic Valley Project to which Borrower is a party.

"Magic Valley Project Management Agreement" means that certain Magic Valley Project Management Agreement dated as of October 20, 1999 between the Borrower and Calpine Central.

"Magic Valley Site" has the meaning given in the Magic Valley Deed of Trust (as it may be amended from time to time).

"Magic Valley Subordination Agreement" means that certain Lien Subordination Agreement, dated as of October 20, 1999, between Administrative Agent and Magic Valley Electric Cooperative, Inc.

"Magic Valley Water Contracts" means, collectively, (a) the Agreement for Purchase of Treated Effluent Water, dated as of April 21, 1998 between the City of Edinburg, Texas and Borrower, (b) the Water Delivery Contract dated as of July 19, 1999 between the Hidalgo County Irrigation District No. 1 and Borrower, (c) the Agreement to Purchase Water dated as of June 17, 1999 between the Hidalgo County Irrigation District No. 2 and Borrower, (d) the Earnest Money Contract dated as of August 4, 1999 between Bayview Irrigation District No. 11 and Borrower and (e) any other contract or agreement entered into by, or on behalf of, Borrower for the supply or transportation of water to the Magic Valley Project.

"Maintenance Contracts" means, collectively, the contracts or agreements approved by the Lead Arrangers or the Technical Committee in accordance with

Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, Borrower for the supply of maintenance services for a Project, including (a) the Magic Valley Maintenance Contract, (b) the South Point Maintenance Contract, (c) the Sutter Maintenance Contract, and (d) the Westbrook Maintenance Contract.

"Maintenance Provider" means any entity approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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 Major Gas Transportation Agreements, any Major Power Purchase Agreements, the Lease, if any, of the applicable Site, the O&M Agreement and any Joint Venture Agreement, if any, for such Project.

"Major Project Participants" means Borrower, each General Partner, Calpine, and, with respect to each Project, 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 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.

"Managing Partner" has the meaning given the term "Managing General Partner" in the Partnership Agreement.

"Mandatory Prepayment" has the meaning specified in Section 2.1.6 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 Projects taken as a whole, or Calpine and (ii) with respect to an individual Initial Project or Funded Subsequent Project, in the business, property, results of operating or financial condition of such Project; 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) Borrower's ability to perform its obligations under the Credit Documents or, with respect to an individual Initial Project or Funded Subsequent Project, the ability of such Project or a Major Project Participant to perform its obligations under a Project Document where such inability to perform will have a material and adverse effect on the completion of the construction or operation of such Project, 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 a Debt to Capitalization Ratio of no more than [\*] to 1.00; provided, however, that if immediately prior to the initial funding of Loans for the Initial Projects pursuant to Section 3.2 of the Credit Agreement, Calpine is not

rated at least Ba2 by Moody's and BB by S&P, then for so long as such ratings are not increased to Ba2 and BB, respectively, the Maximum Debt to Capitalization Ratio shall be a Debt to Capitalization Ratio of no more than [\*] to 1.00.

"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 net equity of Borrower set forth in the balance sheet of Borrower, prepared in accordance with GAAP.

"Non-Advancing Bank" has the meaning given in Section 10.12 of the Credit Agreement.

"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) Borrower. Borrower shall be in breach of any term, condition, provision, covenant, representation, warranty or obligation, or in default, under a Project Document relating to an Initial Project or a Funded Subsequent Project, and such breach or default shall not be remediable or, if remediable, shall continue unremedied for a period of 30 days; provided that, except with respect to a breach or default under the South Point Lease, if (A) such breach cannot be cured within such 30 day period, (B) such breach is susceptible of cure within 90 days, (C) Borrower 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 Borrower 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 Borrower diligently to cure such breach.

(ii) Third Party. A party other than Borrower shall be in breach of, or in default under, a Project Document relating to an Initial Project or a Funded Subsequent Project or any Consent, or any Equity Document (other than the Equity Contribution and Completion Guarantee), 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 Borrower 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 an Initial Project or a Funded Subsequent Project shall for any reason cease to be valid and binding on any party thereto (other than Borrower) 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 Borrower 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 shall fail to perform or observe any of the covenants 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 an Initial Project or a Funded Subsequent 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 an Initial Project or a Funded Subsequent Project), 5.7 (if the failure to comply with the Legal Requirement relates to an Initial Project or a Funded Subsequent Project), 5.8, 5.9(b), (c), (d) or (e) 5.13, 5.14, 5.15, 5.16.1, 5.16.3, 5.21, 5.22, 5.23, 6.14 or 6.20 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) Borrower 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 a 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 Borrower 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 Borrower diligently to cure such failure.

(c) Material Adverse Effect. The occurrence of any event or circumstance having a Material Adverse Effect on an Initial Project or a Funded Subsequent Project.

(d) Omissions. Any financial statement, representation, warranty or certificate made or prepared by, under the control of or on behalf of Borrower 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 an Initial Project or a Funded Subsequent 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.

"Note" has the meaning given in Section 2.1.3 of the Credit Agreement.

"Notice of 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 2.1.5 of the Credit Agreement.

"Notice of LC Activity" has the meaning given in Section 2.2.3 of the Credit Agreement.

"O&M Agreement" means the contracts or agreements approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement entered into by, or on behalf of, Borrower for the operation or maintenance of any Project, including (a) the Magic Valley Operation and Maintenance Agreement, (b) the South Point Operation and Maintenance Agreement, (c) the Sutter Operation and Maintenance Agreement, and (d) the Westbrook Operation and Maintenance Agreement.

"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 Borrower under any Power Purchase Agreement, Major Maintenance costs, local, sales and real estate taxes, insurance, consumables, payments made in connection with the requirements of any Permit or Legal Requirement, payments under any 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 Borrower 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 Borrower, O&M Costs shall consist of a pro rata portion (based on Borrower'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.

"Operating Account" has the meaning given in Section 7.3.1 of the Credit Agreement.

"Operative Documents" means the Credit Documents, the Project Documents and any Additional Project Documents.

"Operator" means any wholly owned Subsidiary of Calpine approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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.

"Partners" means the General Partner and the Limited Partners, and any other partner of Borrower permitted by the Credit Agreement.

"Partnership Agreement" means the Limited Partnership Agreement dated as of August 23, 1999 and amended as of September 9, 1999 for Calpine Construction Finance Company, L.P.

"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.

"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, and (g) Contributions in the form of subordinated debt.

"Permitted Encumbrances" means (a) with respect to the Initial Projects and the Funded Subsequent Projects, those liens, encumbrances or other exceptions to title satisfactory to Lead Arrangers or Technical Committee, as the case may be, and specified on a Title Policy pursuant to Sections 3.1.27(a) and 3.3.29(a) of the Credit Agreement, and (ii) 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 or the Projects taken as a whole.

"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, 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, 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, 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 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 Borrower 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 Borrower's property, either real or personal, whether now or hereafter owned in the aggregate sum of less than \$1,000,000, (i) the Lien granted by Borrower to Magic Valley Electric Cooperative, Inc. pursuant to the Magic Valley Power Purchase Agreement, which shall be subordinated to the Lien of the Collateral Documents pursuant to the Magic Valley Subordination Agreement and (j) provided there exists at least one Funded Subsequent Project, the Lien in favor of Bayer Chemical Corporation or its Affiliates requiring any subsequent owner

of the Baytown Project to assume the energy services agreement and related agreements between Borrower and Bayer Chemical Corporation or such Affiliates.

"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.

"Power Island Supplier" means any entity approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or 3.3, as the case may be, of the Credit Agreement in its capacity as power island supplier under a Power Island Supply Contract.

"Power Island Supply Contract" means, collectively, the contracts or agreements for the purchase or supply of the "power island" (combustion turbines, steam turbine, HRSGs, etc.) for a Project between Borrower and the Power Island Supplier for such Project and approved by the Lead Arrangers or the Technical Committee pursuant to Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement, including (a) the Magic Valley Power Island Supply Contract, (b) the South Point Power Island Supply Contract and (c) the Sutter Power Island Supply Contract.

"Power Marketer" means any wholly owned Subsidiary of Calpine approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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 Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement and entered into by Borrower, including (a) the Magic Valley Power Marketing Agreement, (b) the South Point Power Marketing Agreement, (c) the Sutter Power Marketing Agreement, and (d) the Westbrook Power Marketing Agreement.

"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 3.1.15 and 3.3.16 of the Credit Agreement.

"Power Purchase Documents" means, collectively, for each Project, contracts or agreements entered into by, or on behalf of, Borrower 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 any Project, including (a) the Magic Valley Power Purchase Documents, (b) the South Point Power Purchase Documents, (c) the Sutter Power Purchase Documents, and (d) the Westbrook Power Purchase Documents.

"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.

"Pre-Completion Requirements" means, (a) with respect to the Magic Valley Project, each of the items set forth in Exhibit P to the Credit Agreement, (b) with respect to the South Point Project, each of the items set forth in Exhibit Q to the Credit Agreement, (c) with respect to the Sutter Project, each of the items set forth in Exhibit R to the Credit Agreement, and (d) with respect to the Westbrook Project, each of the items set forth in Exhibit S to the Credit Agreement,

"Pre-Funding Requirements" means, (a) with respect to the Magic Valley Project, each of the items set forth in Exhibit L to the Credit Agreement, (b) with respect to the South Point Project, each of the items set forth in Exhibit M to the Credit Agreement, (c) with respect to the Sutter Project, each of the items set forth in Exhibit N to the Credit Agreement, and (d) with respect to the Westbrook Project, each of the items set forth in Exhibit O to the Credit Agreement.

"Prime Construction Contract" means, collectively, for each Project, the construction contract with the Prime Contractor for 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, including (a) the Magic Valley Prime Construction Contract, (b) the South Point Prime Construction Contract, (c) the Sutter Prime Construction Contract and (d) the Westbrook Turnkey Contract.

"Prime Contractor" means any entity approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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 Budget" means, collectively, the project budgets delivered by Borrower pursuant to Sections 3.1.22 and 3.3.24 of the Credit Agreement.

"Project Costs" means, with respect to any Project, the cost of the development, design, engineering, acquisition, equipping, construction, assembly, inspection, testing, completion, and start-up of such 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 Borrower 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; and (e) payments and fees under the Interest Rate Agreements; provided, however, that "Project Costs" shall not include any contingency. Except as otherwise set forth in Section 3.3.1 of the Credit Agreement, in the case of Projects that are not wholly owned by Borrower, Project Costs shall consist of a pro rata portion (based on Borrower'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 entered into by Borrower and approved by the Lead Arrangers or the Technical Committee in accordance with and to the extent required under Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement, including (a) the Magic Valley Project Documents, (b) the South Point Project Documents, (c) the Sutter Project Documents, and (d) the Westbrook Project Documents.

"Project Engineer" means any entity approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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 Borrower and approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 or Section 3.3, as the case may be, of the Credit Agreement, including (a) the Magic Valley Project Management Agreement, (b) the South Point Project Management Agreement, (c) the Sutter Project Management Agreement, and (d) the Westbrook Project Management Agreement.

"Project Manager" means any wholly owned Subsidiary of Calpine approved by the Lead Arrangers or the Technical Committee in accordance with Section 3.1 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 Borrower 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 Revenues" means all income and receipts of Borrower derived from the ownership or operation of the Projects, including payments received by Borrower 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.

"Projects" means, collectively, the Initial Projects and the Subsequent Projects; each individually a "Project".

"Project Schedules" means, collectively, the project schedules delivered by Borrower pursuant to Sections 3.1.23 and 3.3.25 of the Credit Agreement.

"Proportionate Share" means, with respect to each Bank, the percentage participation of such Bank in the Total 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 Borrower 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%.

"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.

"Secured Obligations" has the meaning given in the granting clause of the Deed of Trust.

"Security Agreement" means the Security Agreement executed by Borrower in favor of Administrative Agent and the Banks in the form of Exhibit D-4 to the Credit Agreement.

"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" means, as applicable, (a) the Magic Valley Site, (b) the South Point Site, (c) the Sutter Site, (d) the Westbrook Site and (e) the site of any Subsequent Project.

"South Point Affiliated Party Agreement Guaranty" means the Affiliated Party Agreement Guaranty dated as of October 20, 1999 in substantially the form of Exhibit D-2B to the Credit Agreement executed by Calpine in favor of Borrower.

"South Point Construction Contracts" means, collectively, (a) the South Point Construction Management Agreement, (b) the South Point Prime Construction Contract, (c) the South Point Power Island Supply Contract and (d) any other contract or agreement entered into by, or on behalf of, Borrower for the construction of all or any portion of the South Point Project, or the supply or provision of any goods or services relating to the construction of the South Point Project.

"South Point Construction Management Agreement" means that certain South Point Construction Management Agreement, dated as of October 20, 1999 between the Borrower and Calpine.

"South Point Deed of Trust" means the Deed of Trust, Assignment of Rents and Security Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-3 to the Credit Agreement executed by Borrower, as trustor, to First American Title Company, as trustee, in favor of Administrative Agent, as beneficiary.

"South Point Electric Interconnection Documents" means, collectively, (a) Topock Substation Construction and Interconnection Agreement, dated as of July 14, 1999, by and between Arizona Electric Power Cooperative, Inc. and Borrower, (b) Contract No. 99-DSR-11008 for the Construction of the South Point Transmission Project, dated as of June 25, 1999, by and between United States Department of Energy Western Area Power Administration and Borrower, (c) Contract for Design, Construction and Maintenance Services, dated as of May 17, 1999, by and between Aha Macav Power Service and Borrower, (d) Contract No. 99-DSR-11050 for Long-Term Firm Point-To-Point Transmission Service, dated August 5, 1999, by and between United States Department of Energy Western Area Power Administration and Borrower, (e) Contract No. 99-DSR-11049 for Service Agreement for Non-Firm-Point-To-Point Transmission Service, by and between United States Department of Energy Western Area Power Administration and Borrower, (f) Integration of the Proposed South Point Generation to Desert Southwest Region Transmission System Facility Study, dated as of May 6, 1999, and prepared by Department of Energy Western Area Power Administration and (g) any other contract or agreement entered into by, or on behalf of, Borrower for electrical interconnection services to the South Point Project.

"South Point Environmental Report" means (a) the Phase I Environmental Site Assessment at the proposed South Point combined-cycle facility located at Mojave County, Arizona, dated August 13, 1999, prepared by Hallock & Gross.

"South Point Fuel Management Agreement" means the South Point Fuel Management Agreement dated as of October 20, 1999, between Borrower and CPN Gas Marketing Company.

"South Point Gas Supply Agreement" means that certain South Point Gas Supply Agreement, dated as of October 20, 1999 between Borrower and CPN Gas Marketing Company.

"South Point Gas Supply Contracts" means, collectively, (a) the South Point Gas Supply Agreement and (b) any other agreement or document entered into by or on behalf of Borrower for the supply of fuel to the South Point Project.

"South Point Gas Transportation Agreements" means, collectively, (a) the Letter Agreement for the Construction, Operation and Connection of the South Point Delivery Point, dated as of July 12, 1999, by and between El Paso Natural Gas and Borrower, (b) Delivery Point Construction and Operating Agreement, dated as of July 16, 1999, by and between Transwestern Pipeline Company and Borrower and (c) any other agreement or document entered into by or on behalf of Borrower for the supply of fuel transportation services to the South Point Project.

"South Point Lease" means that certain Amended and Restated Ground Lease Agreement, executed as of August 4, 1999 and approved as BIA Lease B1778-FM on August 19, 1999 between the Fort Mojave Indian Tribe, a federally recognized Indian Tribe, and Borrower.

"South Point Maintenance Contract" means the Maintenance Contract dated as of March 19, 1999 between Borrower and Siemens Westinghouse Power Corporation, a Delaware corporation.

"South Point Operating and Maintenance Agreement" means the South Point Operation and Maintenance Agreement dated as of October 20, 1999 between Borrower and Calpine.

"South Point Power Island Supply Contract" means the Purchase Contract for Power Island Equipment dated as of March 15, 1998 between Borrower and Siemens Westinghouse Power Corporation, a Delaware corporation.

"South Point Power Marketing Agreement" means the South Point Power Marketing Agreement dated as of October 20, 1999 between Borrower and CPSC.

"South Point Power Purchase Documents" means any contracts or agreements entered into by Borrower for the sale of electric energy and/or capacity from the South Point Project.

"South Point Prime Construction Contract" means the Contract for Engineering, Procurement and Construction dated as of October 20, 1999 between Borrower and the South Point Joint Venture, a general partnership by and between TIC-The Industrial Company, a Delaware corporation, and Utility Engineering Corporation, a Texas corporation.

"South Point Project" means, the approximately 500 MW (gross) combined cycle facility located on the South Point Site, all as further described in Appendix G-1B to the Credit Agreement, together with all buildings, structures or improvements erected on the South Point Site and the Easements with respect to the South Point Site, 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 Borrower and placed upon or used in connection with the electric and steam generation plant located upon the South Point Site and the Easements with respect to the South Point Site.

"South Point Project Documents" means, collectively, the South Point Construction Contracts, the South Point Gas Supply Contracts, the South Point Power Purchase Documents, the South Point Operating and Maintenance Agreement, the South Point Project Management Agreement, the South Point Maintenance Contract, the South Point Power Marketing Agreement, the South Point Gas Transportation Agreements, the South Point Fuel Management Agreement, the South Point Affiliated Party Agreement Guaranty, the South Point Lease, the South Point Water Documents, the South Point Electric Interconnection Documents, the Guaranty dated March 25, 1999, by Siemens Corporation in favor of Borrower and any other agreement or document relating to the development, construction or operation of the South Point Project to which Borrower is a party.

"South Point Project Management Agreement" means that certain South Point Project Management Agreement dated as of October 20, 1999 between Borrower and Calpine.

"South Point Site" has the meaning given in the South Point Deed of Trust (as it may be amended from time to time).

"South Point Water Contracts" means any contract or agreement entered into by, or on behalf of, Borrower for the supply or transportation of water to the South Point Project.

"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 Affiliate Subordination Agreements.

"Subsequent Projects" means, collectively, the combined-cycle power generating facilities (or other generating facilities approved by the Required Banks) described in Appendices G- 1E through G-1S to the Credit Agreement owned or partially owned by Borrower and which use modern, commercially accepted gas-fired technology, together with all buildings, structures or improvements and Easements with respect thereto, 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; each individually, a "Subsequent Project."

"Subsidiary" means, with respect to any Person, (i) any corporation, association, or other business entity (other than a partnership) of which more than 50% 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 or a combination thereof and (ii) any partnership or limited liability company of which more than 50% 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.

"Sutter Affiliated Party Agreement Guaranty" means the Affiliated Party Agreement Guaranty dated as of October 20, 1999 in substantially the form of Exhibit D-2C to the Credit Agreement executed by Calpine in favor of Borrower.

"Sutter Construction Contracts" means, collectively, (a) the Sutter Construction Management Agreement, (b) the Sutter Prime Construction Contract, (c) the Sutter Power Island Supply Contract and (d) any other contract or agreement entered into by, or on behalf of, Borrower for the construction of all or any portion of the Sutter Project, or the supply or provision of any goods or services relating to the construction of the Sutter Project.

"Sutter Construction Management Agreement" means that certain Sutter Construction Management Agreement, dated as of October 20, 1999 between Borrower and Calpine.

"Sutter Deed of Trust" means the Deed of Trust, Assignment of Rents and Security Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-3 to the Credit Agreement executed by Borrower, as trustor, to Stewart Title Company, as trustee, in favor of Administrative Agent, as beneficiary.

"Sutter Electric Interconnection Documents" means, collectively, (a) the Design and Engineering Services for the Calpine Corporation, dated as of August 2, 1999 between United States Department of Energy Western Area Power Administration Central Valley Project, the State of California and Borrower, (b) Contract No. 99-SNR-00210 for Service Agreement for Long-Term Firm Point-To-Point Transmission Service, dated as of August 30, 1999 between United States Department of Energy Western Area Power Administration and Borrower, (c) Sutter Powerplant - Western Area Power Administration Interconnection Feasibility Study, dated as of July 29, prepared by Western Area Power Administration, Sierra Nevada Region and

(d) any other contract or agreement entered into by, or on behalf of, Borrower for electrical interconnection services to the Sutter Project.

"Sutter Environmental Report" means (a) the Phase I Environmental Site Assessment at the proposed Sutter combined-cycle facility located at Sutter County, California, dated August 1999, prepared by Foster Wheeler.

"Sutter Fuel Management Agreement" means the Sutter Fuel Management Agreement dated as of October 20, 1999, between Borrower and CPN Marketing Company.

"Sutter Gas Supply Agreement" means that certain Sutter Gas Supply Agreement, dated as of October 20, 1999 between Borrower and CPN Marketing Company.

"Sutter Gas Supply Contracts" means, collectively, (a) the Sutter Gas Supply Agreement and (b) and any other agreement or document entered into by or on behalf of Borrower for the supply of fuel to the Sutter Project.

"Sutter Gas Transportation Agreements" means any agreement or document entered into by or on behalf of Borrower for the supply of fuel transportation services to the Sutter Project.

"Sutter Maintenance Contract" means the Maintenance Contract dated as of December 12, 1998 between Borrower and Siemens Westinghouse Power Corporation, a Delaware corporation.

"Sutter Operating and Maintenance Agreement" means the Sutter Operation and Maintenance Agreement dated as of October 20, 1999 between Borrower and Calpine.

"Sutter Power Island Supply Contract" means the Purchase Contract dated as of December 16, 1998 between Borrower and Siemens Westinghouse Power Corporation, a Delaware corporation.

"Sutter Power Marketing Agreement" means the Sutter Power Marketing Brokering and Services Agreement dated as of October 20, 1999 between Borrower and CPSC.

"Sutter Power Purchase Documents" means any contracts or agreements entered into by Borrower for the sale of electric energy and/or capacity from the Sutter Project.

"Sutter Prime Construction Contract" means the Contract for Engineering, Procurement and Construction dated as of June 1, 1999 between Borrower and Bechtel Power Corporation, a Nevada corporation.

"Sutter Project" means, the approximately 500 MW (gross) combined cycle facility located on the Sutter Site, all as further described in Appendix G-1D to the Credit Agreement, together with all buildings, structures or improvements erected on the Sutter Site and the Easements with respect to the Sutter Site, 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 Borrower and placed upon or used in connection with the electric and steam generation plant located upon the Sutter Site and the Easements with respect to the Sutter Site.

"Sutter Project Documents" means, collectively, the Sutter Construction Contracts, the Sutter Gas Supply Contracts, the Sutter Power Purchase Documents, the Sutter Operating and Maintenance Agreement, the Sutter Project Management Agreement, the Sutter Maintenance Contract, the Sutter Power Marketing Agreement, the Sutter Gas Transportation Agreements, the Sutter Fuel Management Agreement, the Sutter Affiliated Party Agreement Guaranty, the Sutter Water Documents, the Sutter Electric Interconnection Documents, the Memorandum of Understanding, dated as of March 30, 1999 between the County of Sutter, the State of California and Borrower, the Letter of Agreement No. 99-SNR-00184, dated as of June 4, 1999 between United States Department of Energy Western Area Power Administration and Borrower and any other agreement or document relating to the development, construction or operation of the Sutter Project to which Borrower is a party.

"Sutter Project Management Agreement" means that certain Sutter Project Management Agreement dated as of October 20, 1999 between Borrower and Calpine.

"Sutter Site" has the meaning given in the Sutter Deed of Trust (as it may be amended from time to time).

"Sutter Water Contracts" means any contract or agreement entered into by, or on behalf of, Borrower for the supply or transportation of water to the Sutter Project.

"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 3.1.27 or Section 3.3.29 of the Credit Agreement.

"Title Policy" means, collectively, the title policies delivered by Borrower pursuant to Sections 3.1.27 and 3.3.29 of the Credit Agreement.

"Total Letter of Credit Commitment" has the meaning given in Section 2.3.2 of the Credit Agreement.

"Total Loan Commitment" has the meaning given in Section 2.3.1 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 Subsequent Project" means a Subsequent Project other than a Funded Subsequent Project.

"Waterfall Level" has the meaning given in Section 7.2.1 of the Credit Agreement.

"Westbrook Affiliated Party Agreement Guaranty" means the Affiliated Party Agreement Guaranty dated as of October 20, 1999 in substantially the form of Exhibit D-2D to the Credit Agreement executed by Calpine in favor of Borrower.

"Westbrook Construction Contracts" means, collectively, (a) the Westbrook Turnkey Contract, (b) the Westbrook Construction Management Agreement and (c) any other contract or agreement entered into by, or on behalf of, Borrower for the construction of all or any portion of the Westbrook Project, or the supply or provision of any goods or services relating to the construction of the Westbrook Project.

"Westbrook Construction Management Agreement" means that certain Westbrook Construction Management Agreement, dated as of October 20, 1999 between Borrower and Calpine Eastern Corporation.

"Westbrook Deed of Trust" means the Deed of Trust, Assignment of Rents and Security Agreement dated as of October 20, 1999 in substantially the form of Exhibit D-3 to the Credit Agreement executed by Borrower, as trustor, to Land America, as trustee, in favor of Administrative Agent, as beneficiary.

"Westbrook Electric Interconnection Documents" means, collectively, (a) Contract for Professional Services dated as of September 22, 1999 between E-PRO Engineering & Environmental Consulting L.L.C. and Borrower and (b) any other contract or agreement entered into by, or on behalf of, Borrower for electrical interconnection services to the Westbrook Project.

"Westbrook Environmental Report" means (a) the Phase I Environmental Site Assessment at the proposed Westbrook combined-cycle facility located at Cumberland County, Maine, dated June 1999, and (b) if one is prepared, the Phase II Environmental Site Assessment at the proposed Westbrook combined-cycle facility located at Cumberland County, Maine, dated April 1999, prepared by Hoffman Engineering.

"Westbrook Fuel Management Agreement" means the Westbrook Fuel Management Agreement dated as of October 20, 1999 between Borrower and CPN East Fuels.

"Westbrook Gas Supply Agreement" means that certain Westbrook Gas Supply Agreement, dated as of October 20, 1999 between Borrower and CPN East Fuels.

"Westbrook Gas Supply Contracts" means, collectively, (a) the Westbrook Gas Supply Agreement and (b) any other agreement or document entered into by or on behalf of Borrower for the supply of fuel to the Westbrook Project.

"Westbrook Gas Transportation Agreements" means, collectively, (a) the Negotiated Service Agreement for Natural Gas Transportation Service, dated as of July 9, 1999 between CMP Natural Gas, L.L.C. and Borrower and (b) any agreement or document entered into by or on behalf of Borrower for the supply of fuel transportation services to the Westbrook Project.

"Westbrook Maintenance Contract" means the Long Term Parts and Long Term Service Contract dated as of February 5, 1999 between Borrower and General Electric International.

"Westbrook Operating and Maintenance Agreement" means the Westbrook Operation and Maintenance Agreement dated as of October 20, 1999 between Borrower and Calpine Eastern Corporation.

"Westbrook Power Marketing Agreement" means the Westbrook Power Marketing Agreement dated as of October 20, 1999 between Borrower and CPSC.

"Westbrook Power Purchase Documents" means any contracts or agreements entered into by Borrower for the sale of electric energy and/or capacity from the Westbrook Project.

"Westbrook Project" means, the approximately 540 MW (gross) combined cycle facility located on the Westbrook Site, all as further described in Appendix G-1C to the Credit Agreement, together with all buildings, structures or improvements erected on the Westbrook Site and the Easements with respect to the Westbrook Site, 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 Borrower and placed upon or used in connection with the electric and steam generation plant located upon the Westbrook Site and the Easements with respect to the Westbrook Site.

"Westbrook Project Documents" means, collectively, the Westbrook Construction Contracts, the Westbrook Gas Supply Contracts, the Westbrook Power Purchase Documents, the Westbrook Operating and Maintenance Agreement, the Westbrook Project Management Agreement, the Westbrook Maintenance Contract, the Westbrook Power Marketing Agreement, the Westbrook Gas Transportation Agreements, the Westbrook Fuel Management Agreement, the Westbrook Affiliated Party Agreement Guaranty, the Westbrook Water Documents, the

Westbrook Electric Interconnection Documents, the Joint Development Agreement, dated as of December 29, 1997 between the City of Westbrook, the State of Maine and Borrower, the Credit Enhancement Agreement, dated as of June 28, 1999 between the City of Westbrook, the State of Maine and Borrower and any other agreement or document relating to the development, construction or operation of the project to which Borrower is a party.

"Westbrook Project Management Agreement" means that certain Westbrook Project Management Agreement dated as of October 20, 1999 between Borrower and Calpine Eastern Corporation.

"Westbrook Site" has the meaning given in the Westbrook Deed of Trust (as it may be amended from time to time).

"Westbrook Water Contracts" means, collectively, (a) the Agreement (Sewage Treatment), dated as of February 2, 1999 between the City of Westbrook and Borrower, (b) the Agreement (Water Supply), dated as of February 25, 1999, by and between the Portland Water Authority and Borrower and (c) any other contract or agreement entered into by, or on behalf of, Borrower for the supply or transportation of water to the Westbrook Project.

"Westbrook Turnkey Contract" means that certain Contract Agreement, dated as of February 5, 1999 between General Electric Company, a New York corporation and Borrower.

"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 45-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 Borrower, Administrative Agent, the Lead Arrangers, Co-Documentation Agents, LC Bank, Syndication Agent, 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 Borrower, Administrative Agent, the Lead Arrangers, Co-Arrangers, Co-Documentation Agents, LC Bank, Syndication Agent, 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, L.P., a Delaware limited partnership ("Borrower"), promises to pay to \_\_\_\_\_ (the "Bank"), or order, at the office of \_\_\_\_\_ located at \_\_\_\_\_, Attn: \_\_\_\_\_, 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 20, 1999 (the "Credit Agreement"), by and among Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

Date	Advance	Prepayment or Repayment	Outstanding Balance
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**EXHIBIT C-1**  
**to Credit Agreement**

**FORM OF NOTICE OF BORROWING**

(Delivered pursuant to Section 2.1.1(b))

**of the Credit Agreement)**

[Date]

Bank of Nova Scotia,  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

**Re: CALPINE CONSTRUCTION FINANCE COMPANY PROJECTS**

This Notice of Borrowing is delivered to you pursuant to Section 2.1.1(b) of the Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 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 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 Loans, when aggregated with all Loans and Reimbursement Obligations then outstanding and the current Aggregated LC Stated Amount, will not exceed the Total Loan Commitment, and (ii) the conditions set forth in Article 3 of the Credit Agreement have been satisfied or waived in accordance with the terms thereof.

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

2

**EXHIBIT C-2  
to Credit Agreement**

**FORM OF CONFIRMATION OF INTEREST PERIOD SELECTION**

(Delivered pursuant to Section 2.1.2(b)(ii)

**of the Credit Agreement)**

[Date]

The Bank of Nova Scotia  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company Projects

This Confirmation of Interest Period Selection is delivered to you pursuant to Section 2.1.2(b)(ii) of the Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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):

1. The requested Interest Period for \_\_\_\_\_ of such LIBOR Loans shall be \_\_ months.

This notice shall be effective only if delivered to Administrative Agent as a Confirmation of Interest Period Selection made pursuant to Section 2.1.2(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, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

The undersigned acknowledges receipt of a copy of this Confirmation of Interest Period Selection:

THE BANK OF NOVA SCOTIA,  
as Administrative Agent for the Banks

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

By:

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Name:  
Title:

**FORM OF NOTICE OF CONVERSION OF LOAN TYPE**

(Delivered pursuant to Section 2.1.5 of the Credit Agreement)

[Date]

The Bank of Nova Scotia,  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company Projects

1. Reference is hereby made to that certain Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 2.1.5 of the Credit Agreement, Borrower hereby notifies Administrative Agent:

(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

IN WITNESS WHEREOF, Borrower has executed this Notice of Conversion of Loan Type on the date set forth above.

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

The undersigned acknowledges receipt of a copy of this Notice of Conversion of Loan Type:

**THE BANK OF NOVA SCOTIA, Date: \_\_\_\_\_, \_\_\_\_\_**  
**as Administrative Agent for the Banks**

By:

Name:

Title:

**EXHIBIT C-4  
to Credit Agreement**

**FORM OF NOTICE OF LC ACTIVITY**

(Delivered pursuant to Section 2.2.3 of the Credit Agreement)

[Date]

Bank of Nova Scotia,  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company Projects

This Notice of LC Activity is delivered to you pursuant to Section 2.2.3 of the Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 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.

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 3.6 of the Credit Agreement have all been satisfied or waived in accordance with the terms thereof.

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

**EXHIBIT C-5**  
**to Credit Agreement**

**FORM OF DRAWDOWN CERTIFICATE**

(Delivered pursuant to Section 3.4.3  
of the Credit Agreement)

Date: [\_\_\_\_\_, \_\_\_\_]

Drawdown Date: [\_\_\_\_\_, \_\_\_\_]

The Bank of Nova Scotia,  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Ladies and Gentlemen:

1. This Drawdown Certificate is delivered to you pursuant to Section 3.4.3 of that certain Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 Drawdown Certificate. To the extent that this 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 Drawdown Certificate relates to a Borrowing or other disbursement to take place on the Drawdown Date.
3. This 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 Borrower and for which a Drawdown Certificate has previously been submitted by Borrower are \$\_\_\_\_\_, segregated by major categories as described in Column A of Appendix I hereto.

4.2 The Project Costs for the Project to be paid with the funds requested by this 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 3.8 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 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 N of Appendix I hereto. The aggregate amount of Project Costs for the 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 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 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 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 Except for the Permits detailed in Part II(A) or II(B) of Exhibit G-3 \_\_\_\_\_ to the Credit Agreement, and Permits identified in any previous Drawdown Certificates, no other Permits on the part of Borrower or any Major Project Participant are presently required in connection with the construction and operation of the Project (other than any which have been obtained).

4.12 Except as set forth in Exhibit G-3 \_\_\_, 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 With respect to any of the Permits not yet obtained and listed in Part II(A) or II(B) of Exhibit G-3 \_\_\_\_\_, to Borrower's knowledge, no facts or circumstances exist which indicate that any such 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. Borrower is not 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 Borrower has not 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 Borrower, 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 Drawdown Certificate and the corresponding Notice of 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, any Partner, Calpine, Construction Manager, Project Manager or Operator 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, any Partner, 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 Borrower has not 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 Drawdown Certificate as Appendix IV are complete and accurate listings of all material contracts entered into by Borrower from the last day of the month preceding the date of the last 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 datedown endorsement to the Title Policy with respect to the Project to the date the 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 contained in the Credit Agreement are true and correct to the extent provided therein on and as of the 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 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 Borrower 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.

IN WITNESS WHEREOF, Borrower has executed this Drawdown Certificate as of the date hereof.

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

## Appendix I to Exhibit C-5

(Millions \$)

Prior Req.	This Req.	Cum. Req.	Scheduled Req.	Variance	Closing Budget	Current Bank Approved Budget
---	---	---	---	-----	-----	-----
A	B	C=(A+B)	D	E=(C-D)	F	G

[Example Only - Actuals to Conform to Operating Budget]

### SYSTEM COSTS

Interest on Draw

Sales Tax

Subtotal

---

### OWNER COSTS

Financing & Legal

Engineering

Administration

Working Capital

Total Owner Costs

---

### OTHER OWNER COSTS

Insurance

Interconnection Costs

Start-Up Cost & Inventory

Taxes

Other Costs

Interest During Construction

Bonuses

Contingency

Total Other Owner Costs

### TOTAL FACILITY COSTS

### LETTERS OF CREDIT

TOTAL

---

Prior Equity Req.	Equity This Month	Cum. Equity	Scheduled Equity Req.	Equity Var.	Current Estimated Total Project Cost	Expected Balance to Completion
---	---	---	---	---	---	---
H	I	J	K	L=(J-K)	M	N=M-(J+C)

[Example Only - Actuals to Conform to Operating Budget]

### SYSTEM COSTS

Interest on Draw

Sales Tax

Subtotal

---

OWNER COSTS

Financing & Legal

Engineering

Administration

Working Capital

Total Owner Costs

---

OTHER OWNER COSTS

Insurance

Interconnection Costs

Start-Up Cost &  
Inventory

Taxes

Other Costs

Interest During  
Construction

Bonuses

Contingency

Total Other Owner Costs

TOTAL FACILITY COSTS

LETTERS OF CREDIT

TOTAL

---

**Estimated Dates of Completion and Final Completion**

Completion: \_\_\_\_\_

Final Completion: \_\_\_\_\_

Appendix III to Exhibit C-5

Summary description of variances from estimated Project Costs.

Variation	Amount
0	0
TOTAL	\$0

III-1

Appendix IV to Exhibit C-5

Material Contracts entered into by Borrower and property, rights and assets acquired from date of previous Drawdown Certificate to the date hereof.

IV-1

**List of Change Orders**

V-1

**ATTACHMENT A TO  
BORROWER'S DRAWDOWN CERTIFICATE**

**CONTRACTOR'S CERTIFICATE**

Pursuant to Section \_\_\_\_ of that certain \_\_\_\_\_ Contract (the "Contract") by and between Calpine Construction Finance Company, L.P., a Delaware limited partnership, 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 accordance with the Contract and the schedule in effect on the date hereof as referenced in Article \_\_\_\_ of the Contract. Invoices submitted, including the current invoice, are in accordance with Section \_\_\_\_ and Exhibit \_\_\_\_ 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 [MECHANICAL COMPLETION DATE BEYOND THE SCHEDULED MECHANICAL COMPLETION DATE].
4. To the Contractor's knowledge, all insurance required from Contractor under the Contract has been bound and is in place and is in full force and effect.
5. Schedule I hereto is a list of each first tier Subcontractor/Supplier engaged or employed by Contractor in connection with the construction of the Project whose contract or contracts with the Contractor require payments totaling at least \$\_\_\_\_\_.
6. 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).
7. There is no material adverse change in the condition of the Contractor which in the reasonable judgment of the Contractor would be likely to materially adversely affect the Contractor's ability to perform the Work.
8. To the Contractor's knowledge, the Project has not been abandoned or terminated.

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 \_\_\_\_\_, 199\_\_\_.  

---

By:  
Name:

Its:

**Attachments:**

**Schedule I -- List of Subcontractor/Suppliers**

A-2

**EXHIBIT C-6**  
**to Credit Agreement**

**FORM OF ENGINEER'S CERTIFICATE**

**[LETTERHEAD OF R.W. BECK, INC.]**

(Delivered pursuant to Section 3.4.3)

The Bank of Nova Scotia, Date: \_\_\_\_\_  
as Administrative Agent for the Banks Drawdown Date: \_\_\_\_\_  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company Projects

Ladies and Gentlemen:

R.W. Beck, Inc. ("Independent Engineer"), pursuant to Section 3.4.3 of the Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 Certificate.
2. All defined terms set forth in this Independent Engineer's 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 Borrower since the date of the last Drawdown Certificate with respect to the Project, consisting of: the 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 Drawdown Certificate with respect

to the Project (the "Current Drawdown Certificate"), dated \_\_\_\_\_ (the "Drawdown Date"), and we have previously reviewed the corresponding paragraphs of all previous Drawdown Certificates with respect to the Project. We have also reviewed the materials attached to the Current 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 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 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 DRAWDOWN CERTIFICATE BECAUSE: [(STATE REASONS)];

b. THE AGGREGATE AMOUNT OF PROJECT COSTS FOR THE 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 Drawdown Certificate or in the Current Contractor Certificate referred to in paragraph 3 of this Independent Engineer's Certificate. [SPECIFY ALL]

PARAGRAPHS CONSIDERED CORRECT. IF ANY PARAGRAPH IN THE CURRENT DRAWDOWN CERTIFICATE OR INFORMATION IN THE CURRENT CONTRACTOR CERTIFICATE IS INCORRECT, LIST AND SPECIFY REASONS.]

f. Except for the Applicable Permits detailed in Exhibit G-3\_\_\_\_\_, 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 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 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 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 Drawdown Certificate or that have not been listed in a previous 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 Drawdown Certificate or Current Contractor 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-7  
to Credit Agreement**

**FORM OF DISBURSEMENT REQUISITION**

(Delivered pursuant to Section 7.2.2 [AND SECTION 7.2.3] of the Credit Agreement)

[Date]

The Bank of Nova Scotia  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company 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 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 the 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 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]

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, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

**APPENDIX I**  
**To Exhibit C-7**

CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership

Disbursement Request for the month of \_\_\_\_\_, 19\_\_\_\_ with respect to the \_\_\_\_\_ Project

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	
[Example Only - Actuals to Conform to Categories Set Forth in Operating Budget] O&M Labor Fuel Water Supplies General & Administrative Management Fee Routine Maintenance Ground Lease Payments [ ] [ ] [ ] Facility Operating Expense Facility Expense Insurance Property Taxes Sales Tax Parcel Tax Contingency [CONFORM ABOVE TO OPERATING BUDGET LINE ITEMS]	EXPENDITURES TO LAST DISBURSEMENT DATE	DISBURSEMENTS TO LAST DISBURSEMENT DATE	REMAINING RESIDUAL/ (SHORTFALL)	O&M BUDGET AMOUNT FOR CURRENT MONTH	CURRENT MONTH'S (<= (4))* EXPENDITURES DUE AND PAYABLE	NET DISBURSEMENT REQUEST	TOTAL O&M COSTS TO DATE	TOTAL O&M BUDGET	O&M OVER (UNDER)	% OVER/ (UNDER)
-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
TOTAL	=====	=====	=====	=====	=====	=====	=====	=====	=====	=====

\* Subject to variation as permitted under Section 5.15.2 of the Credit Agreement.

**APPENDIX II  
to Exhibit C-7**

CALPINE CONSTRUCTION FINANCE COMPANY L.P., a Delaware limited partnership

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-8  
to Credit Agreement**

**FORM OF RESERVE ACCOUNT DISBURSEMENT REQUISITION**

(Delivered pursuant to Section 7.8.3 of the Credit Agreement)

[Date]

The Bank of Nova Scotia,  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Re: Calpine Construction Finance Company Projects

This Reserve Account Disbursement Requisition is delivered to you pursuant to Section 7.8.3 of the Credit Agreement dated as of October 20, 1999 ("Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative 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 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, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

The undersigned acknowledges receipt of a copy of this Reserve Account Disbursement Requisition:

**THE BANK OF NOVA SCOTIA, Date: \_\_\_\_\_, \_\_\_\_\_**  
**as Administrative Agent for the Banks**

By:

Name:

Title:

Description of Payees and Uses of Funds Withdrawn From the Working Capital Reserve Account

**EXHIBIT D-1  
to the Credit Agreement**

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**FORM OF DEPOSITORY AGREEMENT**

dated as of \_\_\_\_\_, 1999

among

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership,

as Borrower,

**THE BANK OF NOVA SCOTIA,**

as Administrative Agent for the Banks,

and

**THE BANK OF NOVA SCOTIA,**

as Depository Agent

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THIS DEPOSITORY AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 1999, is among CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership ("Borrower"), THE BANK OF NOVA SCOTIA, acting in its capacity as Administrative Agent ("Administrative Agent") for the Banks under the Credit Agreement (as defined below), and THE BANK OF NOVA SCOTIA, acting in its capacity as Depository Agent (the "Depository Agent").

## **RECITALS**

A. Borrower has entered into that certain Credit Agreement, dated as of October 20, 1999 (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, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent, whereby the Banks have agreed to advance to Borrower certain loans to finance the construction and operation by Borrower of the Projects.

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, 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 Depository Agent, as agent for Administrative Agent, to be held by Depository Agent in pledge as collateral security for Borrower's obligations under the Credit Agreement and distributed by Depository Agent as provided herein.

C. Depository Agent has agreed to act as depository 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.

"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 Depositary Agent pursuant to Section 2.5, the Construction Sub-Accounts and all sub-accounts therein.

"Disbursement Instruction" shall mean a notice from Administrative Agent, substantially in the form of Exhibit B hereto, instructing Depositary 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 the special account designated by that name established by Depositary Agent pursuant to Section 2.5.

"Revenue Account" shall mean the special account designated by that name established by the Depositary Agent pursuant to Section 2.5.

"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 Depositary Agent pursuant to Section 2.5.

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 Depositary 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 Depositary 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 four 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. # 2480-10);
- (2) The Construction Sub-Account (Magic Valley) (Acc. # 2481-18);
- (3) The Construction Sub-Account (South Point) (Acc. # 2483-12);
- (4) The Construction Sub-Account (Sutter) (Acc. # 2485-17);

(5) The Construction Sub-Account (Westbrook) (Acc. # 2486-14);

(6) The Revenue Account (Acc. # 2487-11);

(7) The Loss Proceeds Account (Acc. # 2488-19); and

(8) The Working Capital Reserve Account (Acc. # 2490-17).

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.

## **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 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 by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Construction Account, Depositary Agent shall distribute or apply monies on deposit in the Construction Account 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 by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Revenue Account, Depositary Agent shall distribute or apply monies on deposit in the Revenue Account 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 by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Loss Proceeds Account, Depositary Agent shall distribute or apply monies on deposit in the Loss Proceeds Account 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 by Administrative Agent, requesting that funds be withdrawn and/or transferred from the Working Capital Reserve Account, Depositary Agent shall distribute or apply monies on deposit in the Working Capital Reserve Account 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. Depositary 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 Depositary 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 Depositary Agent has not received any such written

directions, Depository Agent shall be under no obligation to invest any such money. 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 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 Depository Agent shall succeed to all the rights and duties of Depository Agent under this Agreement and shall be entitled to receive the Accounts from the predecessor Depository Agent.

## **ARTICLE 7**

### **Determinations**

Section 7.1 Sales of Permitted Investments. Depository 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, in the reasonable opinion of Depositary Agent, 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 assumes liability for, and agrees to indemnify, protect, save and keep harmless Depositary Agent, Administrative Agent, each Bank and their respective successors, assigns, agents and servants from and against any and all claims, liabilities, obligations, losses, damages, penalties, costs and expenses, including, without limitation, all reasonable fees and expenses of counsel to Depositary Agent, Administrative Agent or any Bank, that may be imposed on, incurred by, or asserted against, at any time, Depositary Agent, Administrative Agent or any Bank, and in any way relating to or arising out of the execution and delivery of this Agreement, the establishment of the Accounts, the acceptance of deposits, the purchase or sale of Permitted Investments, the retention of money and Permitted Investments or the proceeds thereof and any payment, transfer or other application of money or Permitted Investments by Depositary Agent, Administrative Agent or any Bank in accordance with the provisions of this Agreement, or as may arise by reason of any act, omission or error of Depositary Agent made in good faith in the conduct of its duties. Borrower shall not, however, be required to indemnify, protect, save and keep harmless Depositary Agent, Administrative Agent or any Bank against its own gross negligence or willful misconduct. The indemnities contained in this Section 8.1 shall survive the termination of this Agreement. 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 Depositary Agent of a certificate to such effect executed by Administrative Agent. Promptly after receipt of such certificate by Depositary Agent, Depositary 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:

The Bank of Nova Scotia  
600 Peachtree Street, N.E., Suite 2700 Atlanta, Georgia 30306  
Attention: Michael Silveira Telephone Number: (404) 877-1522 Telecopier Number: (404) 888-8998

(b) If to Borrower:

Calpine Construction Finance Company, L.P.

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

and

6700 Knoll Center Parkway, Suite 200 Pleasanton, California 94566 Attention: Corporate Asset Management

(c) If to Depositary Agent:

The Bank of Nova Scotia  
One Liberty Plaza, 26th Floor 165 Broadway  
New York, New York 10006 Attention: Dorothy Jennings Telephone Number: (212) 225-5000 Telecopier Number: (212) 225-5172

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.

**[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, L.P.,**  
a Delaware limited partnership

By CALPINE CCFC GP, INC., a Delaware  
corporation, its General Partner

By:

Name:

Title:

**THE BANK OF NOVA SCOTIA,**  
**as Administrative Agent for the Banks**

By:

Name:

Title:

**THE BANK OF NOVA SCOTIA,**  
**as Depository 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 20, 1999, among Calpine Construction Finance Company, L.P., a Delaware limited partnership ("Borrower"), The Bank of Nova Scotia, as Depositary Agent ("Depositary Agent"), and The Bank of Nova Scotia, as Administrative Agent ("Administrative Agent") for the Banks named in that certain Credit Agreement dated as of October 20, 1999, among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner, The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent, TD Securities (USA) Inc., as Co-Arranger and Co-Documentation Agent and CIBC Inc., as Co-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 [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;
- (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 (as such terms are defined in the Credit Agreement) has occurred and is continuing or will occur after giving effect to the withdrawal of funds requested by this Account Withdrawal Certificate; and

**Exhibit A**

(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, L.P.,**  
a Delaware limited partnership

By CALPINE CCFC GP, INC., a Delaware  
corporation, its General Partner

By:

Name:

Title:

**ACKNOWLEDGED AND AGREED:**

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent for the Banks**

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 20, 1999, among Calpine Construction Finance Company, L.P., a Delaware limited partnership ("Borrower"), The Bank of Nova Scotia, as Depositary Agent ("Depositary Agent"), and The Bank of Nova Scotia, as Administrative Agent ("Administrative Agent") for the Banks named in that certain Credit Agreement dated as of October 20, 1999, among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner, The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent, TD Securities (USA) Inc., as Co-Arranger and Co-Documentation Agent and CIBC Inc., as Co-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,

**THE BANK OF NOVA SCOTIA,**  
as Administrative Agent for the  
Banks

By:

Name:

Title:

**Exhibit B**

**Schedule 1 to Disbursement Instruction**

**Payees of Proceeds of Withdrawal from [Name of Account]**

**Exhibit B -- Schedule 1**

**EXHIBIT D2-A**  
**to the Credit Agreement**

**AFFILIATED PARTY AGREEMENT GUARANTY**

This AFFILIATED PARTY AGREEMENT GUARANTY (this "Guaranty") dated as of \_\_\_\_\_, 1999 is made by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor of Calpine Construction Finance Company, L.P., a Delaware limited partnership ("CCFC").

**RECITALS**

A. \_\_\_\_\_, a \_\_\_\_\_ ("\_\_\_\_\_), and CCFC are parties to that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 1999 (the "\_\_\_\_\_), that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 1999 (the "\_\_\_\_\_) and that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 1999 (the "\_\_\_\_\_"). \_\_\_\_\_, a \_\_\_\_\_ ("\_\_\_\_\_), and CCFC are parties to that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 1999 (the "\_\_\_\_\_), that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 1999 (the "\_\_\_\_\_) and that certain \_\_\_\_\_ dated as of \_\_\_\_\_, 1999 (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 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, all the outstanding capital stock or other equity interests of each of the Affiliated Parties; and

C. CCFC 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 CCFC 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 20, 1999 among CCFC, as Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First

Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 CCFC 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 CCFC 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 CCFC 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 CCFC 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 CCFC. If any of the Affiliated Parties shall fail to pay or perform any of the Obligations to CCFC 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) CCFC 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 CCFC 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 CCFC 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 CCFC 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 CCFC 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 CCFC 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 CCFC, (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 CCFC 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 CCFC such additional amount as may be necessary to ensure that the net amount actually received by CCFC is free and clear of such Taxes, including any Taxes on such additional amount, is equal to the amount that CCFC 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 CCFC by the United States or any State or any jurisdiction where CCFC is organized and/or the jurisdiction in which is located.

2. Representations and Warranties. Guarantor makes the representations and warranties set forth below to CCFC 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 CCFC 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 CCFC; 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 CCFC to proceed against any of the Affiliated Parties or any other person or to proceed against or exhaust any security held by CCFC at any time or to pursue any other remedy in CCFC'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 CCFC 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, CCFC, 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 CCFC as collateral or in connection with any Obligations, (d) any defense based upon an election of remedies by CCFC, 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 CCFC or any other Person under the Relevant Documents, (i) any duty on the part of CCFC to disclose to Guarantor any facts CCFC may now or hereafter know about any of the Affiliated Parties, regardless of whether CCFC 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 CCFC'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 CCFC 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 CCFC, and Guarantor shall cause the same to be paid to CCFC immediately upon demand by CCFC 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 CCFC 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 CCFC 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 CCFC from any of the Affiliated Parties and (b) Guarantor waives any claim, right or remedy which Guarantor may now have 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 CCFC against any of the Affiliated Parties, or any security which CCFC 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 any of the Obligations are owed to CCFC, Guarantor shall not, without the prior written consent of CCFC, 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 CCFC, 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 CCFC all rights of Guarantor thereunder. If Guarantor does not file any such claim, CCFC, is hereby authorized to do so in the name of Guarantor or, in CCFC's discretion, to assign the claim to a nominee and to cause proofs of claim to be filed in the name of CCFC's nominee. The foregoing power of attorney is coupled with an interest and cannot be revoked. CCFC 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 CCFC to the extent of any Obligations which then remain unpaid, and, to the full extent necessary for that purpose, Guarantor hereby assigns to CCFC 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 CCFC receives cash by reason of any such payment or distribution. If CCFC 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 CCFC who shall have, to the extent of their interest, the rights of CCFC 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 CCFC and Administrative Agent, and any purported assignment in violation of this provision shall be void.

#### 9. Waivers.

(a) No delay on the part of CCFC in exercising any of their rights (including those hereunder) and no partial or single exercise thereof and no action or non-action by CCFC, 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 CCFC THAT IS BEING ESTABLISHED. GUARANTOR ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT CCFC HAS ALREADY RELIED ON THE WAIVER IN ENTERING INTO THIS GUARANTY, AND THAT CCFC 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 CCFC 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 CCFC 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: Asset Management and General Counsel Telephone Number: (408) 995-5115 Telecopier Number: (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

(b) The address of CCFC for notices is:

Calpine Corporation 50 West San Fernando Street San Jose, California 95113 Attention: Asset Management and General Counsel Telephone Number: (408) 995-5115 Telecopy Number: (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

(c) The address of Administrative Agent for notices is:

The Bank of Nova Scotia 600 Peachtree Street, N.E., Suite 2700 Atlanta, Georgia 30308 Attention: Michael Silveira Telephone Number: (404) 877-1522 Telecopy Number: (404) 888-8998

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 CCFC are required to pursue any remedy against Guarantor hereunder, Guarantor shall pay to CCFC, as the case may be, upon demand, all reasonable attorneys' fees and expenses all other costs and expenses incurred by CCFC 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 CCFC by any of the Affiliated Parties under the Relevant Documents or by Guarantor hereunder is rescinded or must otherwise be returned by CCFC 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.

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

**EXHIBIT D2-B**  
**to the Credit Agreement**

**COMPLETION GUARANTY**

THIS COMPLETION GUARANTY (this "Guaranty") dated as of , 1999 is made by CALPINE CORPORATION, a Delaware corporation ("Guarantor"), in favor of THE BANK OF NOVA SCOTIA, as Administrative Agent ("Administrative Agent") for the Banks under that certain Credit Agreement (the "Credit Agreement") dated as of October 20, 1999, among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent.

**RECITALS**

- A. Guarantor owns all the outstanding stock of each of Calpine CCFC GP, Inc., a Delaware corporation, the sole general partner of Borrower, and each of the limited partners 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 5.17.2 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, 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 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. 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 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 Agreement 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 Agreement (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, if required by the Credit Agreement, 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 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 to the Banks under the Credit Agreement or the other 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 Agreement (including provisions with respect to the Completion of the Projects) or otherwise amend, modify or supplement (with the consent of Borrower, if required by the Credit Agreement) the Credit Agreement (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, 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 (vii)(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 its 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 its 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 (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) \$415,000,000 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 June 30, 1999 plus (C) 100% of the Net Equity Proceeds from any equity offering by Guarantor after June 30, 1999;

(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 of the failure by Borrower 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 against Administrative Agent, the Banks or any other Person under the Credit Agreement, (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, 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 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, (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 Agreement (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 Agreement (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 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, 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 3.8(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, 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 and (b) Guarantor waives any claim, right or remedy which Guarantor may now have or hereafter acquire against Borrower 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 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. 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 by any defense which Borrower 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 relating to any indebtedness of Borrower 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:

The Bank of Nova Scotia 600 Peachtree Street, N.W., Suite 2700 Atlanta, Georgia 30308 Attention: Michael Silveira Telephone Number: (404) 877-1522 Telecopier Number: (404) 888-8998

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 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 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. 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.

IN WITNESS WHEREOF, 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.

**THE BANK OF NOVA SCOTIA,**  
**as Administrative Agent**

By: \_\_\_\_\_  
Name:  
Title:

## APPENDIX A TO 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 that certain First Amended and Restated Credit Agreement (the "Guarantor Credit Agreement") dated as of May 15, 1998 among Guarantor, certain commercial lending instructions 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.

"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.

"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.

"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, and, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP, and 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.

"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, 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 (i) 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 Section 3(f)) or (ii) that certain Tranche D Letter of Credit related to the Gilroy Project and issued by Banque Nationale de Paris, Los Angeles Branch ("BNP") pursuant to that certain Credit Agreement dated as of August 29, 1996 by and among Calpine Gilroy Cogen, L.P., BNP and certain other financial institutions shall be deemed to be zero unless and until Guarantor's independent auditors have quantified the amount of the exposure thereunder (and thereafter shall be deemed to be the amount so quantified from time to time) 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 Section 3(f)), 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.

"Gilroy Project" means the approximately 120 MW natural gas fired cogeneration facility located in Gilroy, California and owned by Calpine Gilroy Cogen, L.P.

"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 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 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, 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 face amount of all letters of credit (excluding for purposes of this clause (b) that certain Tranche D Letter of Credit related to the Gilroy Project and issued by Banque Nationale de Paris, Los Angeles Branch ("BNP") pursuant to that certain Credit Agreement dated as of August 29, 1996 by and among Calpine Gilroy Cogen, L.P., BNP and certain other financial institutions until the events described in clause (y) of the definition of Contingent Liability" (as defined in this Section 3(f)) have occurred with respect to the Tranche D Letter of Credit), whether or not drawn, and banker's acceptances issued for the account of such Person;

(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; and

(g) all Contingent Liabilities of such Person in respect of any of the foregoing.

For all purposes of this Agreement, 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.

"Net Available Cash" means, with respect to any Asset Sale, the case 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 of any equity 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.

"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 on or more other Subsidiaries of such Person, or by one or more other Subsidiaries of such Person. Unless otherwise specified, all references to "Subsidiary" contained in this Section 3(f) shall mean a Subsidiary of Guarantor.

"Tangible Net Worth" means the consolidated net worth of Guarantor and its Subsidiaries 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.

"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 D-3  
to the Credit Agreement**

**RECORDING REQUESTED BY AND  
WHEN RECORDED, RETURN TO:**

**Gwyn Goodson Timms**

**LATHAM & WATKINS  
701 "B" STREET, SUITE 2100  
SAN DIEGO, CALIFORNIA 92101**

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**DEED OF TRUST, ASSIGNMENT OF RENTS  
AND SECURITY AGREEMENT**

**DATED AS OF \_\_\_\_\_, 1999**

**BY**

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,  
A DELAWARE LIMITED PARTNERSHIP,  
AS TRUSTOR**

**TO**

**TITLE COMPANY,  
AS TRUSTEE**

**FOR THE BENEFIT OF**

**THE BANK OF NOVA SCOTIA, AS ADMINISTRATIVE AGENT FOR THE BANKS,  
AS BENEFICIARY**

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## **FORM OF DEED OF TRUST**

This DEED OF TRUST, ASSIGNMENT OF RENTS AND SECURITY AGREEMENT, dated as of \_\_\_\_\_, 1999 (this "Deed of Trust") BY CALPINE CONSTRUCTION FINANCE COMPANY, a Delaware limited partnership ("Trustor"), whose address is \_\_\_\_\_, to TITLE COMPANY, as trustee ("Trustee"), whose address is TC ADDRESS, for the benefit of THE BANK OF NOVA SCOTIA, as Administrative Agent for the Banks (as defined below) (together with its successors and assigns, "Beneficiary"), whose address is 600 Peachtree Street, N.E., Suite 2700, Atlanta, Georgia 30308.

### **Recitals**

A. Trustor, The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent, Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner, and the financial institutions named therein (together with their respective successors and assigns, the "Banks") have entered into a Credit Agreement, dated as of October 20, 1999 (as modified, supplemented or amended from time to time, the "Credit Agreement"), pursuant to which the Banks have agreed to lend to Borrower One Billion Dollars (\$1,000,000,000) for the purpose of purchasing, constructing, owning and operating various power projects. [DISCUSSION OF COLLATERAL PROPERTY] 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. The Banks are willing to make the Loans and make other financial accommodations in accordance with the Credit Agreement, but in each case only upon the condition, among others, that Trustor secure the loans with various items of real and personal property owned by Trustor.

C. As set forth more fully below, Trustor intends to secure the payment and performance of the Loans 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 promissory notes executed or to be executed by Trustor in favor of Beneficiary, the other Credit Documents and the obligations of Trustor set forth herein, including, without limitation, Section 2.8 hereof (collectively, the "Secured Obligations"), and in consideration of the covenants herein contained and in the Credit Agreement, 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 described herein (the "Premises") including without limitation, any interests under a lease of the Premises whereby Trustor leases the Premises (the "Ground Lease") and the leasehold estate and all other rights of Trustor under the Ground Lease, if any, 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 Site, 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 Premises 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, as defined in the Credit Agreement (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, 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.

**[ADD PARTICULAR ITEMS OF COLLATERAL RELATING TO FACILITY IN QUESTION]**

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 Credit Agreement 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.

"Improvements" 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 Premises; (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 Premises 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.

"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, 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 Agreement.

**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 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 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 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 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 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 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 Ground Lease 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 Agreement, including, without limitation, Sections 7.5 and 7.6 of the Credit Agreement.

**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 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 Premises.

## 2.6 Expenses.

2.6.1 Trustor shall pay when due and payable all costs provided for in Section 12.4 of the Credit Agreement; and

2.6.2 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 as specifically provided in 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 Agreement, 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.

## 2.11 Site.

2.11.1 To the extent applicable, 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 To the extent applicable, 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 (as such term is defined in the Credit Agreement), 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 Agreement 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 To the extent applicable, Trustor shall use all reasonable efforts to enforce the obligations of the lessor under the Ground Lease in a commercially reasonable manner.

2.11.4 To the extent applicable, 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 Agreement, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 To the extent applicable, 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 such notice as may be required by law of the date on which Trustor shall apply to the bankruptcy court for authority to reject the Ground Lease. Beneficiary shall have the right, but not the obligation, to serve upon Trustor within such twenty day period 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 Agreement, 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 Agreement 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 Agreement.

#### 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 [INSERT 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 Agreement, 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 Agreement, 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 Notes or any 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, 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, 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, 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 Agreement to (1) the payment of interest and principal due and payable on 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 Agreement.

- (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 Agreement or 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 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, 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 Credit Agreement 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 Agreement. 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 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 Agreement or any other Credit Document, 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 the Notes 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 Agreement.

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 Credit Agreement 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 the Credit Agreement, 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 Premises; (f) consents to the granting of any easement on the Premises; or (g) makes or consents to any agreement changing the terms of this Deed of Trust or any Credit Document subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the liability under the Credit Agreement, 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 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 the Credit Agreement, 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 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 and 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 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 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 or 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 the Notes, this Deed of Trust 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 appraisement 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 appraisement 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 CREDIT AGREEMENT, THE NOTES 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.**

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TRUSTOR

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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, future advances. It is understood and agreed that this Deed of Trust secures present and future advances made for the benefit of Trustor 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, Partners, Members, Shareholders 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 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.

5.17 Release of Collateral.

(a) The Trust Property 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 Agreement 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 Property permitted to be released pursuant to this Deed of Trust.

(b) The Beneficiary may instruct the Trustee to release Trust Property from the security interest created hereunder upon the sale or disposition of such Trust Property pursuant to the Beneficiary's powers, rights and duties with respect to remedies provided herein.

5.18 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.

5.19 Credit Agreement Controls. 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.

**CALPINE CONSTRUCTION FINANCE COMPANY L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC., its General Partner

By: \_\_\_\_\_  
Name:  
Title:

THE STATE OF \_\_\_\_\_ ss.  
COUNTY OF \_\_\_\_\_ ss.  
ss.

This instrument was acknowledged before me on \_\_\_\_\_, 1999, 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 SITE**

**EXHIBIT B**

**DESCRIPTION OF EASEMENTS**

**EXHIBIT C**

**PERMITTED ENCUMBRANCES**

**EXHIBIT D-4  
to the Credit Agreement**

**SECURITY AGREEMENT**

**Dated as of \_\_\_\_\_, 1999**

between

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**

a Delaware limited partnership

and

**THE BANK OF NOVA SCOTIA**

**as Administrative Agent**

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## **SECURITY AGREEMENT**

This SECURITY AGREEMENT (this "Agreement"), dated as of \_\_\_\_\_, 1999, is entered into by and between CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership ("Borrower"), and THE BANK OF NOVA SCOTIA, as Administrative Agent ("Administrative Agent") for the Banks (as defined below).

### **PREFACE**

A. Borrower intends to construct and own and operate the Projects.

B. Borrower, the financial institutions listed on Exhibit H to the Credit Agreement (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent, have entered into that certain Credit Agreement, dated as of October 20, 1999 (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 Syndication Agent, the Bookrunner, the Co-Documentation Agents and the Banks (as such terms are defined in 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 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 or, with respect to the Operating Accounts only, the State of California; 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 California, 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 in Section 3 hereof), except as provided in Section 2.5, 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) The Prime Construction Contracts, including (i) Contract for Construction between Borrower, as successor in interest to Magic Valley Generation, L.P., and Zachry Construction Corporation, dated March 26, 1999, (ii) Contract for Engineering, Procurement, and Construction between Borrower, as successor in interest to CPN South Point, LLC, and The South Point Joint Venture, dated April 12, 1999, (iii) Contract for Engineering, Procurement, and Construction between Borrower, as successor in interest to Calpine Sutter, LLC, and Bechtel Power Corporation, dated as of June 1, 1999, and (iv) Contract Agreement between General Electric Company and Borrower, as successor in interest to Westbrook, LLC, for the Westbrook Power Project Combined Cycle Power Plant Westbrook, Maine, dated as of February 5, 1999;
- (b) The Power Island Supply Contracts, including (i) Purchase Contract between Westinghouse Power Generation and Borrower, as successor in interest to Calpine Corporation, dated as of June 30, 1998, (ii) Purchase Contract for Power Island Equipment between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to CPN South Point, LLC, dated as of March 15, 1999, and (iii) Purchase Contract for Power Island Equipment between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to Calpine Sutter, Inc., dated as of December 16, 1998;
- (c) The Engineering Contracts, including Contract for Professional Services between Sargent & Lundy, L.L.C., and Borrower, as successor in interest to Magic Valley Generation, L.P., dated as of December 8, 1998;
- (d) The Maintenance Contracts, including (i) Maintenance Contract between Westinghouse Power Generation and Borrower, as successor in interest to Calpine Corporation, dated as of June 30, 1998, (ii) Maintenance Contract between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to Calpine Corporation,

dated as of March 19, 1999, (iii) Maintenance Contract between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to Calpine Corporation, dated as of December 18, 1998, and (iv) Long Term Parts & Long Term Service Contract between Borrower, as successor in interest to Westbrook Power, LLC, and General Electric International, dated as of February 5, 1999;

(e) The Construction Management Agreements;

(f) The Project Documents related to the delivery of water to the Projects; including (i) Agreement for Purchase of Treated Effluent Water, between the City of Edinburg and Borrower, as successor in interest to Calpine Corporation dated April 21, 1998; First Amendment to Agreement for Purchase of Treated Effluent Water by and between the City of Edinburg and Borrower, as successor in interest to Magic Valley Generation, L.P. dated August 4, 1999,

(ii) Master Agreement for Purchase and Sale of Water by and between Hidalgo County Irrigation District No. Two and Borrower, as successor in interest to Magic Valley Generation, L.P., dated June 17, 1999, (iii) Water Delivery Contract by and between Hidalgo County Irrigation District No. One and Borrower, as successor in interest to Magic Valley Generation, L.P., dated July 19, 1999,

(iv) Earnest Money Contract between Bayview Irrigation District No. 11 and Borrower, as successor in interest to Magic Valley Generation, L.P., dated July 27, 1999; and (v) Agreement by and between Borrower, as successor in interest to Westbrook Power, LLC, and Portland Water District, dated as of February 25, 1999;

(g) The Leases, including (i) Amended and Restated Ground Lease Agreement, executed as of August 4, 1999 and approved as BIA Lease B1778-FM on August 19, 1999 between the Fort Mojave Indian Tribe, a federal recognized Indian Tribe and Borrower;

(h) the O&M Agreements;

(i) the Project Management Agreements;

(j) the Gas Supply Contracts;

(k) the Gas Transportation Agreements;

(l) the Fuel Management Agreements;

(m) the Power Purchase Agreements, including Power Purchase and Sale Agreement between Borrower, as successor in interest to Calpine Power Services Company and Magic Valley Electric Cooperative, Inc., dated as of May 22, 1998;

(n) the Power Marketing Agreements;

(o) (i) that certain Option Contract dated as of September 3, 1999, by and between, on the one hand, Ralph E. Williamson and Daphine P. Williamson and, on the other hand, Calpine Eastern Corporation, a Delaware corporation ("Calpine Eastern"), whose interest has been assigned to Borrower,  
(ii) that certain Option Contract dated as of September 3, 1999, by and between, on the one hand, Leslie Williamson, James Williamson, Bonnie

Williamson Morris and Judy Williamson Dunaway and, on the other hand, Calpine Eastern, whose interest has been assigned to Borrower, (iii) that certain Option Contract dated as of September 3, 1999, by and between Albert R. "Shorty" Glenn and Calpine Eastern, whose interest has been assigned to Borrower, (iv) that certain Option Agreement dated as of March 10, 1998 by and between, on the one hand, Tulare Hills Corporation, a California corporation as to an undivided 63.687% interest, Phillip Pon, an unmarried man and Michael Pon, an unmarried man as joint tenants, as to an undivided 12.1% interest and Danville Realty Corporation, as to an undivided 24.213% interest and, on the other hand, Calpine Corporation, a Delaware corporation ("Calpine"), whose interest has been assigned to Borrower, (v) that certain Option Contract dated as of September 3, 1999, by and between, on the one hand, Thomas Walters and Peggy Walters and, on the other hand, Calpine Eastern, whose interest has been assigned to Borrower,

(vi) that certain Option Agreement dated as of April 9, 1999 by and among, on the one hand, Marie A. Passantino, as Trustee of the Passantino Family Trust dated October 23, 1991, as amended and restated April 17, 1997 (as to an undivided 97% interest), Mark Passantino (as to an undivided 1% interest), Raeanne M. Frank (as to an undivided 1% interest) and Suzanne L. Downter (as to an undivided 1% interest) and, on the other hand, Calpine and Bechtel Enterprises, Inc., a Delaware corporation, Calpine's interest in which has been assigned to Borrower, (vii) that certain Option Agreement, dated as of October 20, 1999, by and between Pittsburg District Energy Facility, LLC, a Delaware limited liability company and Borrower, (viii) that certain Option Contract dated as of June 25, 1999, by and between John C. Blythe and Calpine Eastern, whose interest has been assigned to Borrower, (ix) that certain Option Agreement dated as of July 21, 1998, by and between The Dow Chemical Company, a Delaware corporation and Calpine Pittsburg, Inc., a Delaware corporation, a 50% undivided interest in which has been assigned to Borrower, (x) that certain Option Agreement for Purchase of Real Property dated as of August 20, 1999, by and between Donald Gene Haag and Calpine Eastern, whose interest has been assigned to Borrower, (xi) that certain Option Agreement for Purchase of Real Property dated as of July 30, 1999, by and between Donald E. Hemphill and Robert J. Karow, Esq., whose interest has been assigned to Borrower, and (xii) that certain Lease Agreement by and between The City of Alexander City, a municipality located in the County of Tallapoosa in the State of Alabama and Calpine Eastern, whose interest has been assigned to Borrower.

(p) all other Project Documents not listed above to which Borrower is or may become a party from time to time;

(q) 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;

(r) to the extent assignable, all other agreements, including vendor warranties, running to Borrower or assigned to Borrower, relating to the construction, maintenance, improvement, operation or acquisition of a Project or any part thereof, or transport of material, equipment and other parts of a Project or any part thereof;

(s) any other lease or sublease agreements or easement agreements relating to a Project or any part thereof or any ancillary facilities to which Borrower is or becomes a party;

(t) each Additional Project Document, and, to the extent assignable, any other agreements to which Borrower may be or become a party to relating to the construction or operation of a Project or any part thereof;

(u) all amendments, supplements, substitutions and renewals to any of the aforesaid agreements; and

(v) all Permits, including those described on Exhibit G-3 to the Credit Agreement or any Appendix thereto, 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, royalties and revenues derived in any other manner by Borrower from its ownership of a Project or any part thereof and the operation of a Project 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 Level 8 and 10 of Section 7.2.1 of the Credit Agreement;

2.1.3 all other personal property and fixtures of Borrower relating to any Project, 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 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, 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, accounts, contract rights, documents, deposit accounts, chattel paper, general intangibles, and inventory relating to any Project;

2.1.5 all Accounts, including without limitation, the Construction Accounts, the Revenue Accounts, the Operating Accounts, the Loss Proceeds Account and the Working Capital Reserve Accounts, including any sub-accounts within such accounts; 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, but excluding the property described in Section 2.5, 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 relating to the Project 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 relating to a Project 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.

2.5 Notwithstanding anything to the contrary herein contained, the Collateral described in Section 2.1 shall not include, and the Lien granted hereunder shall not extend to, any such Collateral relating to the Project described on Appendix G-1S to the Credit Agreement and that West Phoenix Project.

**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 and chief executive office 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, 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 any Project or any part thereof and/or 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 with respect to any Project;

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) 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  
(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 Section 12.1 of the Credit Agreement.

**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, Partners, Shareholders and their respective Affiliates, 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. Notwithstanding the foregoing, the validity, perfection and priority of the lien and security interest created hereunder in respect to the Operating Accounts is governed by the laws of the State of California.

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.

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IN WITNESS WHEREOF, each of the undersigned has caused this Security Agreement to be duly executed and delivered as of the day and year first above written.

**CALPINE CONSTRUCTION FINANCE  
COMPANY, L.P.,**

a Delaware limited partnership

By: Calpine CCFC GP, Inc.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

By:

Name:

Title:

**EXHIBIT D-5  
to Credit Agreement**

**FORM**

**OF**

**LIEN SUBORDINATION AGREEMENT**

between

\_\_\_\_\_ ,

and

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

## LIEN SUBORDINATION AGREEMENT

This LIEN SUBORDINATION AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, \_\_\_\_ is made by and among \_\_\_\_\_, ("Subordinated Creditor"), THE BANK OF NOVA SCOTIA, as Administrative Agent ("Administrative Agent") under the Credit Agreement described below, and CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership ("Pledgor").

A. Administrative Agent and the Banks party thereto (such parties, acting through the Administrative Agent, being collectively referred to herein as the "Senior Lenders") and Borrower have entered into that certain Credit Agreement (the "Credit Agreement"), dated as of October 20, 1999 among Borrower the financial institutions listed on Exhibit H thereto, (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent. Capitalized terms used and not defined herein shall be given the meanings ascribed to them in the Credit Agreement.

B. In order to induce the Senior Lenders to enter into the Credit Agreement, Pledgor has entered into the Security Agreement dated as of October 20, 1999 (the "Security Agreement") pursuant to which Pledgor granted a security interest to the Senior Lenders in the Collateral (as defined in the Security Agreement). The security interest of the Senior Lenders in the Collateral pursuant to the terms of the Security Agreement shall be referred to herein as the "Senior Liens."

C. Subordinated Creditor desires to place a lien, subordinated according to the terms of this Agreement, on a portion of the Collateral (such portion of the Collateral, the "Subject Collateral") pursuant to \_\_\_\_\_, collectively referred to herein as the "Subordinated Documents"). The security interest of Subordinated Creditor in the Subject Collateral arising in favor of Subordinated Creditor pursuant to the provisions of the Subordinated Documents shall be referred to herein as the "Junior Liens."

D. The Senior Lenders have agreed that Pledgor may subject the Subject Collateral to the Junior Liens only if Subordinated Creditor executes this Subordination Agreement and subordinates, to the extent and in the manner hereinafter set forth, the obligations of Pledgor to Subordinated Creditor under the Subordinated Documents (collectively referred to herein as the "Subordinated Debt") to all indebtedness or other obligations of Pledgor to the Senior Lenders, direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising (herein called the "Senior Lender Debt") to the extent set forth in this Agreement.

NOW THEREFORE, in consideration of the premises and as an inducement to the Senior Lenders to grant financial accommodations to Pledgor, and in consideration of the granting thereof, the parties hereby agree as follows:

1. Subordinated Creditor hereby consents to and acknowledges the grant to the Senior Lenders of the Senior Liens in the Subject Collateral.

2. Until all Senior Lender Debt then due shall have been paid or performed in full:

(a) Subordinated Creditor shall not demand, sue for, or accept from Pledgor or any other person any such payment or collateral in respect of the Subordinated Debt other than amounts distributed to Pledgor in accordance with the Credit Agreement, nor, except as provided in this Section 2(a) or in Section 4 below, take any other action to enforce or collect upon any such payment or to enforce its rights in respect of the Subordinated Debt, nor cancel, set off or otherwise discharge any part of the Subordinated Debt; provided, however, that nothing herein shall limit the right or ability of Subordinated Creditor

(i) to receive payments from Pledgor in respect of the Subordinated Debt as provided herein so long as no Event of Default or, to the extent payments are to be made from the Construction Account or Loss Proceeds Account, Non-Fundamental Project Default with respect to the \_\_\_\_\_ Project 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 Lenders rescind the acceleration of the Loans under the Credit Agreement and provide written notice to Subordinated Creditor thereof, or the Subordinated Creditor otherwise becomes aware of such rescission, Subordinated Creditor shall rescind the acceleration of the Subordinated Debt.

(b) Neither Pledgor nor Subordinated Creditor shall take any action prejudicial to or inconsistent with the Senior Lenders' priority position over Subordinated Creditor created by this Agreement. Subordinated Creditor will not take or cause to be taken, any action, the purpose or effect of which is or could be to give Subordinated Creditor any preference or priority over Senior Lenders, with respect to the Subject Collateral or any part thereof. Subordinated Creditor shall not take any action to enforce its rights with respect to the Subject Collateral and shall have no right to direct the Senior Lenders to exercise any right, remedy or power with respect to the Subject Collateral. Subordinated Creditor will not institute any suit or assert in any suit, bankruptcy, insolvency or other proceeding any claim against the Senior Lenders seeking damages from any of them or other relief, by way of specific performance, injunction or otherwise, with respect to any action with respect to the Collateral taken or omitted by the Senior Lenders in accordance with this Agreement. Subordinated Creditor will execute and deliver to the Administrative Agent any other instrument reasonably requested by Administrative Agent to further assure the subordinated status, in accordance with this Agreement, of the lien of Subordinated Creditor with respect to the Subject Collateral; and

(c) The Junior Liens are hereby made subordinate, junior and inferior and postponed in priority, operation and effect to the priority, operation and effect of the Senior Liens, notwithstanding the perfection, order of perfection or failure by Senior Lenders to perfect any such Senior Liens and other liens or the filing or recording, order of filing or recording of, or failure to file or record any instrument or other document in any filing or recording office in any jurisdiction.

3. Neither any change in the manner, place or terms of payment of, nor any change or extension of the time of payment of, nor any renewal or alteration of the interest on, any of the obligations secured by the Senior Liens, nor any amendment or supplement to the Security Agreement or the other Credit Documents nor any exercising or refraining from exercising of any rights under the Security Agreement or the other Credit Documents, including, without limitation, the right to waive any default, shall require notice to or consent of Subordinated Creditor, and none of the foregoing shall in any manner whatsoever impair the priority of the Senior Liens.

4. Subordinated Creditor will not commence or join with any other creditor or creditors of Pledgor in commencing any bankruptcy, reorganization or insolvency proceedings against Pledgor. At any general meeting of creditors of Pledgor or in the event of any proceeding, voluntary or involuntary, for the distribution, division or application of all or part of the assets of Pledgor or the proceeds thereof, whether such proceeding be for the liquidation, dissolution or winding up of Pledgor or its business, receivership, insolvency or bankruptcy proceeding, an assignment for the benefit of creditors or proceeding by or against Pledgor for position or extension or otherwise, if all Senior Lender Debt has not been paid in full at the time, Administrative Agent is hereby irrevocably authorized at any such meeting or in any such proceeding:

(a) To enforce claims comprising Subordinated Debt in the name of Subordinated Creditor, by proof of debt, proof of claim, suit or otherwise;

(b) To collect any assets of Pledgor distributed, divided or applied by way of dividend or payment, or such securities issued, on account of Subordinated Debt and apply the same, or the proceeds of any realization upon the same that Administrative Agent in its discretion elects to effect, to the Senior Lender Debt until all Senior Lender Debt shall have been paid in full (Administrative Agent hereby agreeing to render any surplus to Subordinated Creditor); provided, however, that Subordinated Creditor shall be entitled to receive any securities of Pledgor (or of any other company, trust, partnership, corporation or other entity provided for by any plan of reorganization or readjustment), the payment of which is junior or otherwise subordinate, to the extent provided herein with respect to the Subordinated Debt, to the payment of all Senior Lender Debt then outstanding and to the payment of all securities issued in exchange for Senior Lender Debt then outstanding; and

(c) To take generally any action in connection with any such meeting or proceeding which Subordinated Creditor might otherwise take; provided, however, that Subordinated Creditor shall retain, to the exclusion of Senior Lenders and Administrative Agent, the right to vote claims comprising or arising out of the Subordinated Debt in any such 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 bankruptcy, insolvency or reorganization proceeding, Subordinated Creditor may inquire of Administrative Agent in writing whether Administrative Agent intends to exercise the foregoing rights with respect to the Subordinated

Debt. Should Administrative Agent 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 Subordinated Creditor, or to inform Subordinated Creditor in writing that Administrative Agent intends to exercise its rights to assert the Subordinated Debt in the manner hereinabove provided, Subordinated Creditor 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 Subordinated Creditor may deem proper.

Subject to and from and after the payment in full of all Senior Lender Debt, Subordinated Creditor shall be subrogated to the rights of the Senior Lenders to receive payments or distributions of cash, property or securities of Pledgor applicable to the Senior Lender Debt until all amounts owing on the Subordinated Debt shall be paid in full. For purposes of such subrogation, no payments or distribution to the Senior Lenders to which Subordinated Creditor would have been entitled but for the provisions of this Agreement, and no payments paid over by Subordinated Creditor to Senior Lenders pursuant to this Agreement, shall, as among Pledgor, its creditors other than Senior Lenders, and Subordinated Creditor, be deemed to be a payment or distribution on account of the Subordinated Debt, it being understood that the provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of Subordinated Creditor and the Senior Lenders. Nothing contained in this Agreement is intended to or shall impair, as between Pledgor, its creditors other than the Senior Lenders and Subordinated Creditor, the obligation of Pledgor, which is absolute and unconditional, to pay to Subordinated Creditor the principal of and the premium, if any, and the interest on the Subordinated Debt as and when the same shall become due and payable in accordance with its terms, or to affect the relative rights of Subordinated Creditor and creditors of Pledgor other than the Senior Lenders.

5. Should any collateral with respect to the Subordinated Debt be received by Subordinated Creditor in violation of this Agreement, such payment or collateral shall be delivered forthwith to Administrative Agent by the recipient for application to Senior Lender Debt, 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 Subordinated Creditor in trust for the Senior Lenders and shall not be commingled with other funds or property of Subordinated Creditor.

6. Subordinated Creditor 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 Lenders. Subordinated Creditor may not assign all or any portion of the Subordinated Debt without the prior written consent of the Senior Lenders, which consent shall not be unreasonably withheld or delayed, and only upon the execution and delivery to the Senior Lenders 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 satisfactory to the Senior Lenders.

7. Upon the occurrence of an Event of Default under the Security Agreement the Administrative Agent shall be permitted and hereby is authorized to take any and all actions and to exercise any and all rights, remedies and options which the Senior Lenders may have

under the Security Agreement and at law or in equity, including to (i) cause Pledgor's obligations to be performed and (ii) sell or otherwise realize upon the Subject Collateral.

8. Administrative Agent is hereby authorized to demand specific performance of this Agreement, whether or not Pledgor shall have complied with the provisions hereof applicable to it, at any time when Subordinated Creditor shall have failed to comply with any provision hereof applicable to it. Subordinated Creditor 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 Administrative Agent. Subordinated Creditor further waives presentment, notice and protest in connection with all negotiable instruments evidencing Senior Lender Debt or Subordinated Debt to which Subordinated Creditor may be a party, notice of the acceptance of this Agreement by Administrative Agent, 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 Lender Debt or time of payment of Senior Lender Debt or Subordinated Debt. Subordinated Creditor hereby assents to any renewal, extension or postponement of the time of payment of Senior Lender Debt or any other indulgence with respect thereto, to any increase in the amount of the Senior Lender Debt, 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 Lender Debt.

9. Pledgor and Subordinated Creditor shall execute and deliver to Administrative Agent such further instruments and shall take such further action as Administrative Agent may at any time or times reasonably request in order to carry out the provisions and intent of this Agreement.

10. The rights granted to the Senior Lenders hereunder are solely for their protection and nothing herein contained shall impose on Administrative Agent or the Senior Lenders any duties with respect to any property of Pledgor or Subordinated Creditor received hereunder. Neither Administrative Agent nor the Senior Lenders shall have any duty to preserve rights against prior parties in any property of any kind received hereunder.

11. Notwithstanding any provision to the contrary herein, the parties acknowledge and agree that all of the covenants, representations, waivers and other provisions by or relating to Subordinated Creditor hereunder shall apply and be effective to and in respect of the Subordinated Debt only, and shall not apply or be effective to or in respect of any other obligations, due or to become due, now existing or hereafter arising, by Pledgor to Subordinated Creditor.

12. 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.

13. This Agreement shall be binding upon Pledgor, Subordinated Creditor, and their respective executors, administrators, other legal representatives, successors and assigns,

and shall inure to the benefit of the Senior Lenders, their respective successors and assigns and shall be governed by the laws of the State of New York.

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IN WITNESS WHEREOF, the parties hereto have caused this Subordination Agreement to be duly executed as of the date first above written.

[\_\_\_\_\_], a [\_\_\_\_\_] corporation, as Subordinated Creditor

By:

Name:

Title:

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

By:

Name:

Title:

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,  
a Delaware limited partnership,  
as Pledgor**

By: CALPINE CCFC GP, INC.  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

**EXHIBIT D-7  
to Credit Agreement**

**FORM OF SUBORDINATION AGREEMENT**

between

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and

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

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## **SUBORDINATION AGREEMENT**

This SUBORDINATION AGREEMENT ("Agreement"), dated as of \_\_\_\_\_, is made by and between \_\_\_\_\_, a \_\_\_\_\_ ("Junior Claimant"), and The Bank of Nova Scotia, as Administrative Agent (the "Administrative Agent") for the Senior Claimants (as defined below).

### **PREFACE**

A. Calpine Construction Finance Company, L.P., a Delaware limited partnership ("Borrower"), has entered into that certain Credit Agreement ("Credit Agreement"), dated as of October 20, 1999, by and among Borrower, The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent, the financial institutions listed on Exhibit H thereto (the "Banks" and, together with Administrative Agent, Lead Arrangers, Syndication Agent, Bookrunner, LC Bank, and all financial institutions parties to the Credit Agreement, the "Senior Claimants") and Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner, 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 Section 3.8(b) 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 any general partner of Borrower, but may join in any Proceeding after it has commenced. At any general meeting of creditors of Borrower or any general partner thereof, 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:

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

By:

Name:

Title:

**Acknowledged and Agreed:**

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, Inc.,  
a Delaware corporation,  
its General Partner

By:  
Name:  
Title:

**EXHIBIT D-8  
to Credit Agreement**

**[AFFILIATE CONTRACT]**

**SUBORDINATION AGREEMENT**

**Dated as of \_\_\_\_\_, 1999**

between

\_\_\_\_\_,  
a \_\_\_\_\_,

and

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

## **SUBORDINATION AGREEMENT**

This [AFFILIATE CONTRACT] SUBORDINATION AGREEMENT (this "Agreement") dated as of \_\_\_\_\_, 1999 is entered into by and between \_\_\_\_\_, a \_\_\_\_\_ (the "Junior Claimant"), and THE BANK OF NOVA SCOTIA, as Administrative Agent ("Administrative Agent") for the Senior Claimants (as defined below).

### **PREFACE**

A. Calpine Construction Finance Company, L.P., a Delaware limited partnership ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent (the Banks, Administrative Agent, the Lead Arrangers, the Syndication Agent, 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 20, 1999 ("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 Borrower's development, construction and ownership of the Projects (as defined below).

B. Borrower 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, Borrower 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 \_\_\_\_\_, Section \_\_\_ of the \_\_\_ or Section \_\_\_ of the \_\_\_\_\_ is referred to herein as the "Subordinated O&M Costs."

C. The Senior Claimants have agreed that Borrower 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 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) assignment for the benefit of creditors of Borrower or (d) other marshaling of the assets of Borrower.

"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 (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 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/any] of the Subordinated Contracts to the contrary:

2.1 Junior Claimant acknowledges that, notwithstanding anything in [either/any] of the Subordinated Contracts to the contrary, Borrower may pay to Junior Claimant Subordinated O&M Costs due to Junior Claimant 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, Borrower shall not, directly or indirectly, make any payment on or in respect of the Subordinated O&M Costs, and Borrower 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 from Borrower 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 Borrower under [either/any] of the Subordinated Contracts or otherwise against any part of the Subordinated O&M Costs. Notwithstanding anything in [either/any] of the Subordinated Contracts to the contrary, the failure by Borrower 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/any] of the Subordinated Contracts.

2.3 Neither Borrower 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 Borrower to commence or join with any other creditor or creditors of Borrower in commencing any Proceeding against Borrower or any partner of Borrower; provided that Junior Claimant shall not be so restricted with respect to claims arising directly out of Borrower's failure to perform its obligations or make any payments of O&M Costs under [either/any] of the Subordinated Contracts other than the Subordinated O&M Costs. At any general meeting of creditors of Borrower 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 Borrower 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);

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/any] of the Subordinated Contracts in accordance with the terms of the Consent

and Agreement dated as of \_\_\_\_\_, 1999 among Junior Claimant, Administrative Agent and Borrower (the "Consent") (or enter into a new agreement pursuant to Section 1(d) of the Consent), then notwithstanding anything in [either/any] of the Subordinated Contracts to the contrary, (i) Borrower (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 the project 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 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 \_\_\_\_\_, 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 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, including without limitation Article 7 thereof, 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/ANY] 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, 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 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 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 BORROWER'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 Borrower 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 Borrower 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 Borrower, its creditors other than the Senior Claimants 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 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 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 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 Borrower 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 Borrower) notwithstanding the termination (except upon the payment in full of Senior Claims) or unenforceability of this Agreement as against Borrower.

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:

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent**

By: \_\_\_\_\_  
Name:  
Title:

The undersigned acknowledges and agrees to the foregoing:

**CALPINE CONSTRUCTION FINANCE COMPANY L.P.,  
a Delaware limited partnership**

By: Calpine CCFC GP, Inc,  
a Delaware corporation,  
its General Partner

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT E-1  
to Credit Agreement**

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**FORM OF  
CONSENT AND AGREEMENT  
[(CONTRACT)]**

**Dated as of \_\_\_\_\_, 199\_\_\_**

by

**[CONTRACTING PARTY]**

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## **FORM OF CONSENT AND AGREEMENT**

This FORM OF CONSENT AND AGREEMENT ("Consent"), dated as of \_\_\_\_\_, 1999 is executed by [CONTRACTING PARTY], a \_\_\_\_\_ corporation (the "Undersigned"), and CALPINE CONSTRUCTION FINANCE COMPANY, L.P., a Delaware limited partnership ("Borrower"), for the benefit of THE BANK OF NOVA SCOTIA, as Administrative Agent ("Administrative Agent") for the Banks under the Credit Agreement (as defined below).

### **RECITALS**

A. Borrower has entered into that certain Credit Agreement, dated as of October 20, 1999 ("Credit Agreement"), by and among Borrower, the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 Borrower have entered into that certain [CONTRACT] dated as of \_\_\_\_\_, 199\_\_\_\_ (as amended, supplemented or modified from time to time in accordance with its terms and the terms hereof, the "Contract"), with respect to the \_\_\_\_\_ Project (the "Project").

C. Pursuant to the Security Agreement dated as of October 20, 1999 ("Security Agreement"), by and between Borrower and Administrative Agent, Borrower has assigned its interest under the Contract to Administrative Agent on behalf of Administrative Agent and the Banks.

### **AGREEMENT**

NOW THEREFORE, the Undersigned hereby agrees as follows:

1. The Undersigned acknowledges receipt of the Security Agreement and consents to the Borrower'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 Borrower 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 Borrower, (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 Borrower 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 Borrower 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 Borrower 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 Borrower'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 Borrower 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 Borrower 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 Borrower'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 Borrower'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 Borrower'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 a person or entity to whom the Project is transferred, provided such transferee assumes the obligations of Borrower (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 Borrower'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 Borrower (and Borrower'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 Borrower (or its assigns) at such time accepts in writing. The Undersigned hereby further assigns to Borrower (and Borrower'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) Borrower 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 Borrower with respect to the matters and interests described therein.

3. [The Undersigned acknowledges that Borrower has succeeded by [merger/assignment] to the interests, rights, duties, obligations and liabilities of \_\_\_\_\_ in the Contract, and hereby consents to such [merger/assignment].][The Undersigned agrees that its recourse

against Borrower under the Contract is limited to Borrower's interest in the Project, the revenue and income produced by the Project and the proceeds of any of the foregoing.]

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:**

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Telecopy No: \_\_\_\_\_ Telephone No: \_\_\_\_\_

**If to Administrative Agent:**

The Bank of Nova Scotia  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Project Finance Group  
Telecopy No.: (212) 225-5090  
Telephone No.: (212) 225-5000

**If to Borrower:**

Calpine Construction Finance Company, L.P.,  
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 Borrower, 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 Borrower, 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 Borrower. This Consent shall be governed by the internal 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).

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:

**THE BANK OF NOVA SCOTIA,  
as Administrative Agent for Banks**

By:  
Name:  
Title:

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:  
Name:  
Title:

## **SCHEDULE OF CONSENTS**

The following Consents, substantially in the form of Exhibit E-1 to the Credit Agreement and otherwise in form and substance satisfactory to the Lead Arrangers, shall be delivered to the Administrative Agent:

1. Zachry Construction Company (consenting to the collateral assignment of Borrower's rights and obligations under the Contract for Construction, dated as of March 26, 1999, between Borrower and Zachry Construction Corporation);
2. H.B. Zachry (consenting to the collateral assignment of Borrower's rights and obligations under H.B. Zachry's guarantee of the obligations of Zachry Construction Company under the Contract for Construction set forth in item 1 above);
3. Siemens Power Corporation (consenting to the collateral assignment of Borrower's rights and obligations under the Maintenance Contract, dated as of June 30, 1998, by and between Borrower and Westinghouse Power Generation);
4. Siemens Power Corporation (consenting to the collateral assignment of Borrower's rights and obligations under the Purchase Contract, dated as of June 30, 1998, by and between Borrower and Westinghouse Power Generation);
5. Magic Valley Electric Cooperative, Inc. (consenting to the collateral assignment of Borrower's rights and obligations under the Magic Valley Power Purchase Agreement, dated as of May 22, 1998, by and between Borrower and Magic Valley Electric Cooperative, Inc.);
6. Sargent & Lundy, L.L.C. (consenting to the collateral assignment of Borrower's rights and obligations under the Contract for Professional Services, dated as of December 8, 1998, by and between Borrower and Sargent & Lundy, L.L.C.);
7. CCNG, Inc. (consenting to the collateral assignment of Borrower's rights and obligations under the Fuel Management Services Agreement, dated as of May 1, 1998, by and between Borrower and CCNG, Inc.);
8. Calpine Power Services Company (consenting to the assignment of Borrower's rights and obligations under the Power Marketing Agreement for the Magic Valley Project, dated as of October 20, 1999, by and between Borrower and Calpine Power Services Company);
9. Calpine Power Services Company (consenting to the assignment of Borrower's rights and obligations under the Power Marketing Agreement for the South Point Project, dated as of October 20, 1999, by and between Borrower and Calpine Power Services Company);

10. Calpine Power Services Company (consenting to the assignment of Borrower's rights and obligations under the Power Marketing Agreement for the Sutter Project, dated as of October 20, 1999, by and between Borrower and Calpine Power Services Company);
11. Calpine Power Services Company (consenting to the assignment of Borrower's rights and obligations under the Power Marketing Agreement for the Westbrook Project, dated as of October 20, 1999, by and between Borrower and Calpine Power Services Company);
12. Calpine Central Fuels, L.P. (consenting to the assignment of Borrower's rights and obligations under (i) the Gas Supply Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Central Fuels, L.P. for the Magic Valley Project and (ii) the Fuel Management Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Central Fuels, L.P. for the Magic Valley Project);
13. CPN East Fuels, LLC (consenting to the assignment of Borrower's rights and obligations under (i) the Gas Supply Agreement, dated as of October 20, 1999, by and between Borrower and CPN East Fuels, LLC for the Westbrook Project and (ii) the Fuel Management Agreement, dated as of October 20, 1999, by and between Borrower and CPN East Fuels, LLC for the Westbrook Project);
14. CPN Gas Marketing Company (consents to the assignment of Borrower's rights and obligations under (i) the Gas Supply Agreement, dated as of October 20, 1999, by and between Borrower and CPN Gas Marketing Company for the South Point Project and (ii) the Fuel Management Agreement, dated as of October 20, 1999, by and between Borrower and CPN Gas Marketing Company for the South Point Project);
15. CPN Gas Marketing Company (consents to the assignment of Borrower's rights and obligations under (i) the Gas Supply Agreement, dated as of October 20, 1999, by and between Borrower and CPN Gas Marketing Company for the Sutter and (ii) the Fuel Management Agreement, dated as of October 20, 1999, by and between Borrower and CPN Gas Marketing Company for the Sutter Project);
16. Calpine Corporation (consenting to the assignment of Borrower's rights and obligations under (i) the Construction Management Agreements, dated as of October \_\_, 1999, by and between Borrower and Calpine Corporation for the South Point Project (ii) the Operating & Maintenance Agreements, dated as of October 20, 1999, by and between Borrower and Calpine Corporation for the South Point Project and (iii) the Project Management Agreements, dated as of October 20, 1999, by and between Borrower and Calpine Corporation for the South Point Project);
17. Calpine Corporation (consenting to the assignment of Borrower's rights and obligations under (i) the Construction Management Agreements, dated as of October \_\_, 1999, by and between Borrower and Calpine Corporation for the Sutter Project (ii) the Operating & Maintenance Agreements, dated as of October 20, 1999, by and between Borrower and Calpine Corporation for the Sutter Project and (iii) the Project Management Agreements, dated as of October 20, 1999, by and between Borrower and Calpine Corporation for the Sutter Project);

18. Calpine Corporation (consenting to the collateral assignment of Borrower's rights and obligations under the Affiliated Party Agreement Guaranty (Magic Valley Project), dated as of October 20, 199, by Calpine Corporation and Calpine Construction Finance Company, L.P. for the benefit of The Bank of Nova Scotia, as Administrative Agent for the Banks;

19. Calpine Corporation (consenting to the collateral assignment of Borrower's rights and obligations under the Affiliated Party Agreement Guaranty (South Point Project), dated as of October 20, 199, by Calpine Corporation and Calpine Construction Finance Company, L.P. for the benefit of The Bank of Nova Scotia, as Administrative Agent for the Banks;

20. Calpine Corporation (consenting to the collateral assignment of Borrower's rights and obligations under the Affiliated Party Agreement Guaranty (Sutter Project), dated as of October 20, 199, by Calpine Corporation and Calpine Construction Finance Company, L.P. for the benefit of The Bank of Nova Scotia, as Administrative Agent for the Banks;

21. Calpine Corporation (consenting to the collateral assignment of Borrower's rights and obligations under the Affiliated Party Agreement Guaranty (Westbrook Project), dated as of October 20, 199, by Calpine Corporation and Calpine Construction Finance Company, L.P. for the benefit of The Bank of Nova Scotia, as Administrative Agent for the Banks;

22. Calpine Central, L.P. (consenting to the assignment of Borrower's rights and obligations under (i) the Construction Management Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Central, L.P. for the Magic Valley Project (ii) the Operating & Maintenance Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Central, L.P. for the Magic Valley Project and (iii) the Project Management Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Central, L.P. for the Magic Valley Project);

23. Calpine Eastern Corporation (consenting to the assignment of Borrower's rights and obligations under (i) the Construction Management Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Eastern Corporation for the Westbrook Project (ii) the Operating & Maintenance Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Eastern Corporation for the Westbrook Project and (iii) the Project Management Agreement, dated as of October 20, 1999, by and between Borrower and Calpine Eastern Corporation for the Westbrook Project);

24. The South Point Joint Venture (consenting to the assignment of Borrower's rights and obligations under the Contract for Engineering, Procurement and Construction, dated as of April 12, 1999, by and between Borrower and The South Point Joint Venture);

25. Siemens Westinghouse Power Corporation (consenting to the assignment of Borrower's rights and obligations under the Purchase Contract for Power Island Equipment, dated as of March 15, 1998, by and between Borrower and Siemens Westinghouse Power Corporation for the South Point Project);

26. Siemens Westinghouse Power Corporation (consenting to the assignment of Borrower's rights and obligations under the Maintenance Contract, dated as of March 10, 1999, by and between Borrower and Siemens Westinghouse Power Corporation for the South Point Project);
27. Siemens Westinghouse Power Corporation (consenting to the assignment of Borrower's rights and obligations under the Purchase Contract, dated as of December 16, 1998, by and between Borrower and Siemens Westinghouse Power Corporation for the Sutter Project);
28. Siemens Westinghouse Power Corporation (consenting to the assignment of Borrower's rights and obligations under the Maintenance Contract, dated as of December 12, 1998, by and between Borrower and Siemens Westinghouse Power Corporation for the Sutter Project);
29. The Fort Mojave Indian Tribe (consenting to the assignment of Borrower's rights and obligations under (i) Amended and Restated Ground Lease Agreement, executed as of August 4, 1999 and approved as BIA Lease B1778-FM on August 19, 1999 by and between the Fort Mojave Indian Tribe, a federally recognized Indian Tribe, and Borrower and (ii) a Water Pipeline Construction Agreement to be entered into between Borrower and the Fort Mojave Indian Tribe);
30. Siemens Corporation (consenting to the assignment of Borrower's rights and obligations under the Siemens Corporation guarantee of the obligations of Siemens Westinghouse Power Corporation under the contract set forth in item 25 above);
31. Bechtel Power Corporation (consenting to the assignment of Borrower's rights and obligations under the Contract for Engineering, Procurement and Construction dated as of June 1, 1999, by and between Borrower and Bechtel Power Corporation);
32. General Electric Company (consenting to the assignment of Borrower's rights and obligations under the Contract Agreement, dated as of February 5, 1999, by and between Borrower and General Electric Company);
33. General Electric Company (consenting to the assignment of Borrower's rights and obligations under the General Electric guarantee of the obligations of General Electric International under the Long Term Parts and Long Term Service Contract as set forth in item 34 below);
34. General Electric International (consenting to the assignment of Borrower's rights and obligations under the Long Term Parts and Long term Service Contract, dated as of February 5, 1999, by and between Borrower and General Electric International);
35. City of Edinburg, Texas (consenting to the collateral assignment of Borrower's rights and obligations under (i) the City of Edinburg Franchise Agreement, dated as of May 14, 1999, from the City of Edinburg, Texas (ii) the Agreement for Purchase of Treated Effluent Water, dated as of April 12, 1999, by and between Borrower and the City of Edinburg, Texas

and (iii) the first Amendment to Agreement for Purchase of Treated Effluent Water, dated as of August 4, 1999, by and between Borrower and the City of Edinburg, Texas);

36. City of McAllen, Texas and the Board of Trustees of the McAllen Public Utilities (consenting to the collateral assignment of Borrower's rights and obligations under the Agreement for the Purchase of Treated Effluent Water, dated as of August 10, 1999, by and between, on the one hand, the Borrower and, on the other hand, the City of McAllen, Texas, and the Board of Trustees of the McAllen Public Utility);

37. Hidalgo County Irrigation District No. One (consenting to the collateral assignment of Borrower's rights and obligations under the Water Delivery Contract, dated as of July 19, 1999, by and between Borrower and Hidalgo County Irrigation District No. 1);

38. Hidalgo County Irrigation District No. 2 (consenting to the collateral assignment of Borrower's rights and obligations under the Water Contract, dated as of June 17, 1999, by and between Borrower and Hidalgo County Irrigation District No. 2);

39. Central Power and Light Company (consenting to the collateral assignment of Borrower's rights and obligations under (i) Interconnection Agreement, dated as of February 25, 1999, by and between Borrower and Central Power and Light Company ("CPL") (ii) Letter of Authorization to Proceed with Engineering and Construction of Transmission Line Relocation, dated as of December 17, 1998, by and between Borrower and Central and South West Services, Inc. ("CSW") and (iii) Letter of Authorization to Proceed with Engineering, Procurement and Construction of Interconnection Facilities, dated as of February 25, 1999, by and between Borrower and CSW). Such Consent shall, to the extent required by the Lead Arrangers, include a representation from CPL that CSW is acting as the agent for and under the direction of CPL under the agreements described in clauses (ii) and (iii) above and that CPL has the power and authority to Consent to the collateral assignment of Borrower's rights and obligations under such agreements;

40. Duke Energy Hidalgo, L.P. (consenting to the collateral assignment of Borrower's rights and obligations under that certain Pipeline Construction and Operation Agreement dated as of October 1, 1999 and entered into between Borrower and Duke Energy Hidalgo, L.P.). Such consent shall contain certain amendments or modifications to the Pipeline Construction and Operation Agreement as may be reasonably requested by the Lenders;

41. El Paso Natural Gas Company (consenting to the collateral assignment of Borrower's rights and obligations under the El Paso Natural Gas Letter Agreement for the Construction, Operation and Connection of the Calpine South Point Delivery Point, dated as of July 12, 1999, by and between Borrower and El Paso Natural Gas Company);

42. Transwestern Pipeline Company (consenting to the collateral assignment of Borrower's rights and obligations under the Delivery Point Construction and Operating Agreement, dated as of July 16, 1999, by and between Transwestern Pipeline Company and Borrower);

43. Arizona Electric Power Cooperative, Inc. (consenting to the collateral assignment of Borrower's rights and obligations under the Topock Substation Construction and Interconnection Agreement, dated as of July 14, 1999, by and between Arizona Electric Power Cooperative, Inc. and Borrower);

44. Aha Macav Power Service (consenting to the collateral assignment of Borrower's rights and obligations under the Contract for Design, Contribution and Maintenance Services, dated as of May 17, 1999, by and between Borrower and Aha Macav Power Services);

45. United States Department of Energy Western Area Power Administration ("Western") (consenting to the collateral assignment of Borrower's rights and obligations under (i) Contract No. 99-DSR-11050, for Long-Term Firm Point-To-Point Transmission Service, dated as of August 5, 1999, by and between Western and Borrower; (ii) Contract No. 99-DSR-11049, for Service Agreement for Non-Firm Point-To-Point Transmission Service, dated as of August 5, 1999, by and between Western and Borrower and (iii) Contract No. 99-DSR-11008, for Construction of the South Point Transmission Project, dated as of June 25, 1999, by and between Western and Borrower). Such consent shall, to the extent required by the Lead Arrangers, include an acknowledgement by Western that Western is responsible for obtaining all the real property rights necessary to construct, own and operate the transmission facilities contemplated under Contract No. 99-DSR-11008 described above;

46. Western (consenting to the collateral assignment of Borrower's rights and obligations under (i) the Design and Engineering Services for the Calpine Corporation, dated as of August 2, 1999, by and between Western and Borrower, (ii) Contract No. 99-SNR-00210 for Service Agreement for Long-Term Firm Point-To-Point Transmission Service, dated as of August 30, 1999, by and between Western and Borrower and (iii) Contract 99-SNR-00184 Land Acquisition Agreement, dated as of June 4, 1999, by and between Western and Borrower)

47. The City of Westbrook, Maine (consenting to the collateral assignment of Borrower's rights and obligations under (i) the Agreement (Sewage Treatment), dated as of February 2, 1999, by and between Borrower and the City of Westbrook and (ii) the Credit Enhancement Agreement, dated as of June 28, 1999, by and between Borrower and the City of Westbrook, Maine and Borrower);

48. E-PRO Engineering (consenting to the collateral assignment of Borrower's rights and obligations under the Contract for Professional Services, dated as of September 22, 1999, between E-PRO Engineers and Environmental Consulting LLC, and Borrower). Such consent shall, to the extent requested by the Lead Arrangers, contain certain amendments or modifications to the Contract for Professional Services;

49. CMP Natural Gas, L.L.C. ("CMPNG") (consenting to the collateral assignment of Borrower's rights and obligations under the Negotiated Service Agreement for Natural Gas Transportation, dated as of July 9, 1999, by and between Borrower and CMPNG (the "CMP Contract")). Such Consent shall, to the extent requested by the Lead Arrangers, clarify that CMPNG shall (i) acquire all real estate rights necessary to construct, own and operate the gas lateral under the CMP Contract regardless of whether, pursuant to the terms of the CMP

Contract, CMPNG or Borrower is ultimately responsible for constructing, owning and operating such lateral and (ii) in the event that Borrower is ultimately responsible for constructing, owning and operating such lateral, transfer to Borrower all such real estate rights;

50. Central Maine Power (consenting to the Borrower's rights and obligations under the Interconnection Agreement to be entered into between Borrower and Central Maine Power);

51. Magic Valley Pipeline L.P. (consenting to the collateral assignment of Borrower's rights and obligations under the Gas Pipeline Construction and Transportation Agreement to be entered into between Borrower and Magic Valley Pipeline L.P.);

52. In the event that Calpine Corporation guarantees the performance of Magic Valley Pipeline L.P. under the agreement described in item 51 above, a consent from Calpine Corporation (consenting to the collateral assignment of Borrower's rights and obligations under such agreement);

53. In the event that a Gas Interconnection agreement is entered into by and between Borrower (as opposed to Magic Valley Pipeline L.P.) and Pacific Gas & Electric, a consent from Pacific Gas & Electric (consenting to the collateral assignment of Borrower's rights and obligations under such agreement);

54. In the event that a Gas Interconnection Agreement is entered into by and between Borrower (as opposed to Magic Valley Pipeline L.P.), and Tejas Gas, a consent from Tejas Gas (consenting to the collateral assignment of Borrower's rights and obligations under such agreement);

55. In the event that a Gas Pipeline Interconnection Agreement is entered into by and between Borrower (as opposed to Magic Valley Pipeline L.P.), and Texas Eastern, a consent from Texas Eastern (consenting to the collateral assignment of Borrower's rights and obligations under such agreement);

56. In the event that a Gas Pipeline Interconnection Agreement is entered into by and between Borrower (as opposed to Magic Valley Pipeline L.P.) and Tennessee Gas, a consent from Tennessee Gas (consenting to the collateral assignment of Borrower's rights and obligations under such agreement);

57. For any gas interconnection and/or transportation agreement entered into by Borrower and third party providers of such services for (i) the South Point Project and/or (ii) the Sutter Project, a consent from the Project Participant who is the counterparty to such agreement(s) (consenting to the collateral assignment of Borrower's rights and obligations under such agreement(s));

58. For any Gas Pipeline Construction and Transportation Agreement entered into by Borrower and an Affiliate of Borrower ("Calpine Pipeline") for

(i) the South Point Project and (ii) the Sutter Project, a consent from Calpine Pipeline to such agreement(s) (consenting to the collateral assignment of Borrower's rights and obligations under such agreement(s));

59. United States Department of Energy Western Area Power Administration (consenting to the collateral assignment of Borrower's rights and obligations under the Mutual Services Agreement to be entered into between Borrower and the Western Area Power Administration);
60. United States Department of Energy Western Area Power Administration (consenting to the collateral assignment of Borrower's rights and obligations under the Electric Interconnection Agreement to be entered into between Borrower and Western Area Power Administration to provide for electrical interconnection of the Sutter Project into the Western Area Power Administration transmission system); and
61. Arizona Electric Power Cooperative, Inc. (consenting to the collateral assignment of Borrower's rights and obligations under the Agreement for Operation and Maintenance of the Topock Substation to be entered into between the Arizona Electric Power Cooperative, Inc. and Borrower).

**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 \_\_\_\_ 1999 to The Bank of Nova Scotia, as Administrative Agent under that certain Credit Agreement dated as of October 20, 1999 (the "Credit Agreement") among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative Agent ("Administrative Agent"), that:

1. Attached hereto are true, complete and correct copies of each Project Document, and material Additional Project Documents in existence as of the Closing Date, and any supplements or amendments thereto, as listed below:

- (a) The Prime Construction Contracts, including (i) Contract for Construction between Borrower, as successor in interest to Magic Valley Generation, L.P. and Zachry Construction Corporation, dated March 26, 1999, (ii) Contract for Engineering, Procurement, and Construction between Borrower, as successor in interest to CPN South Point, LLC and The South Point Joint Venture, dated April 12, 1999, (iii) Contract for Engineering, Procurement, and Construction between Borrower, as successor in interest to Calpine Sutter, LLC, and Bechtel Power Corporation, dated as of June 1, 1999, and (iv) Contract Agreement between General Electric Company and Borrower, as successor in interest to Westbrook, LLC for the Westbrook Power Project Combined Cycle Power Plant Westbrook, Maine, dated as of February 5, 1999;
- (b) The Power Island Supply Contracts, including (i) Purchase Contract between Westinghouse Power Generation and Borrower, as successor in interest to Calpine Corporation, dated as of June 30, 1998, (ii) Purchase Contract for Power Island Equipment between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to CPN South Point, LLC, dated as of March 15, 1999, and (iii) Purchase Contract for Power Island Equipment between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to Calpine Sutter, Inc., dated as of December 16, 1998;
- (c) The Engineering Contracts, including Contract for Professional Services between Sargent & Lundy, L.L.C. and Borrower, as successor in interest to Magic Valley Generation, L.P., dated as of December 8, 1998;
- (d) The Maintenance Contracts, including (i) Maintenance Contract between Westinghouse Power Generation and Borrower, as successor in interest to Calpine Corporation, dated as of June 30, 1998, (ii) Maintenance Contract between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to Calpine Corporation,

dated as of March 19, 1999, (iii) Maintenance Contract between Siemens Westinghouse Power Corporation and Borrower, as successor in interest to Calpine Corporation, dated as of December 18, 1998, and (iv) Long Term Parts & Long Term Service Contract between Borrower, as successor in interest to Westbrook Power, LLC and General Electric International, dated as of February 5, 1999;

(e) The Construction Management Agreements;

(f) The Project Documents related to the delivery of water to the Projects; including (i) Agreement for Purchase of Treated Effluent Water, between the City of Edinburg and Borrower, as successor in interest to Calpine Corporation dated April 21, 1998; First Amendment to Agreement for Purchase of Treated Effluent Water by and between the City of Edinburg and Borrower, as successor in interest to Magic Valley Generation, L.P. dated August 4, 1999,

(ii) Master Agreement for Purchase and Sale of Water by and between Hidalgo County Irrigation District No. Two and Borrower, as successor in interest to Magic Valley Generation, L.P., dated June 17, 1999, (iii) Water Delivery Contract by and between Hidalgo County Irrigation District No. One and Borrower, as successor in interest to Magic Valley Generation, L.P., dated July 19, 1999,

(iv) Earnest Money Contract between Bayview Irrigation District No. 11 and Borrower, as successor in interest to Magic Valley Generation, L.P., dated July 27, 1999; and (v) Agreement by and between Borrower, as successor in interest to Westbrook Power, LLC, and Portland Water District, dated as of February 17, 1999;

(g) The Leases, including (i) Amended and Restated Ground Lease Agreement, executed as of August 4, 1999 and approved as BIA Lease B1778-FM on August 19, 1999 between the Fort Mojave Indian Tribe, a federal recognized Indian Tribe and Borrower;

(h) the O&M Agreements;

(i) the Project Management Agreements;

(j) the Gas Supply Contracts;

(k) the Gas Transportation Agreements;

(l) the Fuel Management Agreements;

(m) the Power Purchase Agreements, including Power Purchase and Sale Agreement between Calpine Power Services Company and Borrower, as successor in interest to Magic Valley Electric Cooperative, Inc., dated as of May 22, 1998;

(n) the Power Marketing Agreements;

2. All of the documents listed above are in full force and effect in accordance with their terms.

3. Borrower is not and, to Borrower's knowledge, no other party to any Operative Document (other than any Additional Project Document not 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 material obligation thereunder which is reasonably expected to have Material Adverse Effect on Borrower or any Project.

4. Each Applicable Permit listed in Part I(A) of Exhibits G-3A, B, C and D 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 any Project. Borrower has no reason to believe that any Permit identified in Part II(A) of Exhibits G-3A, B, C or D will not be obtained without material difficulty or delay by the time they are needed.

5. Each representation and warranty made in Article 4 of the Credit Agreement is true and correct as of the Closing Date.

6. There exists no Event of Default or Inchoate Default or, with respect to any Project, Non-Fundamental Project Default or Non-Fundamental Project Inchoate Default as of the Closing Date.

7. 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.

8. The copies of the annual and quarterly financial statements of Borrower delivered by Borrower pursuant to Section 3.1.20 of the Credit Agreement are true and correct in all material respects and are the most recent annual and quarterly financial statements of Borrower. As of the Closing Date, no material adverse change in the consolidated assets, liabilities, operations or financial condition of Borrower has occurred from those set forth on such financial statements.

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, L.P.,**  
a Delaware limited partnership

By: CALPINE CCFC GP, INC.,  
a Delaware corporation,  
its General Partner

By:

Name:

Title:

**EXHIBIT F-2  
to Credit Agreement**

**[MARSH USA INC. LETTERHEAD]**

\_\_\_\_\_, 1999

The Bank of Nova Scotia,  
as Lead Arranger for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Credit Suisse First Boston  
as Lead Arranger for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: Magic Valley, South Point, Sutter and Westbrook Projects (the "Initial Projects")

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 3.1.9/3.3.10 of that certain Credit Agreement dated as of October 20, 1999 (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 the construction of the Initial Projects 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 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 Initial Projects 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-3  
to Credit Agreement**

**[R.W. BECK INC. LETTERHEAD]**

\_\_\_\_\_, 1999

The Bank of Nova Scotia,  
as Lead Arranger for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Credit Suisse First Boston  
as Lead Arranger for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: \_\_\_\_\_ Project(s)

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 3.1.11/3.3.12 of that certain Credit Agreement dated as of October 20, 1999 (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston ("CSFB"), as Lead Arranger, Syndication Agent and Bookrunner, The Bank of Nova Scotia ("BNS"), as Lead Arranger, LC Bank and Administrative Agent (BNS and CSFB collectively as the "Lead Arrangers"), TD Securities (USA) Inc., as Co-Arranger and Co-Documentation Agent and CIBC Inc., as Co-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 October 12, 1999 (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, the Borrower, counsel to the 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 its 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 above-mentioned Credit Agreement or in any list of closing documents pertaining to the Initial Projects.

Sincerely,

**R.W. BECK INC.**

**EXHIBIT F-4  
to Credit Agreement**

**[FUEL CONSULTANT LETTERHEAD]**

\_\_\_\_\_, 1999

The Bank of Nova Scotia,  
as Lead Arranger for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn. Manager, Project Finance

Credit Suisse First Boston  
as Lead Arranger for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: \_\_\_\_\_ Project(s)

Ladies and Gentlemen:

The undersigned, a duly authorized officer of \_\_\_\_\_, ("Fuel Consultant"), hereby provides this letter to you in accordance with Section 3.1.13/3.3.14 of that Credit Agreement dated as of October 20, 1999 (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 the construction of the above-referenced Project(s) 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, 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-5  
to Credit Agreement**

**[INDEPENDENT POWER MARKETING CONSULTANT LETTERHEAD]**

\_\_\_\_\_, 1999

The Bank of Nova Scotia  
as Lead Arranger for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

Credit Suisse First Boston  
as Lead Arranger for the Banks  
Eleven Madison Avenue  
New York, New York 10010  
Attn: Manager, Project Finance

Re: \_\_\_\_\_ Project(s)

Ladies and Gentlemen:

The undersigned, a duly authorized representative of , ("Independent Power Marketing Consultant"), hereby provides this letter to you in accordance with Section 3.1.14/3.3.15 of that certain Credit Agreement dated as of October 20, 1999 (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 the construction of the above-referenced Project(s) 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, 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]**

## **APPENDIX G-1A - DESCRIPTION OF MAGIC VALLEY PROJECT**

Magic Valley is a 730 MW gas-fired combined cycle power plant currently under construction in Edinburg, Texas on a 59.6-acre site. It will consist of two 230 MW Westinghouse model 501 "G" gas turbines, with one 250 MW Westinghouse condensing steam turbine, a water-cooled steam condenser, and other ancillary equipment. Magic Valley is being constructed using Calpine's "owner construct" approach, with Siemens Westinghouse supplying the combustion turbines, HRSGs, steam turbine, condenser, SCR, and other associated equipment. Zachry Construction Corporation is the Construction Contractor, while Sargent & Lundy, L.L.C. is providing engineering services. The Project's construction is expected to last 24 months, with commercial operation scheduled for April 2001. The Project will sell 250 MW to 400 MW of the net electrical output to Magic Valley Electric Cooperative, Inc. under a 20-year power sales agreement, and will sell the balance of the net electrical output into the ERCOT wholesale merchant power market. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

## **APPENDIX G-1B-DESCRIPTION OF SOUTH POINT PROJECT**

South Point is a 545 MW gas-fired combined cycle power plant currently under construction on a 320-acre site leased from the Fort Mojave Indian Tribe on their Reservation in Arizona, approximately 110 miles south of Las Vegas, Nevada. The electricity generated will be sold to the Arizona, Nevada and California (WSCC) power markets. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

South Point will be constructed using a modified engineering, procurement and construction approach. Siemens Westinghouse Power Corporation will supply and guarantee performance of the power island equipment consisting of two 185 MW Westinghouse model 501 FD combustion turbines with a 190 MW steam turbine, condenser, selective catalytic reduction, and other associated equipment. The design, engineering, procurement and construction of the balance-of-plant equipment will be performed under a fixed-price, date-certain contract with a joint venture between The Industrial Company and the Utility Engineering Corporation. Calpine Corporation will be responsible for integrated project management as well as for start up and commissioning. Construction of the project commenced in June 1999, with commercial operation planned for May 2001.

## **APPENDIX G-1C - DESCRIPTION OF THE WESTBROOK PROJECT**

Westbrook is a 540 MW gas-fired combined cycle merchant power plant located in Westbrook, Maine on a 30-acre parcel of industrial park property. General Electric Company ("GE") is constructing the Westbrook project pursuant to a fixed-price, date-certain EPC contract. Construction is expected to last 24 months, with commercial operation taking place in February 2001. The Project will sell electricity into the wholesale merchant power market. The Project will ultimately be an Eligible Facility.

## **APPENDIX G-1D - DESCRIPTION OF SUTTER PROJECT**

Sutter is a 545 MW gas-fired, combined cycle power plant currently under construction on 19 acres of Calpine's existing 77-acre Greenleaf project site approximately seven miles southwest of Yuba City, California. Sutter will sell electricity into the WSCC wholesale merchant power market. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Sutter will be constructed using a modified engineering, procurement and construction approach. Siemens Westinghouse Power Corporation will supply and guarantee performance of the power island equipment consisting of two 170 MW Westinghouse model 501 FD combustion turbines with a 160 MW steam turbine and two Vogt NEM ("NEM") heat recovery steam generators, selective catalytic reduction, and other associated equipment. Bechtel Power Corporation will perform the design, engineering, procurement, and construction of the balance-of-plant equipment, including the air-cooled condenser, under a fixed-price, date-certain contract. Calpine Corporation will be responsible for integrated project management as well as for start up and commissioning. Construction of the Project commenced in June 1999 and commercial operation is scheduled for April 2001.

## **APPENDIX G-1E - DESCRIPTION OF ONTEL AUNEE PROJECT**

Ontelaunee, located in Berks County, Pennsylvania, will be a 546 MW gas-fired combined cycle generation unit, which will sell electricity into the MAAC wholesale merchant power market. The unit will be located on land optioned from two private owners. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from two Siemens Westinghouse 501 FD combustion turbines. The Project will also be configured with two heat recovery steam generators ("HRSG") and a condensing reheat steam turbine.

## **APPENDIX G-1F - DESCRIPTION OF EASTERN REGION PROJECT 03**

Eastern Region Project 03 will be located in Florida. It will be a 545 MW gas-fired combined cycle generation unit, which will sell electricity into the SERC wholesale merchant power market. The unit will be located on a twenty-acre parcel of land. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from two Siemens Westinghouse 501 FD combustion turbines. The Project will also be configured with two heat recovery steam generators ("HRSG") and a condensing reheat steam turbine.

**APPENDIX G-1G - DESCRIPTION OF EASTERN REGION PROJECT 01**

[\*]

**APPENDIX G-1H - DESCRIPTION OF EASTERN REGION PROJECT 02**

[\*]

#### **APPENDIX G-1I - DESCRIPTION OF EASTERN REGION PROJECT 04**

Eastern Region Project 04 will be located in Florida. It will be a 500 MW gas-fired combined cycle generation unit, which will sell electricity into the SERC wholesale merchant power market. The unit will be located on approximately 35 acres optioned from a private landowner. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from two Siemens Westinghouse 501 FD combustion turbines. The Project will also be configured with two heat recovery steam generators ("HRSG") and a condensing reheat steam turbine.

## **APPENDIX G-1J - DESCRIPTION OF LOST PINES PROJECT**

Lost Pines, located in Bastrop County, Texas, will be a 545 MW gas-fired combined cycle generation unit, which will be jointly owned with Gentex Power Corporation, a wholly owned subsidiary of Lower Colorado River Authority. Lost Pines will be located on a 10-acre site on the Gentex-owned Sim Gideon power plant site. Borrower and Gentex will each own a 50% undivided interest in the Project. The Lost Pines Project will sell electricity into the ERCOT wholesale merchant power market. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from two Siemens Westinghouse 501 F-D combustion turbines. The Project will also be configured with two heat recovery steam generators and a condensing reheat steam turbine.

## **APPENDIX G-1K - DESCRIPTION OF CENTRAL REGION PROJECT 01**

Central Region Project 01 will be located in Alabama. It will be a 734 MW gas-fired combined cycle cogeneration unit, which will sell steam and a portion of its electricity to a large industrial company. The unit will be located inside the fence of the industrial company on leased land owned by the company. The Project will be a Qualifying Facility under PURPA and will be able to sell power above the 168 MW maximum offtaker's capacity requirement into the SERC wholesale market.

Power will be produced from three Siemens Westinghouse 501 F-D Combustion turbines. The Project will also be configured with three heat recovery steam generators ("HRSG") and a full condensing reheat steam turbine. The company's maximum steam requirements can be provided from only one of the HRSGs.

## **APPENDIX G-1L - DESCRIPTION OF BAYTOWN PROJECT**

Baytown, located in Chambers County, Texas, will be a 780 MW gas-fired combined cycle cogeneration unit, which will sell steam and a portion of its electricity to the Bayer Corporation. The unit will be located on 18 acres of leased land inside the Bayer Chemical facility that is owned by Bayer. The Project will be a Qualifying Facility under PURPA and will be able to sell power above Bayer's 290 MW maximum capacity requirement into the SPP wholesale market.

Power will be produced from three Siemens Westinghouse 501 F-D combustion turbines. The Project will also be configured with three heat recovery steam generators and a condensing extraction steam turbine. Approximately 1,000-kpph steam will be provided to Bayer from an extraction off of the steam turbine.

## **APPENDIX G-1M - DESCRIPTION OF LYONDELL CITGO PROJECT**

Lyondell CITGO, located in Pasadena, Harris County, Texas will be a 545 MW gas-fired combined cycle cogeneration unit, which will sell steam and a portion of its electricity production to Lyondell CITGO Refining ("LCR"). The unit will be located on a leased 10-acre site owned by LCR just outside the refinery. The Project will be a Qualifying Facility under PURPA and will be able to sell power above the refiner's 172 MW maximum capacity requirement into the ERCOT wholesale market.

Power will be produced initially from one Siemens Westinghouse 501 F-D combustion turbine, which will be configured with a heat recovery steam generator ("HRSG"). A second Siemens Westinghouse 501 F-D combustion turbine and an additional HRSG will be added along with a condensing reheat steam turbine after the initial combustion turbine reaches commercial operation. LCR's maximum steam requirements of 600 kpph can be provided from only one of the HRSGs.

**APPENDIX G-1N - DESCRIPTION OF CENTRAL REGION PROJECT 02**

[\*]

## **APPENDIX G-1O - DESCRIPTION OF LOS MEDANOS PROJECT**

The Los Medanos Energy Facility, located in Contra Costa County, California, will be a 530 MW gas-fired combined cycle cogeneration unit, which will sell steam and a portion of its electricity to USS-POSCO Industries ("UPI"). The unit will be located "outside the fence" of UPI on land leased from UPI. The Project will be a Qualifying Facility under PURPA and will be able to sell power above 55 MW capacity requirement into the WSCC wholesale market.

Power will be produced from two General Electric 7241 FA Combustion turbines. The Project will also be configured with two heat recovery steam generators ("HRSG") and a condensing reheat steam turbine. Steam will be provided to UPI from the HRSGs when the gas turbine is operating and from one auxiliary boiler when the turbines are down for maintenance or forced outages.

## **APPENDIX G-1P - DESCRIPTION OF WEST PHOENIX PROJECT**

West Phoenix, located in Arizona, will be a nominally rated 500 MW gas-fired combined cycle generation unit which will be jointly owned with Pinnacle West Capital Corporation ("PNW"). Borrower and PNW will each own a 50% undivided interest in the Project. The West Phoenix Project will sell electricity into the WSCC wholesale merchant power market. The unit will be located on land leased from Arizona Public Service adjacent to its existing West Phoenix Power Plant. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from two Siemens Westinghouse 501 FD2 combustion turbines. The Project will also be configured with two heat recovery steam generators ("HRSG") and a condensing reheat steam turbine.

## **APPENDIX G-1Q - DESCRIPTION OF DELTA PROJECT**

Delta Energy Center, located in Contra Costa County, California, will be an 800 MW gas-fired combined cycle generation unit, which may be jointly owned with Bechtel Enterprises Holdings, Inc. or one of its wholly owned subsidiaries. Borrower will either own 100% of the Project or Borrower and Bechtel will each own a 50% undivided interest in the Project. The Delta Project will sell electricity into the WSCC wholesale merchant power market. The unit will be located at Calpine's Pittsburg I power plant. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from three Siemens Westinghouse 501 FD2 combustion turbines. The Project will also be configured with three heat recovery steam generators ("HRSG") and a condensing reheat steam turbine.

## **APPENDIX G-1R - DESCRIPTION OF METCALF PROJECT**

Metcalf Energy Center, located in Santa Clara County, California, will be a 545 MW gas-fired combined cycle generation unit, which may be jointly owned with Bechtel Enterprises Holdings, Inc. or one of its wholly owned subsidiaries. Borrower will either own 100% of the Project or Borrower and Bechtel will each own a 50% undivided interest in the Project. The Metcalf Project will sell electricity into the WSCC wholesale merchant power market. The unit will be located on land to be purchased by the Project. The Project will be an Eligible Facility, and Borrower will be an Exempt Wholesale Generator with respect to this Project.

Power will be produced from two Siemens Westinghouse 501 FD2 combustion turbines. The Project will also be configured with two heat recovery steam generators ("HRSG") and a condensing reheat steam turbine.

**APPENDIX G-1-S**

**WESTERN REGION PROJECT 04**

[\*]

**APPENDIX G-2-A**

**MAGIC VALLEY POWER MARKETING PLAN**

[\*]

**APPENDIX G-2-B**

**SOUTH POINT POWER MARKETING PLAN**

[\*]

**APPENDIX G-2-C**

**WESTBROOK POWER MARKETING PLAN**

[ \* ]

**APPENDIX G-2-D**

**SUTTER POWER MARKETING PLAN**

[ \* ]

## Appendix G-3A

### MAGIC VALLEY:

Permit	Issuing Agency	Date Issued Or Required
<hr/>		
<b>PART I. APPLICABLE PERMITS</b>		
<hr/>		
A. BORROWER		
Texas Air Permit to Operate/PSD Permit	TNRCC	Issued on December 31, 1998
TPDES wastewater Discharge permit	TNRCC	Final permit issued on July 16, 1999
Certify Project capability to use alternate fuel	DOE	Submit before start of construction; submitted on September 16, 1999
Rural Utility Service Approval of MVEC Agreements	RUS	Approval dated 4/8/99
Notice of Intent for NPDES General Stormwater Construction Permit	EPA	Two days before start of construction; submitted on September 28, 1998, and March 22, 1999
Stormwater Pollution Prevention Plan	EPA	Complete two days before start of construction; completed on September 22, 1998 and March 17, 1999
Confirm that no protected cultural resources are located on site	Texas Historical Comm'n	THC sent confirmation on March 13, 1998 and March 31, 1999
Change zoning to heavy industrial	City of Edinburg	Change was approved on September 1, 1998
Clean Water Act Section 404 Permit/Certification	USACE	Letters stating no permit required dated May 26, 1999 and September 28, 1999.
Development permit	Hidalgo County	Exemption certificate

Permit	Issuing Agency	Date Issued Or Required
Drainage System Discharge Permit	Hidalgo County Drainage District No. 1	Dated September 9, 1999
Obtain building permit	City of Edinburg	Permit was issued on September 10, 1999
Final Plat Approval	City of Edinburg	Dated on or about 6/4/99
Obtain approval for discharge into drainage system	Hidalgo County Drainage District No. 1	City of Edinburg obtained approval on September 13, 1999

#### B. THIRD PARTY

City of Edinburg, amend existing reclaimed water reuse approval	TNRCC	Issued on February 22, 1999
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#### PART II. PERMITS (TO BE OBTAINED)

##### A. BORROWER

Exempt Wholesale Generator Certification	FERC	Prior to making sales of electric energy
Federal Power Act Section 205 Approval	FERC	Prior to making sales of electric energy
CAA Title V Permit	TNRCC	Apply no later than the start of operation; short application was filed April 20, 1999
CAA Title IV Phase II Acid Rain Permit	TNRCC	Submit application and compliance plan for NOx 24 months before the later of January 1, 2000, or start of operation; application was submitted April 20, 1999

Permit	Issuing Agency	Date Issued Or Required
Obtain certificate for transfer of water rights purchased from Bayview Irrigation District; convert water use after transfer	TNRCC	Transfer was requested on September 17, 1999; request for conversion will be initiated after transfer
Register as electric wholesale generator	Texas PUC	Within 30 days of start of generation
CAA Continuous Emission Monitoring Certification	TNRCC	Apply within 120 days of commencing system commercial operations

#### B. THIRD PARTY

City of McAllen, amend Existing water reuse approval	TNRCC	City will seek amendment before providing reclaimed water to Project
United Irrigation District, convert water use under its water rights	TNRCC/Watermaster	United will convert before commencing delivery of raw water on October 1, 2000
United Irrigation District, submit annual contract	TNRCC/Watermaster	Submit prior to delivery on October 1, 2000, and on or before January 15 of each subsequent year
Hidalgo County Irrigation District No. 2, convert water use under its water rights	TNRCC/Watermaster	HCID No. 2 will convert before commencing delivery of raw water on October 1, 2000
Hidalgo County Irrigation District No. 2, submit annual contract	TNRCC/Watermaster	Submit before delivery of raw water on October 1, 2000, and before January 1, 2001 through 2005

## Appendix G-3B

### SOUTH POINT:

Action	Agency Involved	Date Action Taken
<hr/>		
PART I.		
Final Environmental Impact Statement (FEIS) re: Lease Agreement(1)	Bureau of Indian Affairs	01/99
FEIS Record of Decision re: Lease Agreement	Bureau of Indian Affairs	03/99
CAA Permit to Construct and Commence Initial Operation of the Project/PSD Permit	Environmental Protection Agency	05/24/99
Finding of No Significant Impact and Rights-of-Way for Construction Operation, Maintenance and Termination of Substation and Transmission Lines to the Project(2)	Bureau of Land Management	12/12/97
Right-of-Way Grant and and Temporary Use Permit for Placement and Construction of Gas Pipeline to the Project(3)	Bureau of Land Management	06/17/99

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(1) Amended Ground Lease Agreement between Fort Mojave Indian Tribe and Calpine South Point, Inc.

(2) 30-year term subject to renewal.

(3) Right-of-Way has term of 20 years subject to renewal; temporary use permit for construction has two-year term from 05/12/99 subject to renewal.

Action	Agency Involved	Date Action Taken
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Notice of Intent for Baseline Construction Stormwater Discharges from Construction of the Project(4)	Environmental Protection Agency	NOI dated 08/02/99
Stormwater Pollution Prevention Plan	Environmental Protection	Dated 7/9/99
Clean Water Act Section 404 Nationwide Permit 12 for Construction of Water Supply Pipeline to the Project(5)	Corps of Engineers	03/18/99
Clean Water Act Section 401 Water Quality Certification in Indian Country for Construction of Water Supply Pipeline to the Project	Environmental Protection Agency	12/13/96(6)
Clean Water Act Section 404 Nationwide Permit 14 for Construction of the Project	Corps of Engineers	Jurisdictional submittal filed
Clear Water Act Section 401 Water Quality Certification in Agency Indian Country for Construction of the Project	Environmental Protection	12/13/96(7)
Self Certification of Coal Capability under Power Plant and Industrial Fuel Use Act	U.S. Department of Energy	Filed 09/01/99
Planned Area Development Plan	FMIT	June 2, 1999
Water Use Permit	FMIT	March 15, 1999
Building Permit	FMIT	June 7, 1999

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(4) Pollution Prevention Plan has been filed separately.

(5) Two-year term from 03/18/99 unless modified, reissued or revoked; may also require a Notice of Intent for baseline construction stormwater discharges.

(6) Conditional EPA CWA Section 401 water quality certification exists for CWA

Section 404 Nationwide Permit 12.

(7) Conditional EPA CWA Section 401 water quality certification exists for CWA Section 404 Nationwide Permit 14.

Action	Agency Involved	Date Action Taken
Determination of No Hazard to Air Navigation	Federal Aviation Administration	Issued 08/31/99(8)
PART II.		
Exempt Wholesale Generator Certification	FERC	Prior to making sales of electric energy
Federal Power Act Section 205 Approval	FERC	Prior to making sales of electric energy
CAA Title IV Acid Rain Permit	Environmental Protection Agency	Application was filed 07/28/99; permit not yet issued
CAA Title V Permit to Operate	Environmental Protection Agency	Application must be filed within one year after commencement of initial operation
Notice of Intent for Multi-Sector Storm Water Discharges from Operation of the Project	Environmental Protection Agency	Must be filed two days before commencement of operation(9)
Clean Water Act Section 404 Nationwide Permit 12 for Construction of Natural Gas Pipeline to the Project(11)	Environmental Protection Agency	Before commencement of construction(10)

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(8) Expires 03/14/01 unless extended, revised or terminated by the issuing office.

(9) Separate Pollution Prevention Plan will need to be filed.

(10) See Opinion of Steptoe & Johnson dated November 3, 1999.

(11) May also require a Notice of Intent for construction stormwater discharges and related Pollution Prevention Plan.

Action	Agency Involved	Date Action Taken
Clean Water Act Section 404 Water Quality Certification In Indian Country for Construction of Natural Gas Pipeline to the Project	Environmental Protection Agency	12/13/96(12)

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(12) Conditional EPA CWA Section 401 water quality certification exists for CWA

Section 404 Nationwide Permit 12

## Appendix G-3C

**WESTBROOK:**

### **PART I**

Action	Agency Involved	Date Action Taken
Powerplant and Industrial Fuel Use Act Self Certification of Coal Capability	U.S. Dept of Energy Office of Coal & Power IM/EX	September 16, 1999
PUC Approval of the Water Agreement	Maine Public Utilities Commission	February 25, 1999
Maine DEP Site Location of Development Act Permit	Maine Department of Environmental Protection	Issued 12/31/98
Maine DEP Site Location of Development Stormwater Permit - Submitted as part of SLDA Permit	Maine Department of Environmental Protection	Issued 12/31/98
Maine DEP Site Location of Development Act Amendment	Maine Department of Environmental Protection	Issued 6/23/99
Natural Resource Protection Act Permit (NRPA)	Maine Department of Environmental Protection	Issued 12/17/98
Clean Water Act Section 404 Permit	U.S. Army Corps of Engineers	Issued 12/8/98
National Pollutant Discharge Elimination System (NPDES) Construction General Permit	U.S. Environmental Protection Agency	Issued February 22, 1999
Stormwater Pollution Prevention Plan	U.S. Environmental Protection Agency	Dated February 24, 1999
Conditional Use Site Plan	City of Westbrook	Issued 7/7/98 Extended to 7/7/99, Construction Commenced

Building Permit	City of Westbrook	Obtained by General Contractor
Action -----	Agency Involved -----	Date Action Taken -----
Air License	Maine Department of Environmental Protection	Issued December, 1998
Stormwater Permit for Operations	EPA Region 1	
FAA Notification	Federal Aviation Administration	Issued 1/5/99

PART II. PERMITS (TO BE OBTAINED)

Action -----	Agency Involved -----	Date Action Taken -----
Exempt Wholesale Generator Certification	FERC	Prior to making sales of electric energy
Federal Power Act Section 205 Approval	FERC	Prior to making sales of electric energy
NEPOOL Interconnection Approval	NEPOOL	Prior to making sales of electric energy
FERC Approval of NEPOOL Interconnection	NEPOOL	Prior to making sales of electric energy
Title IV Acid Rain Permit	Maine DEP	Prior to operational start-up
Title V Permit	Maine DEP	Must submit application within 12 months after operational start-up
Certificate of Occupancy	City of Westbrook	To be obtained by General Contractor
Street Opening Permit	City of Westbrook	To be obtained by General Contractor
Sign Permit	City of Westbrook	To be obtained by General Contractor

## Appendix G-3D

### SUTTER:

Permit	Issuing Agency	Date Issued Or Required
<hr/>		
<b>PART I. APPLICABLE PERMITS</b>		
Powerplant and Industrial Fuel Use Act Act Self Certification of Coal Capability	US Dept of Energy Office of Coal & Power IM/EX	September 16, 1999
Streambed Alteration Agreement for bridge construction and stormwater outfall	CDFG	Currently in signing stages
Clean Water Act Section 401 Permit Waiver	CRWQCB	April 23, 1999
Clean Water Act Section 404 Permit	USACE	June 3, 1999
Powerplant Site Certification	California Energy Commission	April 14, 1999
Final Determination of Compliance/Authority to Construct	Feather River Air Quality Management District (FRAQMD)	December 1, 1998 (Errata to November 13, 1998 FDOC)
Biological Opinion	NMFS	March 7, 1999
Consultation/Biological Opinion	USFWS	April 2, 1999
CEC Modification of Condition of Certification BIO-7	CEC	Dated 10/1/99
Stormwater Discharge Permit or Waiver/Notice of Intent for Construction	SWRCB	May 28, 1999
Stormwater Pollution Prevention Plan	SWRCB	Dated March 20, 1999
Consistency Determination	CDFG	October 7, 1999
Sutter County Plan Amendment 97-04 and Rezone 97-07	Sutter County	March 30, 1999

Permit	Issuing Agency	Date Issued Or Required
<b>PART II. PERMITS (TO BE OBTAINED)</b>		
<b>A. BORROWER</b>		
Exempt Wholesale Generator Certification	FERC	Prior to making sales of electric energy
Federal Power Act Section 205 Approval	FERC	Prior to making sales of electric energy
Air Permit to Operate	FRAQMD	Prior to operational start-up
Permit for Waste Discharge	County Environmental Health Department	Prior to operational start-up
Stormwater Discharge Permit or Waiver/Notice of Intent for Operations	SWRCB	Prior to operational start-up
CEC Modification of Condition of Certification BIO-5	CEC	Pending
Streambed Alteration Agreement for gas pipeline	CDFG	Spring of 2000
Federal Operating Permit Title V	USEPA	Must submit application within 12 months after operational start-up
Continuous Emission Certification Source Test Report	Submitted to USEPA	Within 180 days of operational start-up
Prevention of Significant Deterioration (PSD) Permit	USEPA	Prior to Commencement of Construction
Title IV Acid Rain Permit	USEPA	Prior to operational start-up - Submitted May 6, 1999
<b>B. THIRD PARTY</b>		
De-Watering Permit	CRWQCB	Prior to Commencement

		Date Issued Or Required of Construction
Permit ----- Project Building Permit	Issuing Agency ----- Sutter County	October 19, 1999
Transportation Permits	CalTrans and County Public Works Department	Immediately prior to the work being done.
Excavation Permit	Cal OSHA	Immediately prior to the work being done.
Structural Permit	Cal OSHA	Immediately prior to the work being done.
Well Drilling Permits	Sutter County	Immediately prior to the work being done.

**APPENDIX G-4-A**

**MAGIC VALLEY PROJECT BUDGET**

[\*]

**APPENDIX G-4-B**

**SOUTH POINT PROJECT BUDGET**

[\*]

**APPENDIX G-4-C**

**WESTBROOK PROJECT BUDGET**

[\*]

**APPENDIX G-4-D**

**SUTTER PROJECT BUDGET**

[ \* ]

**BASE CASE PROJECT PROJECTIONS**

[ \* ]

**APPENDIX G-6-A**

**MAGIC VALLEY PROJECT SCHEDULE**

[\*]

**APPENDIX G-6-B**

**SOUTH POINT PROJECT SCHEDULE**

[\*]

**APPENDIX G-6-C**

**WESTBROOK PROJECT SCHEDULE**

[\*]

**EXHIBIT G-7**

**Pending Litigation**

None, except with respect to the following litigation relating to the Sutter Project:

1. In the matter of Sutter Power Project, PSD Permit No. NSR 4-4-4, SAC 98-01, PSD Appeal No. 99-6;
2. Foster v. Energy Resources Conservation and Development Commission, California Supreme Court No. SO 81009; and
3. Foster v. Energy Resources Conservation and Development Commission, Court of Appeal, Third District, No. 3 Civ. C033265, petition for writ of review denied October 14, 1999.

## **EXHIBIT G-8**

### **Hazardous Substances Disclosure**

None, except as disclosed in:

1. Phase I Environmental Site Assessment Magic Valley Site Edinburg, Hidalgo County, Texas dated April 1999, prepared by Environmental Consulting and Technology, Inc.
2. Phase I Environmental Site Assessment for the Proposed Southpoint Power Plant dated August 13, 1999, prepared by Hallock/Gross Inc.
3. Phase I Environmental Site Assessment Review and Update Sutter Power Plant Project dated August 17, 1999, prepared by Foster Wheeler Environmental Corporation.
4. Phase I Environmental Site Assessment of Carmichael Property (Map 4, Lot 9), Saco Street, Westbrook, Maine dated June 1998, prepared by Hoffman Engineering Inc.
5. Analytical Summary of Phase II Environmental Site Assessment of Proposed Westbrook Power Plant Westbrook, Maine dated December 30, 1998, prepared by Hoffman Engineering Inc.

**EXHIBIT H**  
**to Credit Agreement**

**SCHEDULE OF BANK/LENDING OFFICES**

Bank	Percentage of Loans	Allocation
1. THE BANK OF NOVA SCOTIA One Liberty Plaza, 26th Floor New York, New York 10006	5.6785714290%	\$56,785,714.29
2. CREDIT SUISSE FIRST BOSTON Eleven Madison Avenue New York, New York 10010	5.6785714290%	\$56,785,714.29
3. TORONTO DOMINION (TEXAS) INC. 909 Fannin Street, Suite 1700 Houston, Texas 77010	5.6785714290%	\$56,785,714.29
4. CIBC INC. Two Paces West 2727 Paces Ferry Road, Suite 1200 Atlanta, Georgia 30339	5.6785714290%	\$56,785,714.29
5. BANK OF MONTREAL 115 S. LaSalle, 11th Floor Chicago, Illinois 60603	5.6785714290%	\$56,785,714.29
6. BAYERISCHE HYPO-UND VEREINSBANK AG - NEW YORK BRANCH c/o Bayerische Vereinsbank AG - New York Branch 150 East 42nd Street New York, New York 10017	5.6785714290%	\$56,785,714.29
7. BAYERISCHE LANDESBANK CAYMAN ISLANDS BRANCH 560 Lexington Ave, 17th Floor New York, NY 10022	5.6785714290%	\$56,785,714.29

Bank	Percentage of Loans	Allocation
	-----	-----
8. BANQUE NATIONALE DE PARIS 725 South Figueroa Street Suite 2090 Los Angeles, California 90017	5.6785714290%	\$56,785,714.29
9. DG BANK DEUTSCHE GENOSSENSCHAFTSBANK AG, CAYMAN ISLAND BRANCH 609 Fifth Avenue New York, NY 10017	5.6785714280%	\$56,785,714.28
10. DRESDNER BANK AG NEW YORK AND GRAND CAYMAN BRANCHES 75 Wall Street New York, New York 10005	5.6785714820%	\$56,785,714.28
11. EXPORT DEVELOPMENT CORPORATION 151 O'Connor Street Ottawa, Ontario K1A 1K3	5.6785714280%	\$56,785,714.28
12. MEESPIERSON CAPITAL CORP. 3 Stamford Plaza 301 Tresser Boulevard, 9th Floor Stamford, CT 06901-3239	5.6785714280%	\$56,785,714.28
13. NEWCOURT CAPITAL USA INC. 1177 Avenue of the Americas, 47th Floor New York, New York 10036	5.6785714280%	\$56,785,714.28
14. CITICORP USA, INC. 2 Penn's Way New Castle, Delaware 19720	5.0%	\$50,000,000
15. COBANK, ACB 5500 S. Quebec St. Englewood, Colorado 80111	5.0%	\$50,000,000
16. ING (U.S.) CAPITAL LLC 55 East 52nd Street, New York, New York 10055	5.0%	\$50,000,000

Bank	Percentage of Loans	Allocation
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17. UNION BANK OF CALIFORNIA, N.A. 445 S. Figueroa Street, 15th Floor Los Angeles, CA 90071	5.6785714280%	\$56,785,714.28
18. CREDIT LYONNAIS NEW YORK BRANCH 1301 Avenue of the Americas New York, New York 10019	3.0%	\$30,000,000
19. LANDESBANK HESSEN-THURINGEN GIROZENTRALE 420 Fifth Ave. New York, New York 10018	2.5%	\$25,000,000
TOTAL	100%	1,000,000,000

**EXHIBIT I**  
**to Credit Agreement**

**Annual Insurance Certificate**

**[LETTERHEAD OF BORROWER'S INSURANCE BROKER]**

[Date]

The Bank of Nova Scotia,  
as Administrative Agent for the Banks One Liberty Plaza, 26th Floor  
New York, NY 10006  
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 20, 1999 (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower ("Borrower"), the financial institutions listed on Exhibit H thereto (the "Banks"), Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 and Funded Subsequent Projects and in so doing are relying on Borrower's continued compliance with the provisions of Exhibit K to the Credit Agreement.

Insurance Broker hereby certifies that, as of the date hereof, Borrower has obtained and is 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, L.P.**

a Delaware limited partnership  
c/o Calpine Corporation  
50 W. San Fernando Street, 5th Floor  
San Jose, CA 95113  
Attn: Manager, Project Finance

**THE BANK OF NOVA SCOTIA**

as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

In connection with the Credit Agreement dated as of October 20, 1999 (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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:

**BANK WITHHOLDING CERTIFICATE (EFFECTIVELY CONNECTED)**

[Date]

**CALPINE CONSTRUCTION FINANCE COMPANY, L.P.,**  
a Delaware limited partnership  
c/o Calpine Corporation  
50 W. San Fernando Street, 5th Floor  
San Jose, CA 95113  
Attn: Manager, Project Finance

**THE BANK OF NOVA SCOTIA,**  
as Administrative Agent for the Banks  
One Liberty Plaza, 26th Floor  
New York, NY 10006  
Attn: Manager, Project Finance

In connection with the Credit Agreement dated as of October 20, 1999, (the "Credit Agreement"), among Calpine Construction Finance Company, L.P., a Delaware limited partnership, as Borrower, the financial institutions listed on Exhibit H thereto, Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner and The Bank of Nova Scotia, as Lead Arranger, LC Bank and Administrative 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 20, 1999, by and among Calpine Construction Finance Company, L.P. ("Borrower"), a Delaware limited partnership, Credit Suisse First Boston, as Lead Arranger, Syndication Agent and Bookrunner, and The Bank of Nova Scotia as Lead Arranger, LC Bank and Administrative Agent, and the Banks parties thereto.

1. With respect to each Initial Project and any Funded Subsequent Project, 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 and Financing Parties, 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 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 Borrower 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 Closing Date for each Initial Project or after the Funding Date for each Funded Subsequent Project, as the case may be, that restrict coverage, are to be approved by Administrative Agent. Work performed by others for Borrower 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 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 is 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. Work performed by others for Borrower 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 Initial Project and any Funded Subsequent 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. 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 \$500,000; 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 Initial Project or any Funded Subsequent Project 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, destined for the applicable Project site, 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. 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 (1) 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 (\$750,000); 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 or 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 immediate steps 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 Initial Projects and the Funded Subsequent Projects which Administrative Agent may reasonably require.

j. All Major Contractors and Major Subcontractors and the Operator (unless covered under the Borrower's insurance) 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, Administrative Agent and Financing Parties, as additional insureds;
- (ii) be primary as respects insurance provided by Borrower and Administrative Agent,
- (iii) waive rights of subrogation against Borrower 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 Borrower; 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 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 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 Borrower) 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, any of the Banks or Borrower 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 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 Borrower (or Contractor as appropriate) fails 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 Borrower; provided, however, that Borrower shall, upon Administrative Agent's request and at Borrower's 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 Borrower 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 I (e) 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. 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 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**

**MAGIC VALLEY PROJECT PRE-FUNDING REQUIREMENTS**

[\*]

**EXHIBIT M**

**SOUTH POINT PROJECT PRE-FUNDING REQUIREMENTS**

[\*]

**EXHIBIT N**

**SUTTER PROJECT PRE-FUNDING REQUIREMENTS**

[\*]

**EXHIBIT 0**

**WESTBROOK PROJECT PRE-FUNDING REQUIREMENTS**

**EXHIBIT P**

**MAGIC VALLEY PROJECT PRE-COMPLETION REQUIREMENTS**

[ \* ]

## **EXHIBIT Q**

### **South Point Project Pre-Completion Requirements**

**EXHIBIT R**

**SUTTER PROJECT PRE-COMPLETION REQUIREMENTS**

[\*]

**EXHIBIT S**

**WESTBROOK PROJECT PRE-COMPLETION REQUIREMENTS**

[\*]

#### **EXHIBIT 10.3.4**

#### **PETER CARTWRIGHT EMPLOYMENT AGREEMENT**

This Employment Agreement (this "Agreement") has been entered into effective as of the first day of January, 2000, between CALPINE CORPORATION, a Delaware corporation (the "Company"), and PETER CARTWRIGHT ("Executive") to provide for the employment of Executive on the terms and conditions set forth herein.

WHEREAS, Executive has served as the President and Chief Executive Officer of the Company since its inception in 1984 and has served as the Chairman of the Board of Directors of the Company (the "Board") since September 1996; and

WHEREAS, the Company wishes to assure itself of the continued employment efforts of Executive for the period provided in this Agreement, and Executive is willing to continue to serve in the employ of the Company on a full-time basis for said period upon the terms and conditions hereinafter provided.

NOW, THEREFORE, in consideration of the mutual agreements herein contained, intending to be legally bound, the Company and Executive agree as follows:

1. Employment. The Company hereby employs Executive, and Executive hereby accepts such employment by the Company, upon the terms and conditions herein provided.
2. Term of Employment. Executive's employment with the Company pursuant to this Agreement shall commence on January 1, 2000 and shall continue through December 31, 2004 (which period of time shall be referred to as the "Term of this Agreement"), unless such employment is sooner terminated or subsequently extended as hereinafter provided. Unless earlier terminated, this Agreement shall automatically continue in effect for two (2) additional successive calendar year periods after December 31, 2004 (each such successive calendar year periods shall be referred to as the "Extended Term of this Agreement"), unless either the Company or Executive elects to terminate this Agreement as of the start of any subsequent calendar year by providing not less than sixty (60) days prior written notice to the other party. The period during which this Agreement continues in effect shall constitute the "Employment Period".
3. Positions and Responsibilities.
  - (a) Position. During the Employment Period, Executive shall serve as the Company's President and Chief Executive Officer ("CEO") and shall be responsible for the general management of the affairs of the Company, reporting directly to the Board.
  - (b) Duties. During the Employment Period, and subject to the control of the Board, Executive shall have general executive powers and active management and supervision over

the property, business and affairs of the Company and shall perform such other executive and/or administrative duties consistent with the office of President and CEO as from time to time may be assigned to Executive by the Board, but subject to the conditions in this Agreement. Executive shall devote substantially Executive's full business time and attention to, and exert Executive's best efforts in, the performance of Executive's duties hereunder, so as to promote the business of the Company. Executive's principal place of business shall be at the Company's corporate offices in San Jose, California.

(c) **Board Membership.** The Company shall take all actions that are necessary or appropriate to cause Executive to be nominated and elected to serve as a member of the Board and as the Chairman of the Board during the Employment Period.

4. **Compensation.** For all services rendered by Executive pursuant to this Agreement, the Company shall pay Executive, and Executive agrees to accept, the salary, bonuses and other benefits described below in this Section 4. Only for purposes of this Section 4, the term "Board" shall be deemed to mean either the Board of Directors of the Company or, where appropriate, the Compensation Committee of the Board of Directors of the Company.

(a) **Salary.** The Company shall pay Executive an annual base salary ("Base Salary") as determined by the Board in accordance with this Section 4, payable at periodic intervals in accordance with the Company's payroll practices for salaried employees. Executive's Base Salary for the calendar year ending December 31, 1999 is currently Seven Hundred Fifty Thousand Dollars (\$750,000.00). In accordance with Subsection 4(c) hereof, the amount of the Base Salary shall be reviewed by the Board on at least an annual basis during each year of the Employment Period, and any increases will be effective as of the first day of January of such year or on such other date determined appropriate by the Board. Executive's Base Salary may be increased for any reason, including to reflect inflation or such other adjustments as the Board may deem appropriate; provided, however, that Executive's Base Salary, as currently in effect as stated above or as so increased, may not be subsequently decreased, except with the prior written consent of Executive.

(b) **Bonuses.** In addition to Base Salary, Executive shall be entitled to receive, for each fiscal year of the Company ending with or within the Employment Period, an annual bonus ("Bonus"), whether pursuant to a formal bonus or incentive plan or program of the Company or otherwise. Subject to this Subsection 4(b) and Subsection 4(c) hereof, such Bonus shall be based on such criteria as are in good faith deemed appropriate by the Board. Any Bonus earned by Executive for service or performance rendered in any fiscal year within the Employment Period shall be paid to Executive in accordance with the applicable plan or program and the Company's policies governing such matters. Executive is entitled to participate in and receive a Bonus in accordance with the terms and conditions set forth in the Company's Annual Management Incentive Plan; provided, however, that (i) the target bonus for Executive as set forth in the current Annual Management Incentive Plan shall be one hundred forty-five percent (145%), and (ii) ninety percent (90%) of Executive's bonus shall be based on the Company's financial performance and ten percent (10%) of Executive's bonus will be based on the Executive's individual performance which shall be evaluated on the basis of qualitative, non-financial criteria which shall be determined and articulated by the Board on an annual basis.

(c) Annual Compensation Review. Notwithstanding anything herein to the contrary, Executive's compensation, consisting of salary, bonus and stock option grants, shall be reviewed not less than annually by the Board. In order to assist the Board in accomplishing such review, the Company shall retain an independent executive compensation consultant to prepare a survey of the compensation of senior executives in positions similar to Executive.

(d) Health Care. During the Employment Period, Executive shall be eligible to participate in any health insurance programs and medical plans under current policies maintained by the Company for executives.

(e) Participation in Benefit and Equity Compensation Plans. During the Employment Period, Executive shall be eligible to receive all benefits, including those under equity participation and bonus programs, to which key employees are or become eligible under such plans or programs as may be established by the Board. In addition to any other plans or programs established by the Company, Executive shall be entitled to participate in the Company's Stock Option Program and any similar or replacement plan or program (the "Stock Option Program").

(f) 401(k) Plan Benefits. In addition to the other benefits to which Executive shall be entitled to under this Agreement, Executive shall be entitled to participate in the Company's 401(k) Plan and shall be entitled to receive the full benefit of contributions to be made by the Company for the benefit of Executive under the terms of the 401(k) Plan.

(g) Disability Benefits. In the event of the Disability of Executive, the Company shall continue to pay Executive the salary payable to Executive in accordance with Subsection 4(a) hereof during the period of Executive's Disability; provided, however, that, in the event that Executive is disabled for a continuous period exceeding six (6) calendar months, the Company may elect at the expiration of this six (6) month period to terminate this Agreement and pay Executive the greater of (i) Executive's available monthly benefits from any existing Company-sponsored long-term disability plan; or (ii) sixty-seven percent (67%) of the salary provided in Subsection 4(a) for the duration of the Term of this Agreement or the Extended Term of this Agreement, as applicable. In the event of Executive's Disability during the Employment Period, the Company shall also pay to Executive the pro rata portion of the Bonus that Executive would have earned in respect of the portion of the year prior to Executive's Disability.

(h) Death Benefits. In the event of Executive's death (as defined in the Company's group life insurance program) during Executive's Disability or otherwise during the Employment Period, the Company shall cause payment to be made to Executive's most recently designated beneficiary (which, absent specific designation of a beneficiary for purposes of this provision, shall be Executive's most recently designated beneficiary under the Company's group life insurance program) a sum equal to three (3) times Executive's Base Salary. In the event of Executive's death (as defined in the Company's group life insurance program) during the Employment Period, the Company shall pay to Executive's estate the pro rata portion of the Bonus that Executive would have earned with respect of the portion of the year prior to Executive's death. The above payment obligations of the Company shall be discharged to the extent benefits are

actually paid pursuant to the Company's group life insurance program, with the balance of said obligation to be discharged either by a cash payment from the Company, or, if the Company so elects, by supplementary life insurance policies to be obtained and maintained by the Company.

5. Vacation. During the Employment Period, Executive shall be entitled to vacation of twenty-five (25) business days in each year, with full salary, and Executive shall accrue paid vacation benefits during the Employment Period in accordance with the Company policy in effect for executive officers.

6. Indemnification. The Company shall maintain indemnification of Executive pursuant to the provisions of the Company's Articles of Incorporation and Bylaws to the fullest extent of California law and all other applicable law, and shall provide Executive with indemnification pursuant to the Company's standard indemnification agreement and any director's and officer's liability insurance policy maintained by the Company.

## 7. Severance Benefits.

(a) Voluntary Resignation. If Executive's employment terminates by reason of Executive's voluntary resignation (and such termination is not an Involuntary Termination or a termination for Cause), then Executive shall not be entitled to receive severance or other benefits except for those (if any) to which Executive may be entitled under this Agreement or any separate agreement with the Company or as may then be established under the Company's then existing severance and benefit plans and policies at the time of such termination.

(b) Voluntary Resignation Following a Change of Control. If within twelve (12) months after a Change of Control, Executive's employment terminates by reason of Executive's voluntary resignation (and such termination is not an Involuntary Termination or a termination for Cause), then the following severance benefits shall be paid or otherwise provided to Executive:

(i) the Company shall pay to Executive in the form of a lump sum payment, in cash, a severance payment equal to the greater of (I) two (2) times Executive's Current Compensation or (II) Executive's Current Compensation multiplied by the number of years (or any portion thereof, calculated on a daily basis) remaining under this Agreement had Executive's employment not been terminated, which shall be paid to Executive within ten (10) days after the date of termination;

(ii) until the earlier of (I) the date this Agreement would otherwise have terminated had Executive's employment not been terminated or (II) the expiration of the three (3) year period measured from the date of Executive's termination of employment, the Company shall at its sole cost and expense provide Executive (and Executive's eligible dependents, if any) with life, disability, accident and group health insurance benefits substantially similar to those benefits that Executive (and Executive's dependents) were receiving immediately prior to Executive's termination of employment; provided, however, that the benefits otherwise receivable by Executive pursuant to this subsection 7 (b) shall be reduced to the extent comparable benefits are

concurrently received by Executive (or Executive's dependents) pursuant to a similar plan or program of another employer, and any such other benefits actually received by Executive (or Executive's dependents) must be reported to the Company; and provided further, however, that the health care coverage provided by the Company pursuant to this subsection 7 (b) shall be in lieu of any other continued health care coverage to which Executive or Executive's dependents would otherwise, at Executive's own expense, be entitled in accordance with the requirements of Internal Revenue Code of 1986, as amended ("Code"), Section 4980B ("COBRA") by reason of Executive's termination of employment; and

(iii) all stock options, warrants, rights and other Company stock-related awards granted to Executive by the Company that would otherwise have vested or become exercisable at any time in the future shall become fully vested and nonforfeitable upon the date of Executive's termination of employment, the Company's repurchase rights, if any, with respect to those vested shares shall immediately lapse, and each such stock option, to the extent vested, shall remain exercisable for the vested option shares until the expiration or sooner termination of the option term in accordance with the provisions of the agreement evidencing such option.

(c) Involuntary Termination Other Than For Cause. If Executive's employment is terminated as a result of an Involuntary Termination other than for Cause, then the following severance benefits shall be paid or otherwise provided to Executive:

(i) the Company shall pay to Executive in the form of a lump sum payment, in cash, a severance payment equal to the greater of (I) three (3) times Executive's Current Compensation or (II) Executive's Current Compensation multiplied by the number of years (or any portion thereof, calculated on a daily basis) remaining under this Agreement had Executive's employment not been terminated, which shall be paid to Executive within ten (10) days after the date of termination;

(ii) until the earlier of (I) the date this Agreement would otherwise have terminated had Executive's employment not been terminated or (II) the expiration of the three (3) year period measured from the date of Executive's termination of employment, the Company shall at its sole cost and expense provide Executive (and Executive's eligible dependents, if any) with life, disability, accident and group health insurance benefits substantially similar to those benefits that Executive (and Executive's dependents) were receiving immediately prior to Executive's termination of employment; provided, however, that the benefits otherwise receivable by Executive pursuant to this subsection 7 (c) shall be reduced to the extent comparable benefits are concurrently received by Executive (or Executive's dependents) pursuant to a similar plan or program of another employer, and any such other benefits actually received by Executive (or Executive's dependents) must be reported to the Company; and provided further, however, that the health care coverage provided by the Company pursuant to this subsection 7 (c) shall be in lieu of any other continued health care coverage to which Executive or Executive's dependents would otherwise, at Executive's own expense, be entitled in accordance with the requirements COBRA, by reason of Executive's termination of employment;

(iii) all stock options, warrants, rights and other Company stock- related awards granted to Executive by the Company that would otherwise have vested or become exercisable at any time in the future shall become fully vested and nonforfeitable upon the date of Executive's termination of employment, the Company's repurchase rights, if any, with respect to those vested shares shall immediately lapse, and each such stock option, to the extent vested, shall remain exercisable for the vested option shares until the expiration or sooner termination of the option term in accordance with the provisions of the agreement evidencing such option; and

(iv) the Company shall pay or reimburse Executive for any and all expenses incurred by Executive for outplacement services selected by Executive until the earlier of (I) the first anniversary of the date of termination of employment or (II) the date on which Executive commences employment with another employer.

(d) Termination for Cause. If Executive's employment is terminated for Cause, then Executive shall not be entitled to receive any severance payments or other severance benefits under this Section 7. Executive's benefits will be continued under the Company's then existing benefit plans and policies in accordance with such plans and policies in effect on the date of termination.

(e) Parachute Payments. If all or any portion of the amounts payable to Executive under this Agreement or otherwise are subject to the excise tax imposed by Section 4999 of the Internal Revenue Code (the "Code") (or similar state tax and/or assessment), Company shall pay to Executive an amount necessary to place Executive in the same after tax position as Executive would have been in had no such excise tax been imposed. The amount payable pursuant to the preceding sentence shall be increased to the extent necessary to pay income and excise taxes due on such amount. The determination of the amount of any such additional amount shall be made by the independent accounting firm then employed by the Company.

8. Noncompetition and Confidential Information. While employed by the Company, Executive will not directly or indirectly manage, operate, participate in, be employed by, perform consulting services for, or otherwise be connected in any manner with, any firm, person, corporation, or enterprise which would be competitive with the business of the Company. Executive will not at any time disclose to others any confidential information relating to the Company or to the business of the Company and confirms that such information constitutes the exclusive property of the Company. The foregoing shall not preclude Executive's investment in any such firm, corporation or enterprise provided that at any one time Executive and members of Executive's immediate family do not own more than one percent (1%) of any voting securities of any such entity.

9. Consulting. Executive and the Company may, but are not required to, enter into an agreement pursuant to which Executive will provide consulting services to the Company after the date of Executive's retirement or termination. Any consulting fees paid to Executive will be in addition to any retirement or severance payments.

10. Failure to Comply. If, for any reason other than Executive's death, Disability or Involuntary Termination, Executive shall cease to render services as required by this Agreement without the written consent of the Company, or if Executive shall breach the provisions of Section 8 hereof, then, except as provided in Section 7 hereof, Executive will thereby relinquish all rights to any benefits hereunder, including future salary payments and death benefits, and the Company shall reserve whatever rights, if any, it may have against Executive under this Agreement or otherwise.

11. Successors. Any successor to the Company (whether direct or indirect and whether by purchase, lease, merger, consolidation, liquidation or otherwise) or to all or substantially all of the Company's business and/or assets shall assume the obligations under this Agreement and shall perform the obligations under this Agreement in the same manner and to the same extent as the Company would be required to perform such obligations in the absence of a succession. The terms of this Agreement and all of Executive's rights hereunder shall inure to the benefit of, and be enforceable by, Executive's personal or legal representatives, executors, administrators, successors, heirs, distributees, devisees and legatees.

12. Notice. Notices and all other communications contemplated by this Agreement shall be in writing and shall be deemed to have been duly given when personally delivered or when mailed by U.S. registered or certified mail, return receipt requested and postage prepaid. Mailed notices to Executive shall be addressed to Executive at the home address from which Executive most recently communicated to the Company in writing. In the case of the Company, mailed notices shall be addressed to its corporate headquarters, and all notice shall be directed to the attention of its Secretary.

13. Miscellaneous Provisions.

(a) Definition of Terms. The capitalized terms in this Agreement shall have the meanings set forth in this Agreement or in Appendix A hereto.

(b) No Duty to Mitigate. Executive shall not be required to mitigate the amount of any payment contemplated by this Agreement (whether by seeking new employment or in any other manner), nor shall any such payment be reduced by earnings that Executive may receive from any other source.

(c) Waiver. No provision of this Agreement shall be modified, waived or discharged unless the modification, waiver or discharge is agreed to in writing and signed by Executive and by an authorized officer or representative of the Company (other than Executive). No waiver by either party of any breach of, or of compliance with, any condition or provision of this Agreement by the other party shall be considered a waiver of any other condition or provision or of the same condition or provision of another time.

(d) Whole Agreement. No agreements, representations or understandings (whether oral or written and whether express or implied) which are not expressly set forth in this Agreement have been made or entered into by either party with respect to the subject matter hereof.

(e) Choice of Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of the State of California.

(f) Severability. If any term or provision of this Agreement or the application thereof to any circumstance shall, in any jurisdiction and to any extent, be invalid or unenforceable, such term or provision shall be ineffective as to such jurisdiction to the extent of such invalidity or unenforceability without invalidating or rendering unenforceable the remaining terms and provisions of this Agreement or the application of such terms and provisions to circumstances other than those as to which it is held invalid or unenforceable, and a suitable and equitable term or provision shall be substituted therefor to carry out, insofar as may be valid and enforceable, the intent and purpose of the invalid or unenforceable term or provision.

(g) Arbitration. Any dispute or controversy arising under or in connection with this Agreement may be settled by arbitration in the County of San Francisco, California, in accordance with the rules of the American Arbitration Association then in effect. Such arbitration proceedings shall be nonbinding and any claim with respect to this Agreement, whether or not previously the subject of an arbitration proceeding, may be brought in any court of competent jurisdiction.

(h) Employment Taxes. All payments made pursuant to this Agreement will be subject to withholding of applicable income and employment taxes.

(i) Assignment by Company. The Company may assign its rights under this Agreement to an affiliate, and an affiliate may assign its rights under this Agreement to another affiliate of the Company; provided, however, that if there is any such assignment, the Company will guarantee all payments and the performance of all obligations under this Agreement. In the case of any such assignment, the term "Company" when used in a section of this Agreement shall mean the corporation or other entity that actually employs Executive.

(j) Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together will constitute one and the same instrument.

14. Previous Agreement. This Agreement replaces and supersedes the Amended and Restated Employment Contract with Executive which covered the period from January 1, 1995 through December 31, 1999.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement this day and year first above written.

CALPINE CORPORATION:

EXECUTIVE:

By:

-----  
Susan C. Schwab, Chairman of the  
Compensation Committee of the  
Board of Directors

-----  
Peter Cartwright, in his individual  
capacity

## **APPENDIX A**

### **DEFINITIONS**

Cause. "Cause" shall mean (i) material breach of any material terms of this Agreement, (ii) conviction of a felony, (iii) repeated unexplained or unjustified absence, (iv) willful breach of fiduciary duty under this Agreement or (v) gross negligence or willful misconduct where such gross negligence or willful misconduct has resulted or is likely to result in substantial and material damage to the Company or its subsidiaries.

Change of Control. "Change of Control" shall mean the occurrence of any of the following events:

- (i) any "person" (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended (the "Exchange Act")), other than the Company's current stockholders or a trustee or other fiduciary holding securities under an employee benefit plan of the Company or any corporation owned, directly or indirectly, by the Company's stockholders in substantially the same proportions as their ownership of the Company's stock, becomes the "beneficial owner" (as defined in Rule 13d-3 under the Exchange Act), directly or indirectly, of securities of the Company representing fifty percent (50%) or more of the total combined voting power of the Company's then outstanding securities; or
- (ii) the majority of the members of the Board ceases to be comprised of individuals who are Continuing Members; for such purpose, a "Continuing Member" shall mean an individual who is a member of the Board on the date of this Agreement and any successor of a Continuing Member who is elected to the Board or nominated for such election by action of a majority of Continuing Members then serving on the Board; or
- (iii) the stockholders of the Company approve a merger or consolidation of the Company with any other corporation, other than a merger or consolidation which would result in the voting securities of the Company outstanding immediately prior thereto continuing to represent (either by remaining outstanding or by being converted into voting securities of the surviving entity) at least fifty percent (50%) of the total voting power represented by the voting securities of the Company or such surviving entity outstanding immediately after such merger or consolidation, or the stockholders of the Company approve a plan of complete liquidation or dissolution of the Company or an agreement for the sale or disposition by the Company of all or substantially all of the Company's assets.

**Current Compensation.** "Current Compensation" shall mean (i) an amount equal to the greater of (A) Executive's highest annual base salary for the year preceding the year in which a termination of employment occurs or (B) Executive's annual base salary at any time during the year in which a termination of employment occurs, plus (ii) an amount equal to the greater of the bonus payments Executive received in the preceding calendar year or the target bonus payment for the year in which a termination of employment occurs.

**Disability.** "Disability" shall mean the inability of Executive to perform all the material duties of Executive's position as determined by an independent physician selected with the approval of the Company and Executive.

**Involuntary Termination.** "Involuntary Termination" shall mean termination by the Company of Executive's employment for any reason other than for Cause, and shall include Executive's voluntary resignation following (i) the material breach by the Company of one or more of its obligations under this Agreement which are not otherwise corrected within ten (10) days following Executive's written notice to the Company of such breach, or (ii) the occurrence of any of the following events without Executive's express prior written consent: (A) a change in Executive's position with the Company which materially reduces Executive's level of responsibilities, (B) a reduction in Executive's level of compensation (including base salary, benefits and any non-discretionary and objective-standard incentive payment or bonus award), (C) a relocation of Executive's place of employment by more than twenty (20) miles from Executive's current place of employment, (D) the assignment of additional material job responsibilities or a reduction in job responsibilities inconsistent with Executive's position with the Company and Executive's prior responsibilities, or (E) in the event Executive is no longer the Company's President and CEO reporting to the Board.

**EXHIBIT 21****Subsidiaries of Calpine Corporation**

Set forth below are the names of certain subsidiaries, at least 50% owned, directly or indirectly, of Calpine Corporation as of December 31, 1999, unless otherwise indicated. Certain subsidiaries which when considered in the aggregate would not constitute a significant subsidiary, are omitted from the list below:

Name	Calpine Interest Percentage	State or Other Jurisdiction of Incorporation or Organization
Geysers Power Company		
Geysers Power Company, LLC	100%	Delaware
Geysers Power I Company	100%	Delaware
Geysers Power II Company	100%	Delaware
Thermal Power Company	100%	California
Calpine Thermal Power, Inc.	100%	California
Geysers Finance Company	100%	Delaware
Texas City Power Plant		
Texas City Cogeneration, LP	100%	Texas
Texas Cogeneration One Company	100%	Delaware
Texas Cogeneration Five, Inc.	100%	Delaware
Texas Cogeneration Company	100%	Delaware
Calpine Finance Company	100%	Delaware
Pasadena Power Plant		
Pasadena Cogeneration, LP	100%	Delaware
Calpine Pasadena Cogeneration, Inc.	100%	Delaware
Calpine Texas Cogeneration, Inc.	100%	Delaware
King City Power Plant		
Calpine King City Cogen LLC	100%	Delaware
Calpine King City 1, Inc.	100%	Delaware
Calpine King City 2, Inc.	100%	Delaware
Calpine Securities Company, LP	100%	Delaware
Gilroy Power Plant		
Calpine Gilroy Cogen, LP	100%	Delaware
Calpine Gilroy 1, Inc.	100%	Delaware
Calpine Gilroy 2, Inc.	100%	Delaware

**EXHIBIT 23(A)**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

As independent public accountants, we hereby consent to the incorporation of our report dated January 31, 2000 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, 1999 or performed any audit procedures subsequent to the date of our report.

**Arthur Andersen LLP**

San Jose, California  
February 28, 2000

**EXHIBIT 23(B)**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

As independent public accountants, we hereby consent to the incorporation of our report dated February 5, 1999 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, 1998 or performed any audit procedures subsequent to the date of our report.

*/s/ ARTHUR ANDERSEN LLP*

*San Jose, California  
March 23, 1999*

**EXHIBIT 23(C)**

**CONSENT OF INDEPENDENT PUBLIC ACCOUNTANTS**

As independent public accountants, we hereby consent to the incorporation of our report dated February 10, 1998 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, 1997 or performed any audit procedures subsequent to the date of our report.

*/s/ ARTHUR ANDERSEN LLP*

*San Jose, California*

*March 11, 1998*

**ARTICLE 5**

MULTIPLIER: 1,000

PERIOD TYPE	12 MOS
FISCAL YEAR END	DEC 31 1999
PERIOD START	JAN 01 1999
PERIOD END	DEC 31 1999
CASH	349,371
SECURITIES	0
RECEIVABLES	130,828
ALLOWANCES	3,343
INVENTORY	16,417
CURRENT ASSETS	33,135
PP&E	3,093,506
DEPRECIATION	227,059
TOTAL ASSETS	3,991,606
CURRENT LIABILITIES	275,311
BONDS	1,551,750
PREFERRED MANDATORY	270,713
PREFERRED	0
COMMON	63
OTHER SE	964,569
TOTAL LIABILITY AND EQUITY	3,991,606
SALES	760,325
TOTAL REVENUES	847,735
CGS	517,421
TOTAL COSTS	557,477
OTHER EXPENSES	63,756
LOSS PROVISION	0
INTEREST EXPENSE	91,162
INCOME PRETAX	158,216
INCOME TAX	61,973
INCOME CONTINUING	96,973
DISCONTINUED	0
EXTRAORDINARY	1,150
CHANGES	0
NET INCOME	95,093
EPS BASIC	1.82
EPS DILUTED	1.71

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