

# DEVON ENERGY CORP/DE

## FORM 8-K (Current report filing)

Filed 04/09/02 for the Period Ending 03/25/02

Address	333 W. SHERIDAN AVENUE OKLAHOMA CITY, OK 73102
Telephone	4055528183
CIK	0001090012
Symbol	DVN
SIC Code	1311 - Crude Petroleum and Natural Gas
Fiscal Year	12/31

# DEVON ENERGY CORP/DE

## FORM 8-K (Unscheduled Material Events)

Filed 4/9/2002 For Period Ending 3/25/2002

Address	20 N BROADWAY STE 1500 OKLAHOMA CITY, Oklahoma 73102
Telephone	405-235-3611
CIK	0001090012
Industry	Oil & Gas Operations
Sector	Energy
Fiscal Year	12/31

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

**FORM 8-K**

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

**Date of Report (Date of Earliest Event Reported) April 9, 2002 (March 25, 2002)**

**DEVON ENERGY CORPORATION**

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(Exact Name of Registrant as Specified in Charter)

Delaware	000-30176	73-1567067
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(State or Other Jurisdiction of Incorporation)	(Commission File Number)	(IRS Employer Identification No.)

20 North Broadway, Oklahoma City, Oklahoma	73102
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(Address of Principal Executive Office)	(Zip Code)

Registrant's telephone number, including area code (405) 235-3611

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## **ITEM 5. OTHER EVENTS**

Exhibits are filed herewith in connection with the Registration Statement on Form S-3 (File No. 333-83156) declared effective by the Securities and Exchange Commission on March 5, 2002 relating to an aggregate of \$1,500,000,000 of securities of Devon Energy Corporation ("Devon").

## **ITEM 7. EXHIBITS**

1.1 Underwriting Agreement, dated March 20, 2002, between Devon and Banc of America Securities LLC and UBS Warburg LLC, as representatives for themselves and the other Underwriters named therein.

4.1 Indenture, dated as of March 1, 2002, between Devon and The Bank of New York, as Trustee, relating to senior debt securities issuable by Devon (the "Senior Indenture").

4.2 Supplemental Indenture No. 1, dated as of March 25, 2002, between Devon and The Bank of New York, as Trustee, establishing \$1,000,000,000 principal amount of 7.95% Senior Debentures due April 15, 2032 as a series of debt securities under the Senior Indenture.

4.3 Form of 7.95% Senior Debenture due April 15, 2032 (included in Exhibit 4.2).

4.4 Press Release dated March 25, 2002.

**SIGNATURES**

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

**DEVON ENERGY CORPORATION**

*Date: April 9, 2002*

*By: /s/ JANICE A. DOBBS*

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*Name: Janice A. Dobbs*

*Title: Corporate Secretary*

## EXHIBIT INDEX

EXHIBIT NUMBER	DESCRIPTION
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4.1	Indenture, dated as of March 1, 2002, between Devon and The Bank of New York, as Trustee, relating to senior debt securities issuable by Devon (the "Senior Indenture").
4.2	Supplemental Indenture No. 1, dated as of March 25, 2002, between Devon and The Bank of New York, as Trustee, establishing \$1,000,000,000 principal amount of 7.95% Senior Debentures due April 15, 2032 as a series of debt securities under the Senior Indenture.
4.3	Form of 7.95% Senior Debenture due April 15, 2032 (included in Exhibit 4.2).
4.4	Press Release dated March 25, 2002.

**EXHIBIT 1.1**

**DEVON ENERGY CORPORATION**

\$1,000,000,000

**7.950% Debentures**

**due April 15, 2032**

**UNDERWRITING AGREEMENT**

March 20, 2002

## UNDERWRITING AGREEMENT

March 20, 2002

### **BANC OF AMERICA SECURITIES LLC**

Bank of America Corporate Center  
100 North Tryon Street  
Charlotte, North Carolina 28255

### **UBS WARBURG LLC**

677 Washington Blvd.  
Stamford, Connecticut 06901

as Representatives of the several Underwriters named in Schedule A

Ladies and Gentlemen:

Devon Energy Corporation, a Delaware corporation (the "Company"), proposes to issue and sell to the Underwriters named in Schedule A annexed hereto (the "Underwriters") \$1,000,000,000 aggregate principal amount of its 7.950% Debentures due April 15, 2032 (the "Debentures"). The Debentures are described in the Prospectus which is referred to below.

The Debentures are to be issued pursuant to an indenture (the "Base Indenture") to be dated as of March 1, 2002, as amended and supplemented by the First Supplemental Indenture to be dated as of March 25, 2002 (the "Supplemental Indenture" and together with the Base Indenture, the "Indenture"), between the Company and The Bank of New York, as trustee (the "Trustee"). Copies of the Indenture, in substantially final form, have been delivered to each of the Underwriters.

The Company has filed, in accordance with the provisions of the Securities Act of 1933, as amended, and the rules and regulations thereunder (collectively, the "Act"), with the Securities and Exchange Commission (the "Commission") a registration statement on Form S-3 (File No. 333-83156) including a prospectus relating to the Debentures which incorporates by reference documents which the Company has filed or will file in accordance with the provisions of the Securities Exchange Act of 1934, as amended, and the rules and regulations thereunder (collectively, the "Exchange Act"). The Company has prepared a prospectus supplement (the "Prospectus Supplement") to the prospectus included in the registration statement referred to above setting forth the terms of the offering, sale and plan of distribution of the Debentures and additional information concerning the Company and its business. The Company has furnished to you, for use by the Underwriters and by dealers, copies of one or more preliminary prospectuses, containing the prospectus included in the registra-



tion statement, as supplemented by a preliminary Prospectus Supplement, and the documents incorporated by reference therein (each such preliminary prospectus being referred to herein as a "Preliminary Prospectus"), relating to the Debentures. Except where the context otherwise requires, the registration statement referred to above, as amended when it became effective, including all documents filed as a part thereof or incorporated by reference therein, and including any information contained in a prospectus subsequently filed with the Commission pursuant to Rule 424(b) under the Act and deemed to be part of the registration statement at the time of its effectiveness and also including any registration statement filed pursuant to Rule 462(b) under the Act, is referred to herein as the "Registration Statement", and the prospectus included in the Registration Statement, including all documents incorporated therein by reference, as supplemented by the final Prospectus Supplement, in the form filed by the Company with the Commission pursuant to Rule 424(b) under the Act on or before the second business day after the date hereof (or such earlier time as may be required under the Act), is herein called the "Prospectus". Any reference herein to the Registration Statement, the Prospectus, any Preliminary Prospectus or any amendment or supplement thereto shall be deemed to refer to and include the documents incorporated by reference therein, and any reference herein to the terms "amend", "amendment" or "supplement" with respect to the Registration Statement, the Prospectus or any Preliminary Prospectus shall be deemed to refer to and include the filing after the execution hereof of any document with the Commission deemed to be incorporated by reference therein.

This Agreement, the Debentures and the Indenture are hereinafter sometimes referred to collectively as the "Operative Documents."

The Company and the Underwriters agree as follows:

1. Sale and Purchase: Upon the basis of the warranties and representations and subject to the terms and conditions herein set forth, the Company agrees to sell to the respective Underwriters, and each of the Underwriters, severally and not jointly, agrees to purchase from the Company, the aggregate principal amount of Debentures set forth opposite the name of such Underwriter in Schedule A attached hereto in each case at a purchase price of 98.606% of the principal amount thereof, plus accrued interest, if any, from March 25, 2002 to the time of purchase (as hereinafter defined). The Company is advised by you that the Underwriters intend (i) to make a public offering of their respective portions of the Debentures as soon after the effective date of this Agreement as in your judgment is advisable and (ii) initially to offer the Debentures upon the terms set forth in the Prospectus. You may from time to time increase or decrease the public offering price after the initial public offering to such extent as you may determine.
2. Payment and Delivery: Payment of the purchase price for the Debentures shall be made to the Company by federal funds wire transfer, against delivery of the certificates for the Debentures to you through the facilities of The Depository Trust Company ("DTC") for the respective accounts of the Underwriters. Such payment and delivery shall be made at 10:00 A.M., New York City time, on March 25, 2002 (unless another time not later

than March 25, 2002 shall be agreed to by you and the Company or unless postponed in accordance with the provisions of Section 8 hereof). The time at which such payment and delivery are actually made is hereinafter sometimes called the "time of purchase". Certificates for the Debentures shall be delivered to you in global form registered in such names and in such denominations as you shall specify. For the purpose of expediting the checking of the certificates for the Debentures by you, the Company agrees to make such certificates available to you for such purpose at least one full business day preceding the time of purchase. As used herein "business day" shall mean a day on which the New York Stock Exchange is open for trading.

3. Representations and Warranties of the Company: The Company represents and warrants to each of the Underwriters that:

(a) The Company and the transactions contemplated by this Agreement meet the requirements and conditions for using a registration statement on Form S-3 under the Act. The Registration Statement has been filed with the Commission and has been declared effective under the Act. The Registration Statement meets the requirements set forth in Rule 415(a)(1)(x) under the Act and complies in all material respects with such Rule. The Company has not received, and has no notice of, any order of the Commission preventing or suspending the use of the Registration Statement, or threatening or instituting proceedings for that purpose.

(b) A Preliminary Prospectus, including a preliminary Prospectus Supplement, has been prepared and filed pursuant to Rule 424(b) of the Act.

(c) The Prospectus, including a final Prospectus Supplement, has been or will be prepared and will be filed pursuant to Rule 424(b) of the Act on or before the second business day following the date of this Agreement (or such earlier time as may be required under the Act). Each part of the Registration Statement, when such part became or becomes effective or was or is filed with the Commission, and the Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission, and the Registration Statement, the Prospectus and the Indenture at the time of purchase complied or will comply in all material respects with the requirements of the Act and the Trust Indenture Act of 1939, as amended (the "Trust Indenture Act"). Each part of the Registration Statement, when such part became or becomes effective or was or is filed with the Commission, did not or 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. The Prospectus and any amendment or supplement thereto, on the date of filing thereof with the Commission pursuant to Rule 424(b) and at the time of purchase, did not or will not include an 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, except that the foregoing shall not apply to statements in, or omissions from, any such document in reliance upon, and in conformity with,

written information concerning the Underwriters that was furnished in writing to the Company by Banc of America Securities LLC or UBS Warburg LLC, on behalf of the several Underwriters, specifically for use in the preparation thereof.

(d) The documents incorporated by reference in the Registration Statement, the Preliminary Prospectus and the Prospectus or any amendment or supplement thereto, when they became or become effective under the Act or were or are filed with the Commission under the Act or the Exchange Act, as the case may be, complied or will comply as to form in all material respects with the requirements of the Act and Exchange Act, as applicable, and none of such documents contained or contain an untrue statement of a material fact or omit or omitted to state a material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

(e) Copies of the Registration Statement, any Preliminary Prospectus and the Prospectus, any such amendments or supplements and all documents incorporated by reference therein that were filed with the Commission on or prior to the date of this Agreement (including one fully executed copy of the Registration Statement and of each amendment thereto for the Underwriters) have been delivered to the Underwriters and their counsel. The Company has not distributed any offering material in connection with the offering or sale of the Debentures other than the Registration Statement, the Preliminary Prospectus referred to in paragraph (b) above, the Prospectus or any other materials, if any, permitted by the Act.

(f) Attached as Schedule B is a true and complete list of all Restricted Subsidiaries (as defined in the Indenture (assuming the acquisition of Mitchell Energy & Development Corp. had occurred as of December 31, 2001)) of the Company, their jurisdictions of incorporation or formation, type of entity and equity ownership. Other than Devon Energy Corporation (Oklahoma) (which shall be deemed a "Restricted Subsidiary" for purposes of this Agreement), no subsidiary of the Company other than the Restricted Subsidiaries constitutes a "significant" subsidiary of the Company within the meaning of Regulation S-X under the Act. All of the issued and outstanding shares of capital stock or other equity interests of each Restricted Subsidiary have been duly authorized and validly issued and are fully paid and nonassessable, except as such nonassessability may be affected by certain provisions of any applicable jurisdiction's statutes. All shares of capital stock or other equity interests of the Restricted Subsidiaries that are owned of record directly by the Company or indirectly by a wholly owned subsidiary of the Company are owned free and clear of any lien, security interest, pledge, charge, encumbrance, equity or claim; none of the outstanding shares of capital stock or other equity interests of each such Restricted Subsidiary was issued in violation of any preemptive or similar rights or the charter or bylaws or other organizational documents of the Company or such Restricted Subsidiary or any agreement to which the Company or such Restricted Subsidiary is a party. Except as set forth in the Registration Statement and Prospectus, there will not be any outstanding

rights, warrants or options to acquire, or instruments convertible into or exchangeable for, any shares of capital stock or other equity interest of the Restricted Subsidiaries.

(g) The Company and each Restricted Subsidiary has been duly incorporated, organized or formed as a corporation, partnership or other entity in good standing under the laws of its respective jurisdiction of incorporation, organization or formation and has all requisite power and authority to carry on its business as it is currently being conducted and as described in the Registration Statement and Prospectus and to own, lease, license and operate its respective properties in accordance with its business as currently conducted. The Company and each Restricted Subsidiary is duly qualified and in good standing as a foreign corporation, partnership or other entity authorized to do business in each jurisdiction in which the nature of its business or its ownership or leasing of property requires such qualification, except where the failure to be so qualified would not, either individually or in the aggregate, result in a Material Adverse Effect. A "Material Adverse Effect" means any material adverse effect on the business, condition (financial or other), properties, results of operations or prospects of the Company and its subsidiaries, taken as a whole.

(h) The Company has all requisite power and authority to execute, deliver and perform all of its obligations under the Operative Documents and to consummate the transactions contemplated by the Operative Documents to be consummated on its part and, without limitation, the Company has all requisite power and authority to issue, sell and deliver the Debentures.

(i) This Agreement has been duly and validly authorized, executed and delivered by the Company.

(j) The Indenture has been duly and validly authorized by the Company and, when duly executed and delivered by the Company (assuming the due authorization, execution and delivery thereof by the Trustee), will constitute a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity and the discretion of the court before which any proceedings therefor may be brought. The Indenture, when executed and delivered, will conform in all material respects to the description thereof in the Registration Statement and Prospectus.

(k) The Debentures have been duly and validly authorized for issuance and sale to the Underwriters by the Company and, when issued, authenticated and delivered by the Company against payment by the Underwriters in accordance with the terms of this Agreement and the Indenture, the Debentures will be legal, valid and binding obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except as enforcement

thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general principles of equity and the discretion of the court before which any proceedings therefor may be brought. The Debentures, when issued, authenticated and delivered, will conform in all material respects to the description thereof in the Registration Statement and Prospectus.

(l) All taxes, fees and other governmental charges that are due and payable on or prior to the time of purchase in connection with the execution, delivery and performance of the Operative Documents and the execution, delivery and sale of the Debentures shall have been paid by or on behalf of the Company at or prior to the time of purchase, except for those failures which would not reasonably be expected, either individually or in the aggregate, to interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Operative Documents.

(m) None of the Company or any Restricted Subsidiary is (A) in violation of its charter, bylaws or other constitutive documents, (B) in default (or, with notice or lapse of time or both, would be in default) in the performance or observance of any obligation, agreement, covenant or condition contained in any bond, debenture, note, indenture, mortgage, deed of trust, loan or credit agreement, lease, license, franchise agreement, authorization, permit, certificate or other agreement or instrument to which any of them is a party or by which any of them is bound or to which any of their assets or properties is subject (collectively, "Agreements and Instruments"), or (C) in violation of any law, statute, rule, regulation, judgment, order or decree of any domestic or foreign court with jurisdiction over any of them or any of their assets or properties or other governmental or regulatory authority, agency or other body, that, in the case of clauses (B) and (C) herein, would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect. There exists no condition that, with notice, the passage of time or otherwise, would constitute a default by the Company or any Restricted Subsidiary under any such document or instrument or result in the imposition of any penalty or the acceleration of any indebtedness, other than penalties, defaults or conditions that would not have a Material Adverse Effect.

(n) The execution, delivery and performance by the Company of the Operative Documents, including the consummation of the offer and sale of the Debentures, does not or will not violate, conflict with or constitute a breach of any of the terms or provisions of, or a default under (or an event that with notice or the lapse of time, or both, would constitute a default), or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Restricted Subsidiary or an acceleration of any indebtedness of the Company or any Restricted Subsidiary pursuant to, (i) the charter, bylaws or other constitutive documents of the Company or any Restricted Subsidiary, (ii) assuming the consummation of the transactions contemplated thereby, any Agreements and Instruments,

(iii) any law, statute, rule or regulation applicable to the Company or any of its subsidiaries or their respective assets or properties or (iv) any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any Restricted Subsidiary or its respective assets or properties that, in the case of clauses (ii) through (iv), would reasonably be expected, either individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Operative Documents. No consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any court or governmental agency, body or administrative agency, domestic or foreign, is required to be obtained or made by the Company for the execution, delivery and performance by the Company of the Operative Documents, including the consummation of any of the transactions contemplated thereby, except (x) such as have been or will be obtained or made on or prior to the time of purchase, including qualification of the Indenture under the Trust Indenture Act, in connection with the issuance of the Debentures, (y) such as may be required by the NASD, or (z) those for which the failure to obtain would not reasonably be expected, either individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Operative Documents. No consents or waivers from any other person or entity are required for the execution, delivery and performance of this Agreement or any of the other Operative Documents or the consummation of any of the transactions contemplated thereby, other than such consents and waivers as have been obtained or will be obtained prior to the time of purchase, except for those consents or waivers, the failure of which to obtain would not, either individually or in the aggregate, (1) have a Material Adverse Effect or (2) interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Operative Documents.

(o) Except as set forth in the Registration Statement and Prospectus, there is (A) no action, suit or proceeding before or by any court, arbitrator or governmental agency, body or official, domestic or foreign, now pending or, to the knowledge of the Company, threatened or contemplated to which the Company or any of its subsidiaries is a party or to which the business, assets or property of such person is subject, (B) no statute, rule, regulation or order that has been enacted, adopted or issued or, to the knowledge of the Company, that has been proposed by any governmental body or agency, domestic or foreign, (C) no injunction, restraining order or order of any nature by a federal or state court or foreign court of competent jurisdiction to which the Company or any of its subsidiaries is subject that (x) in the case of clause (A) above, if determined adversely to the Company or such subsidiary, would reasonably be expected, either individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of

the Operative Documents and (y) in the case of clauses (B) and (C) above, would reasonably be expected, either individually or in the aggregate, (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Operative Documents. Every request of any securities authority or agency of any jurisdiction for additional information with respect to the Debentures that has been received by the Company or their counsel prior to the date hereof has been, or will prior to the time of purchase be, complied with in all material respects.

(p) Except as set forth in the Registration Statement and Prospectus, the Company and each Restricted Subsidiary (A) is in compliance with, or not subject to costs or liabilities under, all local, state, provincial, federal and foreign laws, regulations, rules of common law, orders and decrees, as in effect as of the date hereof, and any present judgments and injunctions issued or promulgated thereunder relating to pollution or protection of public and employee health and safety, the environment or hazardous or toxic substances or wastes, pollutants or contaminants applicable to it or its business or operations or ownership or use of its property ("Environmental Laws"), other than noncompliance or such costs or liabilities that would not reasonably be expected to have a Material Adverse Effect, and (B) possesses all permits, licenses or other approvals required under applicable Environmental Laws, except where the failure to possess any such permit, license or other approval would not reasonably be expected to have a Material Adverse Effect.

(q) There are no defects in title to, or encumbrances upon the leasehold interests in, the oil and gas producing properties of the Company and its Restricted Subsidiaries or the assets or facilities used by the Company and its Restricted Subsidiaries in the production and marketing of oil and gas which would reasonably be expected, either individually or in the aggregate, to have a Material Adverse Effect.

(r) None of the Company or any of its subsidiaries is an "investment company" or a company "controlled" by an "investment company" incorporated in the United States within the meaning of the Investment Company Act.

(s) The Company maintains a system of internal accounting controls sufficient to provide reasonable assurance that: (A) transactions are executed in accordance with management's general or specific authorizations; (B) transactions are recorded as necessary to permit preparation of its financial statements in conformity with United States generally accepted accounting principles and to maintain accountability for assets; (C) access to assets is permitted only in accordance with management's general or specific authorization; and (D) the recorded accountability for its assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

(t) As of December 31, 2001, neither the Company nor any of its subsidiaries had any liabilities or obligations, direct or contingent, which either individually or in the aggregate were material to the business, condition (financial or otherwise), properties, results of operations or prospects of the Company and its subsidiaries, taken as a whole, that were not set forth in the Company's consolidated balance sheet as of such date or in the notes thereto incorporated by reference in the Prospectus. Since December 31, 2001, except as set forth or contemplated by reference in the Prospectus, (a) none of the Company or any of its subsidiaries has (1) incurred any liabilities or obligations, direct or contingent, that would reasonably be expected to have a Material Adverse Effect, or (2) entered into any material transaction not in the ordinary course of business, (b) there has not been any event or development in respect of the business or condition (financial or other) of the Company and its subsidiaries that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect and (c) there has been no dividend or distribution of any kind declared, paid or made by the Company on any class of its capital stock except in a manner consistent with past practices.

(u) None of the Company or any of its subsidiaries (or any agent thereof acting on their behalf other than the Underwriters, as to whom the Company makes no representation) has taken, and none of them will take (other than the Underwriters, as to whom the Company makes no representation), any action that would reasonably be expected to cause this Agreement or the issuance or sale of the Debentures to violate Regulations T, U or X of the Board of Governors of the Federal Reserve System or analogous foreign laws and regulations, in each case as in effect, or as the same may hereafter be in effect, at the time of purchase.

(v) Each firm of accountants that has certified or shall certify the financial statements included or to be included as part of or incorporated by reference in the Registration Statement and Prospectus is an independent accountant within the meaning of the Act. The historical financial statements and the notes thereto included in or incorporated by reference in the Registration Statement and Prospectus present fairly in all material respects the consolidated financial position and results of operations of the Company and its subsidiaries at the respective dates and for the respective periods indicated. Such financial statements have been prepared in accordance with United States generally accepted accounting principles applied on a consistent basis throughout the periods presented (except as disclosed in the Registration Statement and Prospectus). The pro forma financial statements included in or incorporated by reference in the Registration Statement and Prospectus have been prepared on a basis consistent with such historical statements, except for the pro forma adjustments specified therein, and give effect to assumptions made on a reasonable basis and present fairly in all material respects the transactions disclosed in the Registration Statement and Prospectus. The other financial and statistical information and data included in or incorporated by reference in the Registration Statement and Prospectus are accurately pre-



mented in all material respects and prepared on a basis consistent with the financial statements and the books and records of the Company and its subsidiaries.

(w) Except as described in the Prospectus, there are no contracts, agreements or understandings between the Company or any subsidiaries and any other person other than the Underwriters that would give rise to a valid claim against the Company, any of its subsidiaries or the Underwriters for a brokerage commission, finder's fee or like payment in connection with the issuance, purchase and sale of the Debentures.

(x) The statistical and market-related data and forward-looking statements (within the meaning of Section 27A of the Act and Section 21E of the Exchange Act) included in the Registration Statement and Prospectus are based on or derived from sources that the Company believes to be reliable and accurate in all material respects and represent their good faith estimates that are made on the basis of data derived from such sources.

(y) Each certificate signed by any officer of the Company and delivered to the Underwriters or counsel for the Underwriters pursuant to, or in connection with, this Agreement shall be deemed to be a representation and warranty by the Company to the Underwriters as to the matters covered by such certificate.

(z) The Debentures constitute unsecured and unsubordinated obligations of the Company and rank pari passu without any preference among themselves; the Debentures rank pari passu with all other unsecured and unsubordinated debt obligations of the Company.

4. Certain Covenants of the Company: The Company hereby agrees:

(a) to furnish such information as may be required and otherwise to cooperate in qualifying the Debentures for offering and sale under the securities or blue sky laws of such states as you may designate and to maintain such qualification in effect as long as required for the distribution of the Debentures, provided that the Company shall not be required to qualify as a foreign corporation or to consent to the service of process under the laws of any such state (except service of process with respect to the offering and sale of the Debentures); and to promptly advise you of the receipt by the Company of any notification with respect to the suspension of the qualification of the Debentures for sale in any jurisdiction or the initiation or threatening of any proceeding for such purpose;

(b) to prepare the Prospectus in substantially the form of the Preliminary Prospectus with such changes as are reasonably approved by the Underwriters and file such Prospectus with the Commission pursuant to Rule 424(b) under the Act, on or before the second business day following the date of this Agreement (or such earlier time as may be required by the Act), and to make available to the Underwriters in New York City, as soon as practicable and from time to time to furnish to the Underwriters,

as many copies of the Prospectus (or of the Prospectus as amended or supplemented if the Company shall have made any amendments or supplements thereto after the effective date of the Registration Statement relating to the Debentures) as the Underwriters may reasonably request for the purposes contemplated by the Act; in case any Underwriter is required to deliver a prospectus within the nine-month period referred to in Section 10(a)(3) of the Act in connection with the sale of the Debentures, the Company will prepare promptly upon request, but at the expense of such Underwriter, such amendment or amendments to the Registration Statement and such prospectuses as may be necessary to permit compliance with the requirements of Section 10(a)(3) of the Act;

(c) to advise you promptly and (if requested by you) to confirm such advice in writing when any post-effective amendment thereto becomes effective;

(d) for so long as the delivery of a prospectus is required in connection with the offering or sale of the Debentures, to advise you promptly, confirming such advice in writing, of any request by the Commission for amendments or supplements to the Registration Statement or Prospectus or for additional information with respect thereto, or of notice of institution of proceedings for or the entry of a stop order suspending the effectiveness of the Registration Statement and, if the Commission should enter a stop order suspending the effectiveness of the Registration Statement, to make every reasonable effort to obtain the lifting or removal of such order as soon as possible; for so long as the delivery of a prospectus is required in connection with the offering or sale of the Debentures, to advise you promptly of any proposal to amend or supplement the Registration Statement or Prospectus including by filing any documents that would be incorporated therein by reference, to furnish you a draft of such proposed amendment in advance of such filing and to file no such amendment or supplement to which you shall reasonably object in writing unless the Company is required by law to make such filing;

(e) to file promptly all reports and any definitive proxy or information statement required to be filed by the Company with the Commission in order to comply with the Exchange Act subsequent to the date of the Prospectus and for so long as the delivery of a prospectus is required in connection with the offering or sale of the Debentures, and to promptly notify you of such filing;

(f) if necessary or appropriate, to file a registration statement pursuant to Rule 462(b) under the Act;

(g) to advise the Underwriters promptly of the happening of any event known to the Company within the time during which a prospectus relating to the Debentures is required to be delivered under the Act which, in the judgment of the Company, would require the making of any change in the Prospectus then being used, or in the information incorporated therein by reference, so that the Prospectus would not

include an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in light of the circumstances under which they are made, not misleading, and, during such time, to prepare and furnish, at the Company's expense, to the Underwriters promptly such amendments or supplements to such Prospectus as may be necessary to reflect any such change and to furnish to you a copy of such proposed amendment or supplement before filing any such amendment or supplement with the Commission;

(h) to make generally available to its security holders (as provided in Rule 158(b) under the Act) an earnings statement of the Company (which will satisfy the provisions of Section 11(a) of the Act) covering a period of twelve months beginning after the effective date of the Registration Statement (as defined in Rule 158(c) under Act) as soon as is reasonably practicable after the termination of such twelve-month period but not later than fifteen months after the end of the Company's current fiscal quarter;

(i) to apply the net proceeds from the sale of the Debentures in the manner set forth under the caption "Use of Proceeds" in the Prospectus;

(j) to pay all costs, expenses, fees and taxes (other than any transfer taxes and fees and disbursements of counsel for the Underwriters except as set forth under Section 5 hereof and (iii) below) incident to and in connection with (i) the preparation and filing of the Registration Statement, each Preliminary Prospectus, the Prospectus, and any amendments or supplements thereto, and the printing and furnishing of copies of each thereof to the Underwriters and to dealers (including costs of mailing and shipment), (ii) the preparation, issuance, execution, authentication and delivery of the Debentures, (iii) the qualification of the Debentures for offering and sale under state laws (including the reasonable legal fees and filing fees and other disbursements of counsel for the Underwriters) and the printing and furnishing of copies of any blue sky surveys to the Underwriters and to dealers, (iv) any fees payable to investment rating agencies with respect to the Debentures, (v) the approval of the Debentures by DTC for "book entry" transfer, (vi) the fees and expenses of the Trustee and its counsel in accordance with the Indenture and (vii) the performance of the Company's other obligations hereunder including, but not limited to, the fees, disbursements and expenses of the Company's counsel and accountants; and

(k) to furnish to you, before filing with the Commission subsequent to the effective date of the Registration Statement and during the period referred to in paragraph (d) above, a copy of any document proposed to be filed pursuant to Section 13, 14 or 15(d) of the Exchange Act.

5. Reimbursement of Underwriters' Expenses: If the Debentures are not delivered for any reason other than the termination of this Agreement pursuant to clause (iii), (iv) or (v) of Section 7 or the first two paragraphs of Section 8 hereof or the default by one or

more of the Underwriters in its or their respective obligations hereunder, the Company shall, in addition to paying the amounts described in Section 4(j) hereof, reimburse the Underwriters for all of their reasonable out-of-pocket expenses, including the fees and disbursements of their counsel.

6. Conditions of Underwriters' Obligations: The several obligations of the Underwriters hereunder are subject to the accuracy of the representations and warranties on the part of the Company on the date hereof and at the time of purchase as set forth below, the performance by the Company of its obligations hereunder and to the following additional conditions precedent:

(a) The Company shall furnish to you at the time of purchase an opinion of (i) Mayer, Brown, Rowe & Maw, counsel for the Company substantially in the form of Exhibit A hereto, addressed to the Underwriters and dated the time of purchase, with reproduced copies thereof for each of the other Underwriters.

(b) You shall have received from each of KPMG LLP and Arthur Andersen LLP letters dated, respectively, as of the date of this Agreement and the time of purchase and addressed to the Underwriters (with reproduced copies for each of the other Underwriters) in the forms heretofore approved by Banc of America Securities LLC and UBS Warburg LLC and counsel to the Underwriters.

(c) You shall have received at the time of purchase the favorable opinion of Cahill Gordon & Reindel, counsel for the Underwriters, dated the time of purchase, covering such matters as are customarily covered in such opinions.

(d) All filings with the Commission required by Rule 424 under the Act to have been filed by the time of purchase shall have been made within the applicable time period prescribed for such filing by Rule 424.

(e) Prior to the time of purchase, (i) no stop order with respect to the effectiveness of the Registration Statement shall have been issued under the Act or proceedings initiated under Section 8(d) or 8(e) of the Act; (ii) the Registration Statement and all amendments thereto filed after the date hereof, if any, shall 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 (iii) the Prospectus and all amendments or supplements thereto filed after the date hereof, if any, shall not contain an untrue statement of material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they are made, not misleading.

(f) Between the time of execution of this Agreement and the time of purchase no material and unfavorable change, financial or otherwise (other than as referred to in the Registration Statement and Prospectus), in the business, condition or prospects of the Company and its subsidiaries taken as a whole shall occur or become known.

(g) The Company will, at the time of purchase, deliver to you a certificate of two of its authorized officers to the effect that the representations and warranties of the Company contained in this Agreement shall be true and correct, or true and correct in all material respects where such representations and warranties are not qualified by materiality or Material Adverse Effect, on the date of this Agreement and, in each case after giving effect to the transactions contemplated hereby, at the time of purchase, except that if a representation and warranty is made as of a specific date, and such date is expressly referred to therein, such representation and warranty shall be true and correct (or true and correct in all material respects, as applicable) as of such date, and that the Company shall have performed such of its obligations under this Agreement as are to be performed at or before the time of purchase and the conditions set forth in paragraph (e) of this Section 6 have been met.

(h) The Company shall have furnished to you such other documents and certificates as to the accuracy and completeness of any statement in the Registration Statement and the Prospectus as of the time of purchase as you may reasonably request.

(i) The Debentures shall have initially been assigned ratings of "BBB" and "Baa2" (with negative watch) by Standard & Poor's Rating Services and Moody's Investors Service, Inc., respectively, and no such rating (or other debt rating of the Company) shall have been downgraded or placed on any "watch list" for possible downgrading as of or prior to the time of purchase.

(j) All agreements set forth in the representation letter to the Company to DTC relating to the approval of the Debentures by DTC for "book-entry" transfer shall have been complied with.

7. Effective Date of Agreement; Termination: This Agreement shall become effective when the parties hereto have executed and delivered this Agreement.

The obligations of the several Underwriters hereunder shall be subject to termination by you at any time prior to the time of purchase, if prior to such time (i) the Company shall have failed, refused or been unable to perform in any material respect any agreement on its part to be performed under this Agreement when and as required, (ii) any other condition to the obligations of the Underwriters under this Agreement to be fulfilled by the Company pursuant to Section 6 is not fulfilled when and as required in any material respect, (iii) trading in securities generally on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market shall have been suspended or limitations or minimum prices shall have been established on the New York Stock Exchange, the American Stock Exchange or the Nasdaq National Market, (iv) a general banking moratorium shall have been declared either by the United States or New York State authorities, or if there has been a material disruption in securities settlement or clearance services in the United States, or (v) the United States shall have declared war in accordance with its constitutional processes or there

shall have occurred any material outbreak or escalation of hostilities or other national or international calamity or crisis of such magnitude in its effect on the financial markets of the United States as, in your judgment, to make it impracticable to market the Debentures.

If you elect to terminate this Agreement as provided in this Section 7, the Company and each other Underwriter shall be notified promptly by letter or telegram.

If the sale to the Underwriters of the Debentures, as contemplated by this Agreement, is not carried out by the Underwriters for any reason permitted under this Agreement or if such sale is not carried out because the Company shall be unable to comply with any of the terms of this Agreement, the Company shall not be under any obligation or liability under this Agreement (except to the extent provided in Sections 4(j), 5 and 9 hereof), and the Underwriters shall be under no obligation or liability to the Company under this Agreement (except to the extent provided in Section 9 hereof) or to one another hereunder.

8. Increase in Underwriters' Commitments: Subject to Sections 6 and 7, if any Underwriter shall default in its obligation to take up and pay for the Debentures to be purchased by it hereunder (otherwise than for a reason sufficient to justify the termination of this Agreement under the provisions of Section 7 hereof) and if the aggregate principal amount of Debentures which all Underwriters so defaulting shall have agreed but failed to take up and pay for does not exceed 10% of the total aggregate principal amount of Debentures, the non-defaulting Underwriters shall take up and pay for (in addition to the aggregate number of Debentures they are obligated to purchase pursuant to Section 1 hereof) the aggregate principal amount of Debentures agreed to be purchased by all such defaulting Underwriters, as hereinafter provided. Such Debentures shall be taken up and paid for by such non-defaulting Underwriter or Underwriters in such amount or amounts as you may designate with the consent of each Underwriter so designated, or in the event no such designation is made, such Debentures shall be taken up and paid for by all non-defaulting Underwriters pro rata in proportion to the aggregate principal amount of Debentures set opposite the names of such non-defaulting Underwriters in Schedule A.

Without relieving any defaulting Underwriter from its obligations hereunder, the Company agrees with the non-defaulting Underwriters that it will not sell any Debentures hereunder unless all of the Debentures are purchased by the Underwriters (or by substituted Underwriters selected by you with the approval of the Company or selected by the Company with your approval).

If a new Underwriter or Underwriters are substituted by the Underwriters or by the Company for a defaulting Underwriter or Underwriters in accordance with the foregoing provision, the Company or you shall have the right to postpone the time of purchase for a period not exceeding five business days in order that any necessary changes in the Registration Statement and Prospectus and other documents may be effected.

The term Underwriter as used in this Agreement shall refer to and include any Underwriter substituted under this Section 8 with like effect as if such substituted Underwriter had originally been named in Schedule A.

If the aggregate principal amount of Debentures which the defaulting Underwriter or Underwriters agreed to purchase exceeds 10% of the total principal amount of Debentures which all Underwriters agreed to purchase hereunder, and if neither the non-defaulting Underwriters nor the Company shall make arrangements within the five business day period stated above for the purchase of all the Debentures which the defaulting Underwriter or Underwriters agreed to purchase hereunder, this Agreement shall be terminated without further act or deed and without any liability on the part of the Company to any non-defaulting Underwriter and without any liability on the part of any non-defaulting Underwriter to the Company. Nothing in this paragraph, and no action taken hereunder, shall relieve any defaulting Underwriter from liability in respect of any default of such Underwriter under this Agreement.

9. Indemnity and Contribution: (a) The Company agrees to indemnify and hold harmless each Underwriter, its partners, directors and officers, and any person who controls any Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and the successors and assigns of all the foregoing persons from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which, jointly or severally, any such Underwriter or person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or in a Prospectus (the term "Prospectus" for the purpose of this Section 9 being deemed to include any Preliminary Prospectus, the Prospectus and the Prospectus as amended or supplemented by the Company), or arises out of or is based upon any omission or alleged omission to state a material fact required to be stated in either such Registration Statement or Prospectus or necessary to make the statements made therein not misleading, except insofar as any such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by or on behalf of any Underwriter through you to the Company expressly for use with reference to such Underwriter in such Registration Statement or such Prospectus or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information required to be stated in such Registration Statement or Prospectus or necessary to make such information not misleading.

If any action, suit or proceeding (together, a "Proceeding") is brought against an Underwriter or any such person in respect of which indemnity may be sought against the Company pursuant to the foregoing paragraph, such Underwriter or such person shall promptly notify the Company in writing of the institution of such Proceeding and the Company shall assume the defense of such Proceeding, including the employment of counsel

reasonably satisfactory to such indemnified party and payment of all fees and expenses, provided, however, that the omission to so notify the Company shall not relieve the Company from any liability which the Company may have to any Underwriter or any such person or otherwise, except to the extent that it has been prejudiced in any material respect by such omission to so notify. Such Underwriter or controlling person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of such Underwriter or such controlling person unless (i) the employment of such counsel shall have been authorized in writing by the Company in connection with the defense of such Proceeding or (ii) the Company shall not have, within a reasonable period of time after notice of the Proceeding, employed counsel to have charge of the defense of such Proceeding or (iii) the named parties to such Proceeding include both the Company and such Underwriter or controlling person and such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from, additional to or in conflict with those available to the Company (in which case the Company shall not have the right to direct nor any obligation to assume the defense of such Proceeding on behalf of the indemnified party or parties, but the Company may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of the Company), in any of which events such fees and expenses shall be borne by the Company and paid as and to the extent reasonably incurred (it being understood, however, that the Company shall not be liable for the expenses of more than one separate counsel (in addition to any appropriate local counsel) in any one Proceeding or series of similar or related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). Anything in this paragraph to the contrary notwithstanding, the Company shall not be liable for any settlement of any such Proceeding effected without its written consent but if settled with the written consent of the Company, the Company agrees to indemnify and hold harmless any Underwriter and any such person from and against any loss or liability by reason of such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then the indemnifying party agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 30 days' prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding 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 claims that are the subject matter of such Proceeding.

(b) Each Underwriter severally and not jointly agrees to indemnify and hold harmless the Company, its directors and officers and any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and the



successors and assigns of all the foregoing persons from and against any loss, damage, expense, liability or claim (including the reasonable cost of investigation) which, jointly or severally, the Company or any such person may incur under the Act, the Exchange Act, the common law or otherwise, insofar as such loss, damage, expense, liability or claim arises out of or is based upon any untrue statement or alleged untrue statement of a material fact contained in and in conformity with information furnished in writing by or on behalf of such Underwriter through you to the Company expressly for use with reference to such Underwriter in the Registration Statement (or in the Registration Statement as amended by any post-effective amendment thereof by the Company) or in a Prospectus, or arises out of or is based upon any omission or alleged omission to state a material fact in connection with such information required to be stated in such Registration Statement or such Prospectus or necessary to make such information not misleading.

If any Proceeding is brought against the Company or any such person in respect of which indemnity may be sought against any Underwriter pursuant to the foregoing paragraph, the Company or such person shall promptly notify such Underwriter in writing of the institution of such Proceeding and such Underwriter shall assume the defense of such Proceeding, including the employment of counsel reasonably satisfactory to such indemnified party and payment of all fees and expenses; provided, however, that the omission to so notify such Underwriter shall not relieve such Underwriter from any liability which such Underwriter may have to the Company or any such person or otherwise, except to the extent that it has been prejudiced in any material respect by such omission to so notify. The Company or such person shall have the right to employ its or their own counsel in any such case, but the fees and expenses of such counsel shall be at the expense of the Company or such person unless (i) the employment of such counsel shall have been authorized in writing by such Underwriter in connection with the defense of such Proceeding or (ii) such Underwriter shall not have, within a reasonable period of time after notice of the Proceeding, employed counsel to have charge of the defense of such Proceeding or (iii) the named parties to such Proceeding include both the Company and such Underwriter or controlling person and such indemnified party or parties shall have reasonably concluded that there may be defenses available to it or them which are different from or additional to or in conflict with those available to such Underwriter (in which case such Underwriter shall not have the right to direct nor the obligation to assume the defense of such Proceeding on behalf of the indemnified party or parties, but such Underwriter may employ counsel and participate in the defense thereof but the fees and expenses of such counsel shall be at the expense of such Underwriter), in any of which events such fees and expenses shall be borne by such Underwriter and paid as and to the extent reasonably incurred (it being understood, however, that such Underwriter shall not be liable for the expenses of more than one separate counsel in addition to any appropriate local counsel in any one Proceeding or series of similar or related Proceedings in the same jurisdiction representing the indemnified parties who are parties to such Proceeding). Anything in this paragraph to the contrary notwithstanding, no Underwriter shall be liable for any settlement of any such Proceeding effected without the written consent of such Underwriter but if settled with the written consent of such Underwriter, such Underwriter agrees to indemnify and hold harmless the Company and any such person from and against any loss or liability by reason of

such settlement. Notwithstanding the foregoing sentence, if at any time an indemnified party shall have requested an indemnifying party to reimburse the indemnified party for fees and expenses of counsel as contemplated by the second sentence of this paragraph, then the indemnifying party agrees that it shall be liable for any settlement of any Proceeding effected without its written consent if (i) such settlement is entered into more than 60 business days after receipt by such indemnifying party of the aforesaid request, (ii) such indemnifying party shall not have reimbursed the indemnified party in accordance with such request prior to the date of such settlement and (iii) such indemnified party shall have given the indemnifying party at least 30 days' prior notice of its intention to settle. No indemnifying party shall, without the prior written consent of the indemnified party, effect any settlement of any pending or threatened Proceeding 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 claims that are the subject matter of such Proceeding.

(c) If the indemnification provided for in this Section 9 is held to be unavailable to an indemnified party under subsections (a) and (b) of this Section 9 in respect of any losses, damages, expenses, liabilities or claims referred to therein, then each applicable indemnifying party, in lieu of indemnifying such indemnified party, shall contribute to the amount paid or payable by such indemnified party as a result of such losses, damages, expenses, liabilities or claims (i) in such proportion as is appropriate to reflect the relative benefits received by the Company on the one hand and the Underwriters on the other hand from the offering of the Debentures 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 of the Underwriters on the other in connection with the statements or omissions which resulted in such losses, damages, expenses, liabilities or claims, as well as any other relevant equitable considerations. The relative benefits received by the Company on the one hand and the Underwriters on the other shall be deemed to be in the same respective proportion as the total proceeds from the offering (net of underwriting discounts and commissions but before deducting expenses) received by the Company and the underwriting discounts and commissions received by the Underwriters. The relative fault of the Company on the one hand and of the Underwriters on the other shall be determined by reference to, among other things, whether the untrue statement or alleged untrue statement of a material fact or omission or alleged omission relates to information supplied by the Company or by the Underwriters and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The amount paid or payable by a party as a result of the losses, claims, damages and liabilities referred to in this subsection shall be deemed to include any legal or other fees or expenses reasonably incurred by such party in connection with investigating, preparing to defend or defending any Proceeding.

(d) The Company and the Underwriters agree that it would not be just and equitable if contribution pursuant to this Section 9 were determined by pro rata allocation (even if the Underwriters were treated as one entity for such purpose) or by any other method of

allocation that does not take account of the equitable considerations referred to in subsection (c) above. Notwithstanding the provisions of this Section 9, no Underwriter shall be required to contribute any amount in excess of the amount by which the total price at which the Debentures underwritten by such Underwriter and distributed to the public were offered to the public exceeds the amount of any damage which such Underwriter has otherwise been required to pay by reason of such untrue statement or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Act) shall be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation. The Underwriter's obligations to contribute pursuant to this Section 9 are several in proportion to their respective underwriting commitments and not joint.

(e) The indemnity and contribution agreements contained in this Section 9 and the covenants, warranties and representations of the Company contained in this Agreement shall remain in full force and effect regardless of any investigation made by or on behalf of any Underwriter, its partners, directors and officers or any person (including each partner, officer or director of such person) who controls any Underwriter within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, or by or on behalf of the Company, its directors and officers or any person who controls the Company within the meaning of Section 15 of the Act or Section 20 of the Exchange Act, and shall survive the issuance and delivery of the Debentures. In addition, the agreements contained in Sections 4(j), 5, 9, 10 and 12 shall survive the termination of this Agreement, including pursuant to Section 7. The Company and each Underwriter agree promptly to notify each other of the commencement of any Proceeding against it and, in the case of the Company, against any of the Company's officers or directors, in connection with the issuance and sale of the Debentures, or in connection with the Registration Statement or Prospectus.

10. Underwriters' Information. The Company and the Underwriters severally acknowledge that the statements with respect to the offer and sale of the Debentures set forth in the fourth and fifth paragraphs and ninth paragraph (as it applies to First Union Securities, Inc.(it being understood that First Union Securities, Inc. shall be solely responsible for such information)) under the caption "Underwriting" in the Preliminary Prospectus and the Prospectus (to the extent such statements relate to the Underwriters) constitute the only information furnished in writing by the Underwriters expressly for use in the Preliminary Prospectus and Prospectus.

11. Notices: Except as otherwise herein provided, all statements, requests, notices and agreements shall be in writing and, if to the Underwriters, shall be mailed, delivered, or telexed, telegraphed or telecopied and confirmed in writing to Banc of America Securities LLC, Bank of America Corporate Center, 100 North Tryon Street, Charlotte, NC 28255, Attention: Transaction Management, and UBS Warburg LLC, 677 Washington Blvd., Stamford, Connecticut 06901, Attention: Syndicate Department and, if to the Company, shall be mailed, delivered, or telexed, telegraphed or telecopied to the Company and confirmed in writing at the offices of the Company at 20 North Broadway, Suite 1500, Oklahoma City,

12. Construction: This Agreement shall be construed in accordance with the laws of the State of New York and each of the parties hereto consents to the jurisdiction of the courts of the State of New York. Each of the parties hereto agrees to submit to the jurisdiction of the courts of the State of New York and the U.S. federal courts sitting in The City of New York for the purposes of any suit, action or proceeding arising out of or relating to this Agreement. Nothing herein shall affect the right to serve process in any other manner permitted by law or shall limit the right of the Underwriters to bring proceedings against the Company in the courts of any other jurisdiction.

13. Parties at Interest: The Agreement herein set forth has been and is made solely for the benefit of the Underwriters and the Company and, to the extent provided in Section 9 hereof, the controlling persons, directors and officers referred to in such section, and their respective successors, assigns, executors and administrators. No other person, partnership, heirs, personal representatives, association or corporation (including a purchaser, as such purchaser, from any of the Underwriters) shall acquire or have any right under or by virtue of this Agreement.

14. Counterparts: This Agreement may be signed by the parties in one or more counterparts which together shall constitute one and the same agreement.

15. Successors and Assigns: This Agreement shall be binding upon the Underwriters and the Company and their successors and assigns and any successor or assign of any substantial portion of the Company's and any of the Underwriters' respective businesses and/or assets.

If the foregoing correctly sets forth the understanding between the Company and the Underwriters, please so indicate in the space provided below for the purpose, whereupon this letter and your acceptance shall constitute a binding agreement between the Company and the Underwriters, severally.

Very truly yours,

**DEVON ENERGY CORPORATION**

By: */s/ William T. Vaughn*

-----  
Name: *William T. Vaughn*

Title: *Senior Vice President - Finance*

Accepted and agreed to as of the date first above written, on behalf of themselves and the other several Underwriters named in Schedule A

**BANC OF AMERICA SECURITIES LLC**

By: */s/ Lily Chang*

Name: *Lily Chang*

Title: *Principal*

By: *UBS WARBURG LLC*

By: */s/ Christopher Forshner*

Name: *Christopher Forshner*

Title: *Executive Director Capital Markets*

By: */s/ Scott D. Whitney*

Name: *Scott D. Whitney*

Title: *Director*

## SCHEDULE A

Underwriter -----	Principal Amount of Debentures -----
Banc of America Securities LLC.....	\$ 327,500,000
UBS Warburg LLC.....	327,500,000
ABN AMRO Incorporated.....	37,500,000
BMO Nesbitt Burns Corp.....	37,500,000
Credit Suisse First Boston Corporation.....	37,500,000
Deutsche Banc Alex. Brown Inc.....	37,500,000
J.P. Morgan Securities Inc.....	37,500,000
RBC Dominion Securities Corporation.....	37,500,000
Salomon Smith Barney Inc.....	37,500,000
First Union Securities, Inc.....	37,500,000
BNY Capital Markets, Inc.....	15,000,000
Credit Lyonnais Securities (USA) Inc.....	15,000,000
Tokyo-Mitsubishi International plc.....	15,000,000
	-----
Total.....	\$1,000,000,000

## SCHEDULE B

Restricted Subsidiary -----	Jurisdiction of Incorporation or Organization -----
Devon Energy Corporation (Oklahoma)	Oklahoma
Devon Energy Production Company L.P.	Oklahoma
Devon Financing Corporation, U.L.C.	Nova Scotia
Devon SFS Operating Inc.	Delaware
Devon Energy Operating Company, L.P. (formerly Mitchell Energy Company L.P.)	Delaware
MND Exploration & Production, Inc.	Delaware
Northstar Energy Corporation	Alberta
Devon Canada (formerly Northstar Energy partnership)	Alberta
Numac Energy Inc.	Alberta
Devon ARL Corporation (formerly Anderson Resources Ltd.)	Alberta

## EXHIBIT A

### FORM OF OPINION OF COUNSEL TO THE COMPANY

The opinion of Mayer, Brown, Rowe & Maw, counsel for the Company (capitalized terms not otherwise defined herein shall have the meanings provided in the Underwriting Agreement, to which this is an Exhibit), to be delivered pursuant to Section 6(a) of the Underwriting Agreement shall be to the effect that:

(i) Each of the Company and Devon Energy Production Company L.P., Devon SFS Operating Inc. and Devon Energy Corporation (Oklahoma) (collectively, the "U.S. Restricted Subsidiaries"): (a) is a corporation, partnership or other entity duly incorporated or formed, as the case may be, and validly existing and in good standing under the laws of the jurisdiction of its incorporation, organization or formation; (b) to such counsel's knowledge, has all requisite corporate or other power and authority necessary to carry on its business as it is currently being conducted and as described in the Registration Statement and the Prospectus and to own, lease, license and operate its respective properties in accordance with its business as currently conducted; and (c) is qualified to do business and is in good standing in all other jurisdictions identified by such counsel on a schedule attached to its opinion and based solely on certificates of good standing from such identified jurisdictions.

(ii) The Company has all requisite corporate power and authority to execute, deliver and perform all of its obligations under the Operative Documents and to consummate the transactions contemplated by the Operative Documents to be consummated on its part.

(iii) The Underwriting Agreement has been duly and validly authorized, executed and delivered by the Company.

(iv) The Indenture has been duly and validly authorized, executed and delivered by the Company and (assuming the due authorization, execution and delivery thereof by the Trustee) constitutes a legal, valid and binding obligation of the Company, enforceable against it in accordance with its terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting the enforcement of creditors' rights generally and by general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(v) The Debentures, when issued, authenticated and delivered by the Company in accordance with the terms of the Underwriting Agreement and Indenture, will constitute legal, valid and binding obligations of the Company, entitled to the benefits of the Indenture and enforceable against the Company in accordance with their terms, except as the enforcement thereof may be limited by bankruptcy, insolvency, reorganization, fraudulent conveyance, moratorium or other similar laws affecting the



enforcement of creditors' rights generally and by general principles of equity and the discretion of the court before which any proceeding therefor may be brought.

(vi) the Registration Statement and the Prospectus (except as to the financial statements and schedules and other financial data contained or incorporated by reference therein, as to which such counsel need express no opinion) comply as to form in all material respects with the requirements of the Act and the Trust Indenture Act.

(vii) the Registration Statement has become effective under the Act and the Indenture has been qualified under the Trust Indenture Act and, to the best of such counsel's knowledge, no stop order proceedings with respect thereto are pending or threatened under the Act; and any required filing of the Prospectus and any supplement thereto pursuant to Rule 424 under the Act has been made in the manner and within the time period required by such Rule 424;

(viii) The execution, delivery and performance by the Company of the Operative Documents, including the consummation of the offer and sale of the Debentures, does not or will not violate, conflict with or constitute a breach of any of the terms or provisions of, or a default under (or an event that with notice or the lapse of time, or both, would constitute a default), or require consent under, or result in the creation or imposition of a lien, charge or encumbrance on any property or assets of the Company or any Restricted Subsidiary or an acceleration of any indebtedness of the Company or any Restricted Subsidiary pursuant to, (i) the charter, bylaws or other constitutive documents of the Company or any U.S. Restricted Subsidiary, (ii) to the knowledge of such counsel, any Agreements and Instruments filed as an exhibit to the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2001, together with any amendments to such Agreements or Instruments, (iii) to the knowledge of such counsel, any law, statute, rule or regulation applicable to the Company or any Restricted Subsidiary or its respective assets or properties typical, in such counsel's experience, for transactions contemplated by the Operative Documents and assuming the accuracy of the representations and warranties of the Company and the Underwriters in the Underwriting Agreement and the due performance by the Company and the Underwriters thereof or (iv) to the knowledge of such counsel, any judgment, order or decree of any domestic or foreign court or governmental agency or authority having jurisdiction over the Company or any U.S. Restricted Subsidiary or their respective assets or properties.

(ix) No consent, approval, authorization or order of, or filing, registration, qualification, license or permit of or with, any United States court or governmental agency, body or administrative agency is required to be obtained or made by the Company in connection with the issue or sale of the Debentures by the Company as contemplated by the Underwriting Agreement, except (x) such as have been obtained or made on or prior to the date hereof, (y) such as may be required under state securities and blue sky laws, or (z) that would not reasonably be expected, either individually or

in the aggregate (1) to have a Material Adverse Effect or (2) to interfere with or adversely affect the issuance of the Debentures in any jurisdiction or adversely affect the consummation of the transactions contemplated by any of the Operative Documents.

(x) The Company is not an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

(xi) Each of the Debentures and the Indenture conforms as to legal matters in all material respects to the description thereof contained in the Prospectus.

(xii) Each document filed under the Exchange Act and incorporated by reference in the Registration Statement (other than the financial statements and related schedules included therein, as to which such counsel need not comment), when they were filed with the Commission, appeared on their face to comply as to form in all material respects with the requirements of the Exchange Act and the rules and regulations promulgated thereunder.

In addition, such counsel shall state that they have participated in discussions with your representatives, representatives of the Company and their counsel and independent public accountants concerning the preparation of the Registration Statement and Prospectus. Such counsel shall state that, although they are not passing upon and do not assume any responsibility for the accuracy, completeness or fairness of any of the statements in the Registration Statement and Prospectus (except to the extent specified elsewhere in such letter or with reference to such counsel), no facts have come to their attention that lead such counsel to believe that, at the time the Registration Statement became effective, the Registration Statement (other than the financial statements and related schedules and other financial data contained or incorporated therein as to which such counsel need express no belief) contained any untrue statement of material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein not misleading, or that the Prospectus (other than the financial statements and related schedules and other financial data contained or incorporated therein as to which such counsel need express no belief), as of its date or as of the time of purchase, contained or contains an untrue statement of a material fact or omitted or omits to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

**EXHIBIT 4.1**

**DEVON ENERGY CORPORATION**

**TO**

**THE BANK OF NEW YORK,**

**as Trustee**

**INDENTURE**

**Dated as of March 1, 2002**

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INDENTURE, dated as of March 1, 2002, between DEVON ENERGY CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), having its principal office at 20 North Broadway, Suite 1500, Oklahoma City, Oklahoma 73102-8260, and THE BANK OF NEW YORK, a New York banking corporation, having its principal corporate trust office at 101 Barclay Street, New York, New York 10286, Attention: Corporate Trust Administration, as Trustee (herein called the "Trustee").

## **RECITAL OF THE COMPANY**

The Company has duly authorized the execution and delivery of this Indenture to provide for the issuance from time to time of its debentures, notes or other evidences of indebtedness (herein called the "Debt Securities") in an unlimited aggregate principal amount, to be issued in one or more series as contemplated herein; and all acts necessary to make this Indenture a valid and legally binding agreement of the Company have been performed.

For all purposes of this Indenture, except as otherwise expressly provided or unless the context otherwise requires, capitalized terms used herein shall have the meanings assigned to them in Article I of this Indenture.

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

For and in consideration of the premises and the purchase of the Debt Securities by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the Debt Securities or of series thereof, as follows:

## **ARTICLE I**

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

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

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

- (a) the terms defined in this Article have the meanings assigned to them in this Article and include the plural as well as the singular;
- (b) all terms used herein without definition which are defined in the Trust Indenture Act, either directly or by reference therein, have the meanings assigned to them therein;
- (c) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP; and
- (d) 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.

Certain terms, used principally in Article IX, are defined in that Article.

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

"Additional Interest" means the interest, if any, that shall accrue on any interest on the Debt Securities of any series the payment of which has not been made on the applicable Interest Payment Date and which shall accrue at the rate per annum specified or determined as specified in such Debt Security.

"Additional Amounts" means any additional amounts which are required hereby or by any Security, under circumstances specified herein or therein, to be paid by the Company in respect of certain taxes, assessments or other governmental charges imposed on Holders specified therein and which are owing to such Holders.

"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; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

"Authenticating Agent" means any Person (other than the Company or an Affiliate of the Company) authorized by the Trustee pursuant to Section 9.15 to act on behalf of the Trustee to authenticate one or more series of Debt Securities or Tranche thereof.

"Authorized Officer" means the Chairman of the Board, the President, any Vice President, the Treasurer or any other duly authorized officer of the Company.

"Board of Directors" means either the board of directors of the Company or any committee thereof duly authorized to act or any director or directors and/or officer or officers of the Company to whom that board or committee shall have duly delegated its authority in respect of matters relating to this Indenture.

"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", when used with respect to a Place of Payment or any other particular location specified in the Debt Securities or this Indenture, means any day, other than a Saturday or Sunday, which is not a day on which banking institutions or trust companies in such Place of Payment or other location are generally authorized or required by law, regulation or executive order to remain closed, except as may be otherwise specified as contemplated by Section 3.01.

"Capital Interests" means, with respect to any Person, any and all shares, interests, participations, rights or other equivalents (however designated) of such Person's equity, including, without limitation (i) with respect to partnerships, partnership interests (whether general or limited),  
(ii) with respect to limited liability companies, member interests, and (iii)



any other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distributions of assets of, such Person.

"Commission" means the Securities and Exchange Commission, as from time to time constituted, created under the Securities Exchange Act of 1934, or, if at any time after the date of execution and delivery of this Indenture such Commission is not existing and performing the duties now assigned to it under the Trust Indenture Act, then the body, if any, performing such duties at such time.

"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 an Authorized Officer and delivered to the Trustee.

"Consolidated Net Tangible Assets" means, calculated as of the date of the financial statements for the most recently ended fiscal quarter or fiscal year, as applicable, prior to the date of determination, the aggregate amount of assets of the Company and its consolidated Subsidiaries, less applicable reserves and other properly deductible items but including investments in non-consolidated entities, after deducting therefrom:

(i) all current liabilities, excluding any portion thereof constituting Funded Debt by reason of being renewable or extendible at the option of the obligor beyond 12 months from the date of determination; and

(ii) all goodwill, trade names, trademarks, patents, unamortized debt discount and expenses and other like intangibles, all as set forth on a consolidated balance sheet of the Company and its consolidated Subsidiaries and computed in accordance with GAAP.

"Corporate Trust Office" means the office of the Trustee at which at any particular time its corporate trust business shall be principally administered, which office at the date of execution and delivery of this Indenture is located at 5 Penn Plaza, 13th Floor, New York, New York 10001, Attention: Corporate Trust Administration.

"corporation" means a corporation, association, company, limited liability company, joint stock company or business trust.

"Debt" has the meaning specified in Section 6.06.

"Debt Securities" has the meaning stated in the first recital of this Indenture and more particularly means any securities authenticated and delivered under this Indenture.

"Debt Security Register" and "Debt Security Registrar" have the respective meanings specified in Section 3.05.

"Defaulted Interest" has the meaning specified in Section 3.07.

"Depository" shall mean, with respect to Debt Securities of any series, for which the Company shall determine that such Debt Securities will be issued in the form of one or more Global Securities, The Depository Trust Company, New York, New York, another clearing agency, or any successor registered as a clearing agency under the Exchange Act or other applicable statute or regulation, which, in each case, shall be designated by the Company pursuant to Section 2.03(c).

"Designated Trustee Office" means any office or offices of the Trustee or any Affiliate, servicer or other agent of the Trustee from time to time established by the Trustee in its discretion as the location at which particular actions or functions (for example, registration of securities and paying agent responsibilities) will occur. The Trustee shall, upon the written request of the Company or any Holder, provide the Company or such Holder with a written list of its Designated Trustee Offices hereunder.

"Discount Debt Security" means any Debt Security which provides for an amount less than the principal amount thereof to be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.02. "Interest" with respect to a Discount Debt Security means interest, if any, borne by such Debt Security at a Stated Interest Rate.

"Dollar" or "\$" means a dollar or other equivalent unit in such coin or currency of the United States as at the time shall be legal tender for the payment of public and private debts.

"Eligible Obligations" means:

(a) with respect to Debt Securities denominated in Dollars, Government Obligations; or

(b) with respect to Debt Securities denominated in a currency other than Dollars or in a composite currency, such other obligations or instruments as shall be specified with respect to such Debt Securities, as contemplated by Section 3.01.

"Event of Default" has the meaning specified in Section 8.01.

"Exchange Act" means the Securities Exchange Act of 1934, as amended.

"Funded Debt" means all Debt of the Company or any of its Subsidiaries for money borrowed which is not by its terms subordinated in right of payment to the prior payment in full of the Debt Securities, having a maturity of more than 12 months from the date as of which the amount thereof is to be determined or having a maturity of fewer than 12 months but by its terms being (1) renewable or extendible beyond 12 months from such date at the option of the obligor; or  
(2) issued in connection with a commitment by a bank or other financial institution to lend so that the indebtedness is treated as though it had a maturity in excess of 12 months pursuant to GAAP.

"GAAP" means generally accepted accounting principles in the United States as set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved

by a significant segment of the accounting profession of the United States, as in effect from time to time.

"Global Security" shall mean, with respect to the Debt Securities, a Debt Security executed by the Company and delivered by the Trustee to the Depository or pursuant to the Depository's instruction, all in accordance with this Indenture, which shall be registered in the name of the Depository or its nominee.

"Governmental Authority" means the government of the United States or of any State or Territory thereof or of the District of Columbia or of any county, municipality or other political subdivision of any thereof, or any department, agency, authority or other instrumentality of any of the foregoing.

"Government Obligations" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States entitled to the benefit of the full faith and credit thereof; and

(b) certificates, depositary receipts or other instruments which evidence a direct ownership interest in obligations described in clause (a) above or in any specific interest or principal payments due in respect thereof; provided, however, that the custodian of such obligations or specific interest or principal payments shall be a bank or trust company (which may include the Trustee or any Paying Agent) subject to Federal or state supervision or examination with a combined capital and surplus of at least \$100,000,000; and provided, further, that except as may be otherwise required by law, such custodian shall be obligated to pay to the holders of such certificates, depositary receipts or other instruments the full amount received by such custodian in respect of such obligations or specific payments and shall not be permitted to make any deduction therefrom.

"Holder" means a Person in whose name a Debt Security is registered in the Debt Security Register.

"Indebtedness" means any indebtedness for money borrowed or representing the deferred purchase price of property or assets purchased.

"Indenture" means this instrument as originally executed and delivered and as it may from time to time be supplemented or amended by one or more indentures or Officer's Certificates supplemental hereto entered into pursuant to the applicable provisions hereof and shall include the terms of particular series of Debt Securities established as contemplated by Section 3.01.

"Interest Payment Date," when used with respect to any Debt Security, means the Stated Maturity of an installment of interest on such Debt Security.

"Maturity," when used with respect to any Debt Security, means the date on which the principal of such Debt Security or an installment of principal becomes due and payable as

provided in such Debt Security or in this Indenture, whether at the Stated Maturity, by declaration of acceleration, upon call for redemption or otherwise.

"Mortgage" means and includes any mortgage, pledge, lien, security interest, conditional sale or other title retention agreement or other similar encumbrance.

"Offshore" means the lands beneath the navigable waters of the United States or Canada, or the continental shelf of the United States or Canada.

"Officer's Certificate" means a certificate signed by an Authorized Officer and delivered to the Trustee.

"Opinion of Counsel" means a written opinion of counsel, who may be an employee of the Company.

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

(a) Debt Securities theretofore canceled by the Trustee or the Debt Security Registrar or delivered to the Trustee or the Debt Security Registrar for cancellation;

(b) Debt Securities deemed to have been paid in accordance with Section 7.01; and

(c) Debt Securities which have been paid pursuant to Section 3.06 or in exchange for or in lieu of which other Debt Securities have been authenticated and delivered pursuant to this Indenture, other than any such Debt Securities in respect of which there shall have been presented to the Trustee proof satisfactory to it and the Company that such Debt Securities are held by a bona fide purchaser or purchasers in whose hands such Debt Securities are valid obligations of the Company;

provided, however, that in determining whether or not the Holders of the requisite principal amount of the Debt Securities Outstanding under this Indenture, or the Outstanding Debt Securities of any series or Tranche, have given any request, demand, authorization, direction, notice, consent or waiver hereunder or whether or not a quorum is present at a meeting of Holders of Debt Securities,

(x) Debt Securities owned by the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor (unless the Company, such Affiliate or such obligor owns all Debt Securities Outstanding under this Indenture, or all Outstanding Debt Securities of each such series and each such Tranche, as the case may be, determined without regard to this clause (x)) shall be disregarded and deemed not to be Outstanding, except that, in determining whether the Trustee shall be protected in relying upon any such request, demand, authorization, direction, notice, consent or waiver or upon any such determination as to the presence of a quorum, only Debt Securities which a Responsible Officer of the Trustee knows to be so owned shall be so disregarded; provided, however, that Debt Securities so owned which have been pledged in good faith may be regarded as Outstanding if the pledgee establishes to the satisfaction

of the Trustee the pledgee's right so to act with respect to such Debt Securities and that the pledgee is not the Company or any other obligor upon the Debt Securities or any Affiliate of the Company or of such other obligor; and

(y) the principal amount of a Discount Debt Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal thereof that would be due and payable as of the date of such determination upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.02;

provided, further, that, in the case of any Debt Security, the principal of which is payable from time to time without presentment or surrender, the principal amount of such Debt Security that shall be deemed to be Outstanding at any time for all purposes of this Indenture shall be the original principal amount thereof less the aggregate amount of principal thereof theretofore paid.

"Paying Agent" means any Person, including the Company, authorized by the Company to pay the principal of and premium, if any, or interest (including Additional Interest), if any, on any Debt Securities on behalf of the Company.

"Periodic Offering" means an offering of Debt Securities of a series from time to time any or all of the specific terms of which Debt Securities, including without limitation the rate or rates of interest (including Additional Interest), if any, thereon, the Stated Maturity or Maturities thereof and the redemption provisions, if any, with respect thereto, are to be determined by the Company or its agents upon the issuance of such Debt Securities.

"Person" means any individual, corporation, limited liability company, partnership, joint venture, trust or unincorporated organization or any Governmental Authority.

"Place of Payment", when used with respect to the Debt Securities of any series, or Tranche thereof, means the place or places, specified as contemplated by Section 3.01, at which, subject to Section 6.02, principal of and premium, if any, and interest (including Additional Interest), if any, on the Debt Securities of such series or Tranche are payable.

"Predecessor Debt Security" of any particular Debt Security means every previous Debt Security evidencing all or a portion of the same debt as that evidenced by such particular Debt Security; and, for the purposes of this definition, any Debt Security authenticated and delivered under Section 3.06 in exchange for or in lieu of a mutilated, destroyed, lost or stolen Debt Security shall be deemed (to the extent lawful) to evidence the same debt as the mutilated, destroyed, lost or stolen Debt Security.

"Principal Property" means any oil, gas or mineral producing property, or any refining, processing, smelting or manufacturing facility located in the United States, Canada or Offshore, other than: (1) property employed in transportation, distribution or marketing; (2) information and electronic data processing equipment; or (3) any property that, in the opinion of the Board of Directors of the Company, is not materially important to the total business conducted by the Company and its Subsidiaries as an entirety.

"Redemption Date," when used with respect to any Debt Security to be redeemed, means the date fixed for such redemption by or pursuant to this Indenture.

"Redemption Price," when used with respect to any Debt Security to be redeemed, means the price at which it is to be redeemed pursuant to this Indenture.

"Regular Record Date" for the interest payable on any Interest Payment Date on the Debt Securities of any series means the date specified for that purpose as contemplated by Section 3.01.

"Required Currency" has the meaning specified in Section 3.11.

"Responsible Officer" shall mean, when used with respect to the Trustee, any officer within the corporate trust department of the Trustee, including any vice president, assistant vice president, assistant secretary, assistant treasurer, trust officer or any other officer of the Trustee who customarily performs functions similar to those performed by the persons who at the time shall be such officers, respectively, or to whom any corporate trust matter is referred because of such person's knowledge of and familiarity with the particular subject and who shall have direct responsibility for the administration of this Indenture.

"Restricted Subsidiary" means Devon Financing Corporation, U.L.C. and any other Subsidiary of the Company: (1) a substantial portion of the property of which is located, or a substantial portion of the business of which is carried on, within the United States, Canada or Offshore; (2) that owns or leases under a capital lease any Principal Property; and (3) that has a Stockholders' Equity exceeding 2% of Consolidated Net Tangible Assets.

"Special Record Date" for the payment of any Defaulted Interest on the Debt Securities of any series means a date fixed by the Trustee pursuant to Section 3.07.

"Stated Interest Rate" means a rate (whether fixed or variable) at which an obligation by its terms is stated to bear interest. Any calculation or other determination to be made under this Indenture by reference to the Stated Interest Rate on a Debt Security shall be made without regard to the effective interest cost to the Company of such Debt Security and without regard to the Stated Interest Rate on, or the effective cost to the Company of, any other indebtedness in respect of which the Company's obligations are evidenced or secured in whole or in part by such Debt Security.

"Stated Maturity," when used with respect to any obligation or any installment of principal thereof or interest thereon, means the date on which the principal of such obligation or such installment of principal or interest is stated to be due and payable (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension).

"Stockholders' Equity" means, with respect to any corporation, partnership, joint venture, association, joint stock company, limited liability company, unlimited liability company, trust, unincorporated organization or government, or any agency or political subdivision thereof, stockholders' equity, as computed in accordance with GAAP.

"Subsidiary" of any Person means any corporation, association or other business entity of which more than 50% of the total voting power of the Capital Interests of such Person entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees thereof or, in the case of a partnership, more than 50% of the partners'

Capital Interests (considering all partners' Capital Interests as a single class), is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof.

"Tranche" means a group of Debt Securities which (a) are of the same series and (b) have identical terms except as to principal amount.

"Trust Indenture Act" means the Trust Indenture Act of 1939 as in force and effect as of the date of execution of this Indenture; provided, however, that in the event the Trust Indenture Act of 1939 is succeeded by another statute or is amended after such date, "Trust Indenture Act" shall mean such successor statute or the Trust Indenture Act of 1939, as so amended, to the extent such successor statute or amendment is applicable to this Indenture or to the actions of the Company or the Trustee under or pursuant 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 with respect to one or more series of Debt Securities pursuant to the applicable provisions of this Indenture, and thereafter "Trustee" shall mean or include each Person who is then a Trustee hereunder, and if at any time there is more than one such Person, "Trustee" as used with respect to the Debt Securities of any series shall mean the Trustee with respect to Debt Securities of that series.

"United States" means the United States of America, its territories, its possessions and other areas subject to its political jurisdiction.

#### SECTION 1.02 Compliance Certificates and Opinions.

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

Every certificate or opinion with respect to compliance with a condition or covenant provided for in this Indenture shall include:

- (a) a statement that each Person signing such certificate or opinion has read such covenant or condition and the definitions herein relating thereto;
- (b) a brief statement as to the nature and scope of the examination or investigation upon which the statements or opinions contained in such certificate or opinion are based;
- (c) a statement that, in the opinion of each such Person, such Person has made such examination or investigation as is necessary to enable such Person 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 such Person, such condition or covenant has been complied with.

#### SECTION 1.03 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 such officer's certificate or opinion are 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.

Whenever, subsequent to the receipt by the Trustee of any Board Resolution, Officer's Certificate, Opinion of Counsel or other document or instrument, a clerical, typographical or other inadvertent or unintentional error or omission shall be discovered therein, a new document or instrument may be substituted therefor in corrected form with the same force and effect as if originally filed in the corrected form and, irrespective of the date or dates of the actual execution and/or delivery thereof, such substitute document or instrument shall be deemed to have been executed and/or delivered as of the date or dates required with respect to the document or instrument for which it is substituted. Anything in this Indenture to the contrary notwithstanding, if any such corrective document or instrument indicates that action has been taken by or at the request of the Company which could not have been taken had the original document or instrument not contained such error or omission, the action so taken shall not be invalidated or otherwise rendered ineffective but shall be and remain in full force and effect, (except to the extent that such action was a result of willful misconduct or bad faith or had or could be expected to have a material adverse effect on the Holders of any Debt Securities issued hereunder). Without limiting the generality of the foregoing, any Debt Securities issued under the authority of such defective document or instrument shall nevertheless be the valid obligations of the Company entitled to the benefits of this Indenture equally and ratably with all other Outstanding Debt Securities.



SECTION 1.04 Acts of Holders.

(a) Any request, demand, authorization, direction, notice, consent, election, waiver or other action provided by this Indenture to be made, given or taken by Holders may be embodied in and evidenced by one or more instruments of substantially similar tenor signed by such Holders in person or by an agent duly appointed in writing or, alternatively, may be embodied in and evidenced by the record of Holders voting in favor thereof, either in person or by proxies duly appointed in writing, at any meeting of Holders duly called and held in accordance with the provisions of Article XIII, or a combination of such instruments and any such record. Except as herein otherwise expressly provided, such action shall become effective when such instrument or instruments or record or both are delivered to the Trustee and, where it is hereby expressly required, to the Company. Such instrument or instruments and any such record (and the action embodied therein and evidenced thereby) are herein sometimes referred to as the "Act" of the Holders signing such instrument or instruments and so voting at any such meeting. Proof of execution of any such instrument or of a writing appointing any such agent, or of the holding by any Person of a Debt Security, shall be sufficient for any purpose of this Indenture and (subject to Section 9.01) conclusive in favor of the Trustee and the Company, if made in the manner provided in this Section. The record of any meeting of Holders shall be proved in the manner provided in Section 13.06.

(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 or may be proved in any other manner which the Trustee and the Company deem sufficient. 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.

(c) The principal amount (except as otherwise contemplated in clause (y) of the proviso to the definition of Outstanding) and serial numbers of Debt Securities held by any Person, and the date of holding the same, shall be proved by the Debt Security Register.

(d) Any request, demand, authorization, direction, notice, consent, election, waiver or other Act of a Holder shall bind every future Holder of the same Debt Security and the Holder of every Debt 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 Debt Security.

(e) Until such time as written instruments shall have been delivered to the Trustee with respect to the requisite percentage of principal amount of Debt Securities for the action contemplated by such instruments, any such instrument executed and delivered by or on behalf of a Holder may be revoked with respect to any or all of such Debt Securities by written notice by such Holder or any subsequent Holder, proven in the manner in which such instrument was proven.

(f) Debt Securities of any series, or any Tranche thereof, authenticated and delivered after any Act of Holders may, and shall if required by the Trustee, bear a notation in form approved by the Trustee as to any action taken by such Act of Holders. If the Company shall so determine, new Debt Securities of any series, or any Tranche thereof, so modified as to conform, in the opinion of the Trustee and the Company, to such action may be prepared and executed by the Company and authenticated and delivered by the Trustee in exchange for Outstanding Debt Securities of such series or Tranche.

(g) If the Company shall solicit from Holders any request, demand, authorization, direction, notice, consent, election, waiver or other Act, the Company may, at its option, fix in advance a record date for the determination of Holders entitled to give such request, demand, authorization, direction, notice, consent, election, waiver or other Act, but the Company shall have no obligation to do so. If such a record date is fixed, such request, demand, authorization, direction, notice, consent, election, waiver or other Act may be given before or after such record date, but only the Holders of record at the close of business on the record date shall be deemed to be Holders for the purposes of determining whether Holders of the requisite proportion of the Outstanding Debt Securities have authorized or agreed or consented to such request, demand, authorization, direction, notice, consent, election, waiver or other Act, and for that purpose the Outstanding Debt Securities shall be computed as of the record date.

**SECTION 1.05 Notices, Etc. to Trustee and Company.**

Any request, demand, authorization, direction, notice, consent, election, 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, the Trustee by any Holder or by the Company, or 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 delivered personally to an officer or other responsible employee of the addressee, or transmitted by facsimile transmission or other direct written electronic means to such telephone number or other electronic communications address as the parties hereto shall from time to time designate, or transmitted by certified or registered mail, charges prepaid, to the applicable address set opposite such party's name below or to such other address as either party hereto may from time to time designate:

**If to the Trustee, to:**

101 Barclay Street  
New York, NY 10286

Attention: Corporate Trust Administration Telephone No.: 212-896-7107  
Telecopier No.: 212-896-7298

**If to the Company:**

Devon Energy Corporation  
20 North Broadway, Suite 1500  
Oklahoma City, Oklahoma 73102-8260 Attention: General Counsel  
Telephone No.: (405) 235-3611  
Telecopier No.: (405) 552-4550

Any communication contemplated herein shall be deemed to have been made, given, furnished and filed if personally delivered, on the date of delivery, if transmitted by facsimile transmission or other direct written electronic means, upon date of receipt of the transmission, and if transmitted by certified or registered mail, on the date of receipt.

#### SECTION 1.06 Notice to Holders of Debt Securities; Waiver.

Except as otherwise expressly provided herein, where this Indenture provides for notice to Holders of any event, such notice shall be sufficiently given, and shall be deemed given, to Holders if in writing and mailed, first- class postage prepaid, to each Holder affected by such event, at the address of such Holder as it appears in the Debt Security Register, not later than the latest date, and not earlier than the earliest date, prescribed for the giving of such notice.

In case by reason of the suspension of regular mail service or by reason of any other cause it shall be impracticable to give such notice to Holders by mail, then such notification as shall be made with the approval of the Trustee shall constitute a sufficient notification for every purpose hereunder. 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 required by this Indenture may be waived in writing by the Person entitled to receive such notice, either before or after the event otherwise to be specified therein, 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.

#### SECTION 1.07 Conflict with Trust Indenture Act.

If any provision of this Indenture limits, qualifies or conflicts with another provision hereof which is required or deemed to be included in this Indenture by, or is otherwise governed by, any of the provisions of the Trust Indenture Act, such other provision shall control; and if any provision hereof otherwise conflicts with the Trust Indenture Act, the Trust Indenture Act shall control.

#### SECTION 1.08 Effect of Headings and Table of Contents.

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

#### SECTION 1.09 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 the Debt 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 the Debt Securities, express or implied, shall give any benefit or any legal or equitable right, remedy or claim under this Indenture to any Person other than (i) the parties hereto; (ii) their successors hereunder; and (iii) the Holders.

#### SECTION 1.12 Governing Law.

This Indenture and the Debt Securities shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflicts of law principles thereof, except to the extent that the law of any other jurisdiction shall be mandatorily applicable.

#### SECTION 1.13 Legal Holidays.

In any case where any Interest Payment Date, Redemption Date or Stated Maturity of any Debt Security shall not be a Business Day at any Place of Payment, then (notwithstanding any other provision of this Indenture or of the Debt Securities other than a provision in Debt Securities of any series, or any Tranche thereof, or in the indenture supplemental hereto, Board Resolution or Officer's Certificate which establishes the terms of the Debt Securities of such series or Tranche, which specifically states that such provision shall apply in lieu of this Section) payment of interest or principal and premium, if any, need not be made at such Place of Payment on such date, but may be made on the next succeeding Business Day at such Place of Payment with the same force and effect as if made on the Interest Payment Date or Redemption Date, or at the Stated Maturity, and, if such payment is made or duly provided for on such Business Day, no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date, Redemption Date or Stated Maturity, as the case may be, to such Business Day.

## **ARTICLE II**

### **Debt Security Forms**

#### SECTION 2.01 Forms Generally.

The definitive Debt Securities of each series shall be in substantially the form or forms thereof established in the indenture supplemental hereto establishing such series or in a Board Resolution establishing such series, or in an Officer's Certificate pursuant to such supplemental indenture or Board Resolution, in each case with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture, and may have such letters, numbers or other marks of identification and such legends or endorsements placed thereon as may be required to comply with the rules of any securities exchange or as may, consistently herewith, be determined by the officers executing such Debt Securities, as evidenced by their execution of the Debt Securities. If the form or forms of Debt Securities of any series are

established in a Board Resolution or in an Officer's Certificate pursuant to an indenture supplement hereto or to a Board Resolution, such Board Resolution and Officer's Certificate, if any, shall be delivered to the Trustee at or prior to the delivery of the Company Order contemplated by Section 3.03 for the authentication and delivery of such Debt Securities.

Unless otherwise specified as contemplated by Sections 3.01 or 12.01(g), the Debt Securities of each series shall be issuable in registered form without coupons. The definitive Debt Securities shall be produced in such manner as shall be determined by the officers executing such Debt Securities, as evidenced by their execution thereof.

SECTION 2.02 Form of Trustee's Certificate of Authentication.

The Trustee's certificate of authentication shall be in substantially the form set forth below:

This is one of the Debt Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated: -----

The Bank of New York,  
as Trustee

By: -----  
Authorized Representative

SECTION 2.03 Debt Securities Issuable in the Form of a Global Security.

(a) If the Company shall establish pursuant to Section 3.01 that the Debt Securities of a particular series are to be issued in whole or in part in the form of one or more Global Securities, then the Company shall execute and the Trustee shall, in accordance with Section 3.03 and the Company Order delivered to the Trustee thereunder, authenticate and deliver such Global Security or Securities, which (i) shall represent, and shall be denominated in an amount equal to the aggregate principal amount of the Outstanding Debt Securities of such series to be represented by such Global Security or Securities, (ii) may provide that the aggregate amount of Outstanding Debt Securities represented thereby may from time to time be increased or reduced to reflect exchanges, (iii) shall be registered in the name of the Depository for such Global Security or Securities or its nominee, (iv) shall be delivered by the Trustee to the Depository or pursuant to the Depository's instruction and (v) shall bear a legend in accordance with the requirements of the Depository.

(b) Notwithstanding any other provision of this Section or of Section 3.05, except as contemplated by the provisions of paragraph (c) below, unless the terms of a Global Security expressly permit such Global Security to be exchanged in whole or in part for individual Debt Securities, a Global Security may be transferred, in whole but not in part and in the manner provided in Section 3.05, only to a nominee of the Depository for such Global Security, or to the Depository, or to a successor Depository for such Global Security selected or approved by the Company, or to a nominee of such successor Depository.

(c) If at any time the Depositary for a Global Security notifies the Company that it is unwilling or unable to continue as the Depositary for such Global Security or if at any time the Depositary for the Debt Securities for such series shall no longer be eligible or in good standing under the Exchange Act, or other applicable statute or regulation, the Company shall appoint a successor Depositary with respect to such Global Security. If a successor Depositary for such Global Security is not appointed by the Company within 90 days after the Company receives such notice or becomes aware of such ineligibility, the Company will execute, and the Trustee, upon receipt of a Company Order for the authentication and delivery of Debt Securities of such series in the form of definitive certificates in exchange for such Global Security, will authenticate and deliver Debt Securities of such series in the form of definitive certificates of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Security in exchange for such Global Security. Such Debt Securities will be issued to and registered in the name of such Person or Persons as are specified by the Depositary.

(1) The Company may at any time and in its sole discretion determine that the Debt Securities of any series issued or issuable in the form of one or more Global Securities shall no longer be represented by such Global Security or Securities. In any such event the Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of Debt Securities in the form of definitive certificates in exchange in whole or in part for such Global Security, will authenticate and deliver without service charge to each Person specified by the Depositary Debt Securities in the form of definitive certificates of like tenor and terms in an aggregate principal amount equal to the principal amount of such Global Security representing such series, or the aggregate principal amount of such Global Securities representing such series, in exchange for such Global Security or Securities.

(2) If specified by the Company pursuant to Section 3.01 with respect to Debt Securities issued or issuable in the form of a Global Security, the Depositary for such Global Security may surrender such Global Security in exchange in whole or in part for Debt Securities in the form of definitive certificates of like tenor and terms on such terms as are acceptable to the Company and such Depositary. Thereupon the Company shall execute, and the Trustee shall authenticate and deliver, without service charge, (A) to each Person specified by such Depositary a new Debt Security or Securities of the same series of like tenor and terms and any authorized denomination as requested by such Person in aggregate principal amount equal to and in exchange for such Person's beneficial interest in the Global Security and (B) to such Depositary a new Global Security of like tenor and terms and in an authorized denomination equal to the difference, if any, between the principal amount of the surrendered Global Security and the aggregate principal amount of Debt Securities delivered to Holders thereof.

(3) In any exchange provided for in any of the preceding three subparagraphs, the Company shall execute and the Trustee shall authenticate and deliver Debt Securities in the form of definitive certificates in authorized denominations. Upon the exchange of the entire principal amount of a Global

Security for Debt Securities in the form of definitive certificates, such Global Security shall be canceled by the Trustee. Except as provided in the immediately preceding subparagraph, Debt Securities issued in exchange for a Global Security pursuant to this Section shall be registered in such names and in such authorized denominations as the Depository for such Global Security, acting pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Trustee. Provided that the Company and the Trustee have so agreed, the Trustee shall deliver such Debt Securities to the Persons in whose names the Debt Securities are so to be registered.

(4) Any endorsement of a Global Security to reflect the principal amount thereof, or any increase or decrease in such principal amount, or changes in the rights of Holders of Outstanding Debt Securities represented thereby shall be made in such manner and by such Person or Persons as shall be specified in or pursuant to any applicable letter of representations or other arrangement entered into with, or procedures of, the Depository with respect to such Global Security or in the Company Order delivered or to be delivered pursuant to Section 3.03 with respect thereto. Subject to the provisions of Section 3.03, the Trustee shall deliver and redeliver any such Global Security in the manner and upon instructions given by the Person or Persons specified in or pursuant to any applicable letter of representations or other arrangement entered into with, or procedures of, the Depository with respect to such Global Security or in any applicable Company Order. If a Company Order pursuant to Section 3.03 is so delivered, any instructions by the Company with respect to such Global Security contained therein shall be in writing but need not be accompanied by or contained in an Officer's Certificate and need not be accompanied by an Opinion of Counsel.

(5) The Depository or, if there be one, its nominee, shall be the Holder of a Global Security for all purposes under this Indenture; and beneficial owners with respect to such Global Security shall hold their interests pursuant to applicable procedures of such Depository. The Company, the Trustee and the Debt Security Registrar shall be entitled to deal with such Depository for all purposes of this Indenture relating to such Global Security (including the payment of principal, premium, if any, and interest (including any Additional Interest) and the giving of instructions or directions by or to the beneficial owners of such Global Security as the sole Holder of such Global Security and shall have no obligations to the beneficial owners thereof (including any direct or indirect participants in such Depository). None of the Company, the Trustee, any Paying Agent or the Debt Security Registrar shall have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security in or pursuant to any applicable letter of representations or other arrangement entered into with, or procedures of, the Depository with respect to such Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

## ARTICLE III

### The Debt Securities

#### SECTION 3.01 Amount Unlimited; Issuable in Series.

The aggregate principal amount of Debt Securities which may be authenticated and delivered under this Indenture is unlimited.

The Debt Securities may be issued in one or more series. Subject to the last paragraph of this Section, prior to the authentication and delivery of Debt Securities of any series there shall be established by specification in a supplemental indenture or in a Board Resolution, or in an Officer's Certificate pursuant to a supplemental indenture or a Board Resolution:

- (a) the title of the Debt Securities of such series (which shall distinguish the Debt Securities of such series from Debt Securities of all other series);
- (b) any limit upon the aggregate principal amount of the Debt Securities of such series which may be authenticated and delivered under this Indenture (except for Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of the series pursuant to Section 3.04, 3.05, 3.06, 4.06 or 12.06 and, except for any Debt Securities which, pursuant to Section 3.03, are deemed never to have been authenticated and delivered hereunder);
- (c) the Person or Persons (without specific identification) to whom interest on Debt Securities of such series, or any Tranche thereof, shall be payable on any Interest Payment Date, if other than the Persons in whose names such Debt Securities (or one or more Predecessor Debt Securities) are registered at the close of business on the Regular Record Date for such interest;
- (d) the date or dates on which the principal of the Debt Securities of such series or any Tranche thereof, is payable or any formulary or other method or other means by which such date or dates shall be determined, by reference to an index or other fact or event ascertainable outside of this Indenture or otherwise (without regard to any provisions for redemption, prepayment, acceleration, purchase or extension);
- (e) the rate or rates at which the Debt Securities of such series, or any Tranche thereof, shall bear interest, if any (including (i) the rate or rates at which overdue principal shall bear interest, if different from the rate or rates at which such Debt Securities shall bear interest prior to Maturity, (ii) if applicable, the rate or rates at which overdue premium shall bear interest, if any and (iii) if applicable, the rate or rates and extent to which Additional Interest, if any, shall be payable), the period or periods during which such rate or rates shall be applicable, or any formulary or other method or other means by which such rate or rates, and any period or periods, shall be determined, by reference to an index or other fact or event ascertainable outside of this Indenture or otherwise; the date or dates from which such interest shall accrue; whether and under what circumstances Additional Amounts shall be payable; the Interest Payment Dates on which such interest shall be payable and the Regular Record Date, if any, for the interest payable on such Debt Securities on any Interest Payment Date; and the basis of computation of interest, if other than as provided in Section 3.10;



(f) the place or places at which or methods by which (1) the principal of and premium, if any, and interest (including Additional Interest), if any, on Debt Securities of such series, or any Tranche thereof, shall be payable, (2) registration of transfer of Debt Securities of such series, or any Tranche thereof, may be effected, (3) exchanges of Debt Securities of such series, or any Tranche thereof, may be effected and (4) notices and demands to or upon the Company in respect of the Debt Securities of such series, or any Tranche thereof, and this Indenture may be served; the Debt Security Registrar for such series; and if such is the case, that the principal of such Debt Securities shall be payable without presentment or surrender thereof;

(g) the period or periods within which, or the date or dates on which, the price or prices at which and the terms and conditions upon which the Debt Securities of such series, or any Tranche thereof, may be redeemed, in whole or in part, at the option of the Company and any restrictions on such redemptions, including but not limited to a restriction on a partial redemption by the Company of the Debt Securities of any series, or any Tranche thereof, resulting in delisting of such Debt Securities from any national exchange;

(h) the obligation or obligations or options, if any, of the Company to redeem or purchase the Debt Securities of such series, or any Tranche thereof, pursuant to any sinking fund or other mandatory redemption or tender provisions or at the option of a Holder thereof and the period or periods within which or the date or dates on which, the price or prices at which and the terms and conditions upon which such Debt Securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation, and applicable exceptions to the requirements of Section 4.04 in the case of mandatory redemption or redemption at the option of the Holder;

(i) the denominations in which Debt Securities of such series, or any Tranche thereof, shall be issuable if other than denominations of \$1,000 and any integral multiple thereof;

(j) the currency or currencies, including composite currencies, in which payment of the principal of and premium, if any, and interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, shall be payable (if other than in Dollars);

(k) if the principal of or premium, if any, or interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, are to be payable, at the election of the Company or a Holder thereof, in a coin or currency other than that in which the Debt Securities are stated to be payable, the period or periods within which and the terms and conditions upon which, such election may be made;

(l) if the principal of or premium, if any, or interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, are to be payable, or are to be payable at the election of the Company or a Holder thereof, in securities or other property, the type and amount of such securities or other property, or the formulary or other method or other means by which such amount shall be determined, and the period or periods within which, and the terms and conditions upon which, any such election may be made;

(m) if the amount payable in respect of principal of or premium, if any, or interest (including Additional Interest), if any, on the Debt Securities of such series, or any Tranche thereof, may be determined with reference to an index or other fact or event ascertainable outside

this Indenture, the manner in which such amounts shall be determined to the extent not established pursuant to clause (e) of this paragraph;

(n) if other than the principal amount thereof, the portion of the principal amount of Debt Securities of such series, or any Tranche thereof, which shall be payable upon declaration of acceleration of the Maturity thereof pursuant to Section 8.02;

(o) any Events of Default, in addition to those specified in Section 8.01, with respect to the Debt Securities of such series, any covenants of the Company for the benefit of the Holders of the Debt Securities of such series, or any Tranche thereof, in addition to those set forth in Article VI, and the terms, if any, pursuant to which any covenants of the Company for the benefit of the Holders of the Debt Securities of such series are subject to defeasance;

(p) the terms, if any, pursuant to which the Debt Securities of such series, or any Tranche thereof, may be converted into or exchanged for shares of capital stock or other securities of the Company or any other Person;

(q) the obligations or instruments, if any, which shall be considered to be Eligible Obligations in respect of the Debt Securities of such series, or any Tranche thereof, denominated in a currency other than Dollars or in a composite currency, and any additional or alternative provisions for the reinstatement of the Company's indebtedness in respect of such Debt Securities after the satisfaction and discharge thereof as provided in Section 7.01;

(r) whether the Debt Securities of the series shall be issued in whole or in part in the form of a Global Security or Securities; the terms and conditions, if any, upon which such Global Security or Securities may be exchanged in whole or in part for certificated Debt Securities of such series and of like tenor of any authorized denomination and the circumstances under which such exchange may occur, if other than in the manner provided for in Section 2.03; the Depository for such Global Security or Securities; and the form of any legend or legends to be borne by any such Global Security in addition to or in lieu of the legend referred to in Section 2.03;

(s) if the Debt Securities of such series, or any Tranche thereof, are to be issuable in bearer form, any and all matters incidental thereto which are not specifically addressed in a supplemental indenture as contemplated by clause (g) of Section 12.01;

(t) to the extent not established pursuant to clause (r) of this paragraph, any limitations on the rights of the Holders of the Debt Securities of such Series, or any Tranche thereof, to transfer or exchange such Debt Securities or to obtain the registration of transfer thereof; and if a service charge will be made for the registration of transfer or exchange of Debt Securities of such series, or any Tranche thereof, the amount or terms thereof;

(u) any exceptions to Section 1.13, or variation in the definition of Business Day, with respect to the Debt Securities of such series, or any Tranche thereof;

(v) any collateral security, assurance or guarantee for such series of Debt Securities;

(w) any credit enhancement applicable to the Debt Securities of such series; and

(x) any other terms of the Debt Securities of such series, or any Tranche thereof, not inconsistent with the provisions of this Indenture;

With respect to Debt Securities of a series subject to a Periodic Offering, the indenture supplemental hereto or the Board Resolution which establishes such series, or the Officer's Certificate pursuant to such supplemental indenture or Board Resolution, as the case may be, may provide general terms or parameters for Debt Securities of such series and provide either that the specific terms of Debt Securities of such series, or any Tranche thereof, shall be specified in a Company Order or that such terms shall be determined by the Company or its agents in accordance with procedures specified in a Company Order as contemplated by clause (b) of the third paragraph of Section 3.03.

#### SECTION 3.02 Denominations.

Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Securities, or any Tranche thereof, the Debt Securities of each series shall be issuable in denominations of \$1,000 and any integral multiple thereof.

#### SECTION 3.03 Execution, Authentication, Delivery and Dating.

Unless otherwise provided as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, the Debt Securities shall be executed on behalf of the Company by an Authorized Officer and may have the corporate seal of the Company affixed thereto or reproduced thereon attested by any other Authorized Officer. The signature of any or all of these officers on the Debt Securities may be manual or facsimile.

Debt Securities bearing the manual or facsimile signatures of individuals who were at the time of execution Authorized 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 Debt Securities or did not hold such offices at the date of such Debt Securities.

The Trustee shall authenticate and deliver Debt Securities of a series, for original issue, at one time or from time to time in accordance with the Company Order referred to below, upon receipt by the Trustee of:

(a) the instrument or instruments establishing the form or forms and terms of such series, as provided in Sections 2.01 and 3.01;

(b) a Company Order requesting the authentication and delivery of such Debt Securities and, to the extent that the terms of such Debt Securities shall not have been established in an indenture supplemental hereto or in a Board Resolution, or in an Officer's Certificate pursuant to a supplemental indenture or Board Resolution, all as contemplated by Sections 2.01 and 3.01, either (i) establishing such terms or (ii) in the case of Debt Securities of a series subject to a Periodic Offering, specifying procedures, acceptable to the Trustee, by which such terms are to be established, in either case in accordance with the instrument or instruments delivered pursuant to clause (a) above;

(c) the Debt Securities of such series, executed on behalf of the Company by an Authorized Officer;

(d) an Opinion of Counsel to the effect that:

(i) the form or forms of such Debt Securities have been duly authorized by the Company and have been established in conformity with the provisions of this Indenture;

(ii) the terms of such Debt Securities have been duly authorized by the Company and have been established in conformity with the provisions of this Indenture; and

(iii) assuming authentication and delivery by the Trustee and subject to any conditions specified in such Opinion of Counsel, such Debt Securities will have been duly issued under this Indenture and will be legal, valid and binding obligations of the Company, enforceable in accordance with their terms, subject, as to enforcement, to laws relating to or affecting generally the enforcement of creditors' rights, including, without limitation, bankruptcy and insolvency laws and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law);

provided, however, that, with respect to Debt Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to receive such Opinion of Counsel only once at or prior to the time of the first authentication of such Debt Securities (provided that such Opinion of Counsel addresses the authentication and delivery of all Debt Securities of such series) and that in lieu of the opinions described in clauses (ii) and (iii) above Counsel may opine that:

(x) when the terms of such Debt Securities shall have been established pursuant to a Company Order or Orders or pursuant to such procedures (acceptable to the Trustee) as may be specified from time to time by a Company Order or Orders, all as contemplated by and in accordance with the instrument or instruments delivered pursuant to clause (a) above, such terms will have been duly authorized by the Company and will have been established in conformity with the provisions of this Indenture; and

(y) such Debt Securities, when authenticated and delivered by the Trustee in accordance with this Indenture and the Company Order or Orders or specified procedures referred to in paragraph (x) above and issued and delivered by the Company in the manner and subject to any conditions specified in such Opinion of Counsel, will have been duly issued under this Indenture and will constitute valid and legally binding obligations of the Company, entitled to the benefits provided by the Indenture, and enforceable in accordance with their terms, subject, as to enforcement, to laws relating to or affecting generally the enforcement of creditors' rights, including, without limitation, bankruptcy and insolvency laws and to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

With respect to Debt Securities of a series subject to a Periodic Offering, the Trustee may conclusively rely, as to the authorization by the Company of any of such Debt Securities, the form and terms thereof and the legality, validity, binding effect and enforceability thereof, upon

the Opinion of Counsel and other documents delivered pursuant to Sections 2.01 and 3.01 and this Section, as applicable, at or prior to the time of the first authentication of Debt Securities of such series unless and until such opinion or other documents have been superseded or revoked or expire by their terms. In connection with the authentication and delivery of Debt Securities of a series subject to a Periodic Offering, the Trustee shall be entitled to assume that the Company's instructions to authenticate and deliver such Debt Securities do not violate any rules, regulations or orders of any Governmental Authority having jurisdiction over the Company.

If the form or terms of the Debt Securities of any series have been established by or pursuant to a Board Resolution or an Officer's Certificate as permitted by Sections 2.01 or 3.01, the Trustee shall not be required to authenticate such Debt Securities if the issuance of such Debt Securities pursuant to this Indenture will materially or adversely affect the Trustee's own rights, duties or immunities under the Debt Securities and this Indenture or otherwise in a manner which is not reasonably acceptable to the Trustee.

Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, each Debt Security shall be dated the date of its authentication.

Unless otherwise specified as contemplated by Section 3.01 with respect to any series of Debt Securities, or any Tranche thereof, no Debt Security shall be entitled to any benefit under this Indenture or be valid or obligatory for any purpose unless there appears on such Debt Security a certificate of authentication substantially in the form provided for herein executed by the Trustee or its agent by manual signature, and such certificate upon any Debt Security shall be conclusive evidence, and the only evidence, that such Debt Security has been duly authenticated and delivered hereunder and is entitled to the benefits of this Indenture. Notwithstanding the foregoing, if any Debt Security shall have been authenticated and delivered hereunder to the Company, or any Person acting on its behalf, but shall never have been issued and sold by the Company, and the Company shall deliver such Debt Security to the Debt Security Registrar for cancellation as provided in Section 3.09 together with a written statement (which need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel) stating that such Debt Security has never been issued and sold by the Company, for all purposes of this Indenture such Debt Security shall be deemed never to have been authenticated and delivered hereunder and shall never be entitled to the benefits hereof.

#### SECTION 3.04 Temporary Debt Securities.

Pending the preparation of definitive Debt Securities of any series, or any Tranche thereof, the Company may execute, and upon Company Order the Trustee shall authenticate and deliver, temporary Debt Securities which are printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denomination, substantially of the tenor of the definitive Debt Securities in lieu of which they are issued, with such appropriate insertions, omissions, substitutions and other variations as the officers executing such Debt Securities may determine, as evidenced by their execution of such Debt Securities; provided, however, that temporary Debt Securities need not recite specific redemption, sinking fund, conversion or exchange provisions.

Unless otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, after the preparation of definitive Debt Securities of such series or Tranche, the temporary Debt Securities of such series or Tranche shall be exchangeable, without charge to the Holder thereof, for definitive Debt Securities of such series or Tranche, upon surrender of such temporary Debt Securities at the office or agency of the Company maintained pursuant to Section 6.02 in a Place of Payment for such Debt Securities. Upon such surrender of temporary Debt Securities, the Company shall, except as aforesaid, execute and the Trustee shall authenticate and deliver in exchange therefor definitive Debt Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount.

Until exchanged in full as hereinabove provided, temporary Debt Securities shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of the same series and Tranche and of like tenor authenticated and delivered hereunder.

#### SECTION 3.05 Registration, Registration of Transfer and Exchange.

The Company shall cause to be kept in each office designated pursuant to Section 6.02, with respect to the Debt Securities of each series or any Tranche thereof, a register (all registers kept in accordance with this Section being collectively referred to as the "Debt Security Register") in which, subject to such reasonable regulations as it may prescribe, the Company shall provide for the registration of Debt Securities of such series or Tranche and the registration of transfer thereof. The Company shall designate one Person to maintain the Debt Security Register for the Debt Securities of each series on a consolidated basis, and such Person is referred to herein, with respect to such series, as the "Debt Security Registrar". Anything herein to the contrary notwithstanding, the Company may designate one or more of its offices as an office in which a register with respect to the Debt Securities of one or more series, or any Tranche or Tranches thereof, shall be maintained, and the Company may designate itself the Debt Security Registrar with respect to one or more of such series. The Debt Security Register shall be open for inspection by the Trustee and the Company at all reasonable times.

Except as otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, upon surrender for registration of transfer of any Debt Security of such series or Tranche at the office or agency of the Company maintained pursuant to Section 6.02 in a Place of Payment for such series or Tranche, the Company shall execute, and the Trustee shall authenticate and deliver, in the name of the designated transferee or transferees, one or more new Debt Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount.

Except as otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, any Debt Security of such series or Tranche may be exchanged at the option of the Holder, for one or more new Debt Securities of the same series and Tranche, of authorized denominations and of like tenor and aggregate principal amount, upon surrender of the Debt Securities to be exchanged at any such office or agency. Whenever any Debt Securities are so surrendered for exchange, the Company shall execute, and the Trustee shall authenticate and deliver, the Debt Securities which the Holder making the exchange is entitled to receive.

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

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

Unless otherwise specified as contemplated by Section 3.01 with respect to Debt Securities of any series, or any Tranche thereof, no service charge shall be made for any registration of transfer or exchange of Debt 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 Debt Securities, other than exchanges pursuant to Section 3.04, 4.06 or 12.06 not involving any transfer.

The Company shall not be required to execute or to provide for the registration of transfer of or the exchange of (a) Debt Securities of any series, or any Tranche thereof, during a period of 15 days immediately preceding the day of the mailing of a notice of redemption of the Debt Securities of such series or Tranche is to be given or (b) any Debt Security so selected for redemption in whole or in part, except the unredeemed portion of any Debt Security being redeemed in part.

None of the Company, the Trustee, any Paying Agent or the Debt Security Registrar will have any responsibility or liability for any aspect of the records relating to or payments made on account of beneficial ownership interests of a Global Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

#### SECTION 3.06 Mutilated, Destroyed, Lost and Stolen Debt Securities.

If any mutilated Debt Security is surrendered to the Trustee, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefor a new Debt Security of the same series and Tranche, and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

If there shall be delivered to the Company and the Trustee (a) evidence to their satisfaction of the ownership of and the destruction, loss or theft of any Debt Security and (b) such security or indemnity as may be reasonably 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 Debt Security is held by a Person purporting to be the owner of such Debt Security, the Company shall execute and the Trustee shall authenticate and deliver, in lieu of any such destroyed, lost or stolen Debt Security, a new Debt Security of the same series and Tranche, and of like tenor and principal amount and bearing a number not contemporaneously outstanding.

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

Upon the issuance of any new Debt 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 reasonable expenses (including the fees and expenses of the Trustee) connected therewith.

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

#### SECTION 3.07 Payment of Interest and Additional Interest; Interest Rights Preserved.

Unless otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of any series, or any Tranche thereof, interest and Additional Interest on any Debt 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 Debt Security (or one or more Predecessor Debt Securities) is registered at the close of business on the Regular Record Date for such interest.

Any interest on any Debt Security of any series which is payable, but is not punctually paid or duly provided for, on any Interest Payment Date (herein called "Defaulted Interest") shall forthwith cease to be payable to the Holder on the related 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 (a) or (b) below:

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names the Debt Securities of such series (or their respective Predecessor Debt Securities) are registered at the close of business on a date (herein called a "Special Record Date") for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Debt Security of such series 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 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 promptly cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefor to be mailed, first-class postage prepaid, to each Holder of Debt Securities of such series at the address of such Holder as it appears in the Debt 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 Debt Securities of such series (or their respective Predecessor Debt Securities) are registered at the close of business on such Special Record Date.

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

Subject to the foregoing provisions of this Section and Section 3.05, each Debt Security delivered under this Indenture upon registration of transfer of or in exchange for or in lieu of any other Debt Security shall carry the rights to interest (including any Additional Interest) accrued and unpaid, and to accrue, which were carried by such other Debt Security.

#### SECTION 3.08 Persons Deemed Owners.

Prior to due presentment of a Debt 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 such Debt Security is registered as the absolute owner of such Debt Security for the purpose of receiving payment of principal of and premium, if any, and (subject to Sections 3.05 and 3.07) interest (including Additional Interest), if any, on such Debt Security and for all other purposes whatsoever, whether or not such Debt Security is overdue, and neither the Company, the Trustee nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

#### SECTION 3.09 Cancellation by Debt Security Registrar.

All Debt Securities surrendered for payment, redemption, registration of transfer or exchange shall, if surrendered to any Person other than the Debt Security Registrar, be delivered to the Debt Security Registrar and, if not theretofore canceled, shall be promptly canceled by the Debt Security Registrar. The Company may at any time deliver to the Debt Security Registrar for cancellation any Debt Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever or which the Company shall not have issued and sold, and all Debt Securities so delivered shall be promptly canceled by the Debt Security Registrar. No Debt Securities shall be authenticated in lieu of or in exchange for any Debt Securities canceled as provided in this Section, except as expressly permitted by this Indenture. All certificates representing canceled Debt Securities held by the Debt Security

Registrar shall be disposed of in accordance with the customary practices of the Debt Security Registrar at the time in effect, and the Debt Security Registrar shall not be required to destroy any such certificates. The Debt Security Registrar, if other than the trustee, shall promptly deliver a certificate of disposition with respect to such disposed certificates to the Trustee and the Company unless, by a Company Order, similarly delivered, the Company shall direct that canceled Debt Securities be returned to it. The Debt Security Registrar shall promptly deliver evidence of any cancellation of a Debt Security in accordance with this Section to the Trustee and the Company. If the Trustee is the entity acting as Debt Security Registrar, it shall promptly deliver to the Company a certificate of disposition with respect to any certificates disposed of and/or evidence of any cancellation of a Debt Security, in each case in accordance with this Section, if so requested by a Company Order.

#### SECTION 3.10 Computation of Interest.

Except as otherwise specified as contemplated by Section 3.01 for Debt Securities of any series, or any Tranche thereof, interest on the Debt Securities of each series shall be computed on the basis of a 360-day year consisting of twelve 30-day months.

#### SECTION 3.11 Payment to be in Proper Currency.

In the case of the Debt Securities of any series, or any Tranche thereof, denominated in any currency other than Dollars or in a composite currency (the "Required Currency"), except as otherwise specified with respect to such Debt Securities as contemplated by Section 3.01, the obligation of the Company to make any payment of the principal thereof, or the premium or interest thereon, shall not be discharged or satisfied by any tender by the Company, or recovery by the Trustee, in any currency other than the Required Currency, except to the extent that such tender or recovery shall result in the Trustee timely holding the full amount of the Required Currency then due and payable. If any such tender or recovery is in a currency other than the Required Currency, the Trustee may take such actions as it considers appropriate to exchange such currency for the Required Currency. The costs and risks of any such exchange, including without limitation the risks of delay and exchange rate fluctuation, shall be borne by the Company, the Company shall remain fully liable for any shortfall or delinquency in the full amount of Required Currency then due and payable, and in no circumstances shall the Trustee be liable therefor except in the case of its negligence or willful misconduct.

#### SECTION 3.12 CUSIP Numbers.

The Company in issuing the Debt 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 Debt 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 Debt Securities, and any such redemption shall not be affected by any defect in or omission of such numbers. The Company will promptly notify the Trustee of any change in the "CUSIP" numbers.

## ARTICLE IV

### REDEMPTION OF DEBT SECURITIES

#### SECTION 4.01 Applicability of Article.

Debt Securities of any series, or any Tranche thereof, which are redeemable before their Stated Maturity shall be redeemable in accordance with their terms and (except as otherwise specified as contemplated by Section 3.01 for Debt Securities of such series or Tranche) in accordance with this Article.

#### SECTION 4.02 Election to Redeem; Notice to Trustee.

The election of the Company to redeem any Debt Securities shall be evidenced by a Board Resolution and/or an Officer's Certificate. The Company shall, at least 60 days prior to the Redemption Date fixed by the Company (unless a shorter notice shall be satisfactory to the Trustee), notify the Trustee in writing of such Redemption Date and of the principal amount of such Debt Securities to be redeemed. In the case of any redemption of Debt Securities

(a) prior to the expiration of any restriction on such redemption provided in the terms of such Debt Securities or elsewhere in this Indenture or (b) pursuant to an election of the Company which is subject to a condition specified in the terms of such Debt Securities, the Company shall furnish the Trustee with an Officer's Certificate evidencing compliance with such restriction or condition.

#### SECTION 4.03 Selection of Debt Securities to be Redeemed.

If less than all the Debt Securities of any series, or any Tranche thereof, are to be redeemed, the particular Debt Securities to be redeemed shall be selected by the Trustee from the Outstanding Debt Securities of such series or Tranche not previously called for redemption, by such method as shall be provided for any particular series, or, in the absence of any such provision, by such method of random selection as the Trustee shall deem fair and appropriate and which may, in any case, provide for the selection for redemption of portions (equal to the minimum authorized denomination for Debt Securities of such series or Tranche or any integral multiple thereof) of the principal amount of Debt Securities of such series or Tranche of a denomination larger than the minimum authorized denomination for Debt Securities of such series or Tranche; provided, however, that if, as indicated in an Officer's Certificate, the Company shall have offered to purchase all or any principal amount of the Debt Securities then Outstanding of any series, or any Tranche thereof, and less than all of such Debt Securities as to which such offer was made shall have been tendered to the Company for such purchase, the Trustee, if so directed by Company Order, shall select for redemption all or any principal amount of such Debt Securities which have not been so tendered.

If the Debt Securities are then held in the form of a Global Security, the Trustee shall select Debt Securities to be redeemed in accordance with the customary procedures for the Depositary.

The Trustee shall promptly notify the Company and the Debt Security Registrar in writing of the Debt Securities selected for redemption and, in the case of any Debt Securities selected to be redeemed in part, the principal amount thereof to be redeemed.

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

#### SECTION 4.04 Notice of Redemption.

Notice of redemption shall be given in the manner provided in Section 1.06 to the Holders of the Debt Securities to be redeemed not less than 30 nor more than 60 days prior to the Redemption Date.

All notices of redemption shall state:

- (a) the Redemption Date,
- (b) the Redemption Price (or the method of calculating the Redemption Price),
- (c) if less than all the Debt Securities of any series or Tranche are to be redeemed, the identification of the particular Debt Securities to be redeemed and the portion of the principal amount of any Debt Security to be redeemed in part,
- (d) that on the Redemption Date, the Redemption Price, together with accrued interest (including Additional Interest), if any, to the Redemption Date, will become due and payable upon each such Debt Security to be redeemed and, if applicable and provided that the Redemption Price is received by the Paying Agent or Agents on or prior to the Redemption Date, that interest (including any Additional Interest) thereon will cease to accrue on and after said date,
- (e) the place or places where such Debt Securities are to be surrendered for payment of the Redemption Price and accrued interest (including Additional Interest), if any, unless it shall have been specified as contemplated by Section 3.01 with respect to such Debt Securities that such surrender shall not be required,
- (f) that the redemption is for a sinking or other fund, if such is the case, and
- (g) such other matters as the Company shall deem desirable or appropriate (including CUSIP numbers with respect to such Debt Securities, if the Company shall so elect, in which event such notice of redemption may contain a disclaimer as to the correctness of such numbers either as printed on the Debt Securities or on such notice of redemption).

Unless otherwise specified with respect to any Debt Securities in accordance with Section 3.01, with respect to any notice of redemption of Debt Securities at the election of the Company, unless, upon the giving of such notice, such Debt Securities shall be deemed to have been paid in accordance with Section 7.01, such notice may state that such redemption shall be conditional

upon the receipt by the Paying Agent or Agents for such Debt Securities, on or prior to the date fixed for such redemption, of money sufficient to pay the principal of and premium, if any, and interest (including Additional Interest), if any, on such Debt Securities and that if such money shall not have been so received such notice shall be of no force or effect and the Company shall not be required to redeem such Debt Securities. In the event that such notice of redemption contains such a condition and such money is not so received, the redemption shall not be made and within a reasonable time thereafter notice shall be given, in the manner in which the notice of redemption was given, that such money was not so received and such redemption was not required to be made, and the Paying Agent or Agents for the Debt Securities otherwise to have been redeemed shall promptly return to the Holders thereof any of such Debt Securities which had been surrendered for payment upon such redemption.

Notice of redemption of Debt Securities to be redeemed at the election of the Company, and any notice of non-satisfaction of a condition for redemption as aforesaid, shall be given by the Company or, at the Company's request, by the Debt Security Registrar in the name and at the expense of the Company. Notice of mandatory redemption of Debt Securities shall be given by the Debt Security Registrar in the name and at the expense of the Company.

#### SECTION 4.05 Debt Securities Payable on Redemption Date.

Notice of redemption having been given as aforesaid, and the conditions, if any, set forth in such notice having been satisfied, the Debt Securities or portions thereof 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, in the case of an unconditional notice of redemption, the Company shall default in the payment of the Redemption Price and accrued interest (including Additional Interest), if any) such Debt Securities or portions thereof, if interest-bearing, shall cease to bear interest. Upon surrender of any such Debt Security for redemption in accordance with such notice, such Debt Security or portion thereof shall be paid by the Company at the Redemption Price, together with accrued interest (including Additional Interest), if any, to the Redemption Date; provided, however, that no such surrender shall be a condition to such payment if so specified as contemplated by Section 3.01 with respect to such Debt Security; and provided, further, that except as otherwise specified as contemplated by Section 3.01 with respect to such Debt Security, any installment of interest on any Debt Security the Stated Maturity of which installment is on or prior to the Redemption Date shall be payable to the Holder of such Debt Security, or one or more Predecessor Debt Securities, registered as such at the close of business on the related Regular Record Date according to the terms of such Debt Security and subject to the provisions of Section 3.07.

#### SECTION 4.06 Debt Securities Redeemed in Part.

Upon the surrender of any Debt Security which is to be redeemed only in part 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), the Company shall execute, and the Trustee shall authenticate and deliver to the Holder of such Debt Security, without service charge, a new Debt Security or Debt Securities of the same series and Tranche, of any authorized denomination requested by such Holder and of like tenor and in aggregate principal

amount equal to and in exchange for the unredeemed portion of the principal of the Debt Security so surrendered.

## **ARTICLE V**

### **Sinking Funds**

#### **SECTION 5.01 Applicability of Article.**

The provisions of this Article shall be applicable to any sinking fund for the retirement of the Debt Securities of any series, or any Tranche thereof, except as otherwise specified as contemplated by Section 3.01 for Debt Securities of such series or Tranche.

The minimum amount of any sinking fund payment provided for by the terms of Debt Securities of any series, or any Tranche thereof, is herein referred to as a "mandatory sinking fund payment," and any payment in excess of such minimum amount provided for by the terms of Debt Securities of any series, or any Tranche thereof, is herein referred to as an "optional sinking fund payment." If provided for by the terms of Debt Securities of any series, or any Tranche thereof, the cash amount of any sinking fund payment may be subject to reduction as provided in Section 5.02. Each sinking fund payment shall be applied to the redemption of Debt Securities of the series or Tranche in respect of which it was made as provided for by the terms of such Debt Securities.

#### **SECTION 5.02 Satisfaction of Sinking Fund Payments with Debt Securities.**

The Company (a) may deliver to the Trustee Outstanding Debt Securities (other than any previously called for redemption) of a series or Tranche in respect of which a mandatory sinking fund payment is to be made and (b) may apply as a credit Debt Securities of such series or Tranche which have been redeemed either at the election of the Company pursuant to the terms of such Debt Securities or through the application of permitted optional sinking fund payments pursuant to the terms of such Debt Securities, in each case in satisfaction of all or any part of such mandatory sinking fund payment; provided, however, that no Debt Securities shall be applied in satisfaction of a mandatory sinking fund payment if such Debt Securities shall have been previously so applied. Debt Securities so applied shall be received and credited for such purpose by the Trustee at the Redemption Price specified in such Debt Securities for redemption through operation of the sinking fund and the amount of such mandatory sinking fund payment shall be reduced accordingly.

#### **SECTION 5.03 Redemption of Debt Securities for Sinking Fund.**

Not less than 45 days prior to each sinking fund payment date for the Debt Securities of any series, or any Tranche thereof, the Company shall deliver to the Trustee an Officer's Certificate specifying:

(a) the amount of the next succeeding mandatory sinking fund payment for such series or Tranche;

(b) the amount, if any, of the optional sinking fund payment to be made together with such mandatory sinking fund payment;

(c) the aggregate sinking fund payment;

(d) the portion, if any, of such aggregate sinking fund payment which is to be satisfied by the payment of cash; and

(e) the portion, if any, of such aggregate sinking fund payment which is to be satisfied by delivering and crediting Debt Securities of such series or Tranche pursuant to Section 5.02 and stating the basis for such credit and that such Debt Securities have not previously been so credited, and the Company shall also deliver to the Trustee any Debt Securities to be so delivered.

If the Company shall not have delivered such Officer's Certificate and, to the extent applicable, all such Debt Securities, on or prior to the 45th day prior to such sinking fund payment date, the sinking fund payment for such series or Tranche in respect of such sinking fund payment date shall be made entirely in cash in the amount of the mandatory sinking fund payment. Not less than 30 days before each such sinking fund payment date the Trustee shall select the Debt Securities to be redeemed upon such sinking fund payment date in the manner specified in Section 4.03 and the Debt Security Registrar shall cause notice of the redemption thereof to be given in the name of and at the expense of the Company in the manner provided in Section 4.04. Such notice having been duly given, the redemption of such Debt Securities shall be made upon the terms and in the manner stated in Sections 4.05 and 4.06.

## **ARTICLE VI**

### **Covenants**

#### **SECTION 6.01 Payment of Principal, Premium and Interest.**

The Company shall pay the principal of and premium, if any, and interest (including Additional Interest), if any, on the Debt Securities of each series in accordance with the terms of such Debt Securities and this Indenture.

#### **SECTION 6.02 Maintenance of Office or Agency.**

The Company shall maintain in each Place of Payment for the Debt Securities of each series, or any Tranche thereof, an office or agency where payment of such Debt Securities shall be made, where the registration of transfer or exchange of such Debt Securities may be effected and where notices and demands to or upon the Company in respect of such Debt Securities and this Indenture may be served. The Company shall give prompt written notice to the Trustee of the location, and any change in the location, of each such office or agency and prompt notice to the Holders of any such change in the manner specified in Section 1.06. If at any time the Company shall fail to maintain any such required office or agency in respect of Debt Securities of any series, or any Tranche thereof, or shall fail to furnish the Trustee with the address thereof, payment of such Debt Securities shall be made, registration of transfer or exchange thereof may be effected and notices and demands in respect thereof may be served at the Corporate Trust

Office of the Trustee, and the Company hereby appoints the Trustee as its agent for all such purposes in any such event.

The Company may also from time to time designate one or more other offices or agencies with respect to the Debt Securities of one or more series, or any Tranche thereof, for any or all of the foregoing purposes and may from time to time rescind such designations; provided, however, that, unless otherwise specified as contemplated by Section 3.01 with respect to the Debt Securities of such series or Tranche no such designation or rescission shall in any manner relieve the Company of its obligation to maintain an office or agency for such purposes in each Place of Payment for such Debt Securities in accordance with the requirements set forth above. The Company shall give prompt written notice to the Trustee, and prompt notice to the Holders in the manner specified in Section 1.06, of any such designation or rescission and of any change in the location of any such other office or agency.

Anything herein to the contrary notwithstanding, any office or agency required by this Section may be maintained at an office of the Company, in which event the Company shall perform all functions to be performed at such office or agency.

#### SECTION 6.03 Money for Debt Securities Payments to be Held in Trust.

If the Company shall at any time act as its own Paying Agent with respect to the Debt Securities of any series, or any Tranche thereof, it shall, on or before each due date of the principal of and premium, if any, and interest (including Additional Interest), if any, on any of such Debt Securities, segregate and hold in trust for the benefit of the Persons entitled thereto a sum sufficient to pay the principal and premium or interest (including Additional Interest) so becoming due until such sums shall be paid to such Persons or otherwise disposed of as herein provided. The Company shall promptly notify the Trustee of any failure by the Company (or any other obligor on such Debt Securities) to make any payment of principal of or premium, if any, or interest (including Additional Interest), if any, on such Debt Securities.

Whenever the Company shall have one or more Paying Agents for the Debt Securities of any series, or any Tranche thereof, it shall, on or before each due date of the principal of and premium, if any, and interest (including Additional Interest), if any, on such Debt Securities, deposit with such Paying Agents sums sufficient (without duplication) to pay the principal and premium or interest (including Additional Interest) so becoming due, such sum to be held in trust for the benefit of the Persons entitled to such principal, premium or interest (including Additional Interest), and (unless such Paying Agent is the Trustee) the Company shall promptly notify the Trustee of any failure by it so to act.

The Company shall cause each Paying Agent for the Debt Securities of any series, or any Tranche thereof, other than the Company or 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 shall:

(a) hold all sums held by it for the payment of the principal of and premium, if any, or interest (including Additional Interest), if any, on such Debt Securities in trust for the benefit



of the Persons entitled thereto until such sums shall be paid to such Persons or otherwise disposed of as herein provided;

(b) give the Trustee notice of any failure by the Company (or any other obligor upon such Debt Securities) to make any payment of principal of or premium, if any, or interest (including Additional Interest), if any, on such Debt Securities; and

(c) at any time during the continuance of any such default, upon the written request of the Trustee, forthwith pay to the Trustee all sums so held in trust by such Paying Agent and furnish to the Trustee such information as it possesses regarding the names and addresses of the Persons entitled to such sums.

The Company may at any time 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, if so stated in a Company Order delivered to the Trustee, in accordance with the provisions of Article VII; 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 and premium, if any, or interest (including Additional Interest), if any, on any Debt Security and remaining unclaimed for two years after such principal and premium, if any, or interest (including Additional Interest) has become due and payable shall be paid to the Company on Company Request, or, if then held by the Company, shall be discharged from such trust; and, upon such payment or discharge, the Holder of such Debt Security shall, as an unsecured general creditor and not as a Holder of an Outstanding Debt Security, look only to the Company for payment of the amount so due and payable and remaining unpaid, and all liability of the Trustee or such Paying Agent with respect to such trust money, and all liability of the Company as trustee thereof, shall thereupon cease; provided, however, that the Trustee or such Paying Agent, before being required to make any such payment to the Company, may at the expense of the Company cause to be mailed, on one occasion only, notice to such Holder that such money remains unclaimed and that, after a date specified therein, which shall not be less than 30 days from the date of such mailing, any unclaimed balance of such money then remaining will be paid to the Company.

#### SECTION 6.04 Corporate Existence.

Subject to the rights of the Company under Article XI, the Company shall do or cause to be done all things necessary to preserve and keep in full force and effect its corporate existence under the law of its jurisdiction of incorporation and all its rights (charter and statutory) thereunder; provided, however, that the Company shall not be required to preserve any such right if the Board of Directors of the Company shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Company and that the loss thereof is not disadvantageous in any material respect to the Holders of Debt Securities.

#### SECTION 6.05 Annual Officer's Certificate as to Compliance.

Within 120 days after the end of each fiscal year of the Company ending after the date hereof, the Company shall deliver to the Trustee an Officer's Certificate which need not comply with Section 1.02, executed by the principal executive officer, the principal financial officer or the principal accounting officer of the Company, stating whether, to such officer's knowledge, the Company is in compliance with all conditions and covenants under this Indenture, such compliance to be determined without regard to any period of grace or requirement of notice under this Indenture, and making any other statements as may be required by the provisions of Section 314(a)(4) of the Trust Indenture Act.

#### SECTION 6.06 Limitation on Liens.

The Company will not itself, nor will the Company permit any Restricted Subsidiary to, incur, issue, assume or guarantee any indebtedness for money borrowed (all such indebtedness for money borrowed being hereinafter in this Article VI called "Debt") secured by a Mortgage on any Principal Property or on any shares of stock or Indebtedness of any Restricted Subsidiary, without first effectively providing that the Debt Securities of each series (together with, if the Company shall so determine, any other indebtedness of the Company or any Restricted Subsidiary which is not subordinate in right of payment to the prior right of payment in full of the Debt Securities of any series) shall be secured equally and ratably with (or prior to) such secured Debt, for so long as such secured Debt shall be so secured, unless, after giving effect thereto, the principal amount of all Debt so secured would not exceed 10% of Consolidated Net Tangible Assets; provided, however, that this Section 6.06 shall not apply to, and there shall be excluded from secured Debt in any computation under this Section 6.06, Debt secured by:

- (a) Mortgages existing at the date of this Indenture;
- (b) Mortgages on property of, or on any shares of stock or Indebtedness of, any entity existing at the time such entity is merged into or consolidated with the Company or becomes a Restricted Subsidiary;
- (c) Mortgages in favor of the Company or any Restricted Subsidiary;
- (d) Mortgages on property, shares of stock or Indebtedness existing at the time of acquisition thereof (including acquisitions through merger, consolidation or other reorganization) or to secure the payment of all or any part of the purchase price thereof or construction thereon or to secure any Debt incurred prior to, at the time of, or within one year after the later of the acquisition, the completion of construction or the commencement of full operation of such property or within one year after the acquisition of such shares or Indebtedness for the purpose of financing all or any part of the purchase price thereof or construction thereon, it being understood that if a commitment for such financing is obtained prior to or within such one-year period, the applicable Mortgage shall be deemed to be included in this clause (4) whether or not such Mortgage is created within such one-year period;
- (e) Mortgages in favor of the United States, any State thereof, Canada, or any province thereof, or any department, agency or instrumentality or political subdivision of the

United States, any State thereof, Canada, or any province thereof, or in favor of any other country or any political subdivision thereof;

(f) Mortgages on minerals or geothermal resources in place, or on related leasehold or other property interests, that are incurred to finance development, production or acquisition costs (including, but not limited to, Mortgages securing advance sale obligations);

(g) Mortgages on equipment used or usable for drilling, servicing or operating oil, gas, coal or other mineral properties or geothermal properties;

(h) Mortgages required by any contract or statute in order to permit the Company or any of its Subsidiaries to perform any contract or subcontract made with or at the request of, the United States, any State thereof, Canada, any province thereof, or in favor of any other country or any political subdivision thereof or any department, agency or instrumentality of the United States, any State thereof, Canada, any province thereof or any other country or political subdivision thereof;

(i) any Mortgage resulting from the deposit of moneys or evidence of indebtedness in trust for the purpose of defeasing Debt of the Company or any Restricted Subsidiary or secured Debt of the Company or any Restricted Subsidiary the net proceeds of which are used, substantially concurrent with the funding thereof, and taking into consideration, among other things, required notices to be given to the holders of the outstanding securities in connection with the refunding, refinancing or repurchase thereof, and the required corresponding durations thereof, to refund, refinance or repurchase all of the outstanding securities, including the amount of all accrued interest thereon and reasonable fees and expenses and premiums, if any, incurred by the Company or any Restricted Subsidiary in connection therewith; and

(j) any extension, renewal or replacement (or successive extensions, renewals or replacements) of any Mortgage referred to in the foregoing clauses

(a) to (i) of this Section 6.06, inclusive; provided, however, that such extension, renewal or replacement Mortgage shall be limited to all or a part of the same property (including any improvements on such property), shares of stock or Indebtedness that secured the Mortgage so extended, renewed or replaced.

The following transactions shall not be deemed to create Debt secured by a Mortgage;

(i) the sale or other transfer of oil, gas, coal or other minerals in place for a period of time until, or in an amount such that, the transferee will realize therefrom a specified amount of money (however determined) or a specified amount of oil, gas, coal or other minerals, or the sale or other transfer of any other interest in property of the character commonly referred to as an oil, gas, coal or other mineral payment or a production payment, and including in any case, overriding royalty interests, net profit interests, reversionary interests and carried interests and other similar burdens on production; and

(ii) the sale or other transfer by the Company or a Restricted Subsidiary of properties to a partnership, joint venture or other entity whereby the Company or such Restricted Subsidiary would retain partial ownership of such properties.

## SECTION 6.07 Waiver of Certain Covenants.

The Company may omit in any particular instance to comply with any term, provision or condition set forth in (a) Section 6.02 or any additional covenant or restriction specified with respect to the Debt Securities of any series, or any Tranche thereof, as contemplated by Section 3.01 if before the time for such compliance the Holders of at least a majority in aggregate principal amount of the Outstanding Debt Securities of all series and Tranches with respect to which compliance with Section 6.02 or such additional covenant or restriction is to be omitted, considered as one class, shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition and (b) Sections 6.04, 6.06 or Article XI if before the time for such compliance the Holders of at least a majority in principal amount of Debt Securities Outstanding under this Indenture shall, by Act of such Holders, either waive such compliance in such instance or generally waive compliance with such term, provision or condition; but, in the case of (a) or (b), no such waiver shall extend to or affect such term, provision or condition except to the extent so expressly waived, and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such term, provision or condition shall remain in full force and effect.

## ARTICLE VII

### Satisfaction and Discharge

#### SECTION 7.01 Satisfaction and Discharge of Debt Securities.

Any Debt Security or Debt Securities, or any portion of the principal amount thereof, shall be deemed to have been paid for all purposes of this Indenture, and the entire indebtedness of the Company in respect thereof shall be deemed to have been satisfied and discharged, if there shall have been irrevocably deposited with the Trustee or any Paying Agent (other than the Company), in trust:

(a) money in an amount which shall be sufficient, or

(b) in the case of a deposit made prior to the Maturity of such Debt Securities or portions thereof, Eligible Obligations, which shall not contain provisions permitting the redemption or other prepayment thereof at the option of the issuer thereof, the principal of and the interest on which when due, without any regard to reinvestment thereof, will provide moneys which, together with the money, if any, deposited with or held by the Trustee or such Paying Agent, shall be sufficient, or

(c) a combination of (a) or (b) which shall be sufficient, to pay when due the principal of and premium, if any, and interest (including Additional Interest), if any, due and to become due on such Debt Securities or portions thereof on or prior to Maturity; provided, however, that in the case of the provision for payment or redemption of less than all the Debt Securities of any series or Tranche, such Debt Securities or portions thereof shall have been selected by the Trustee as provided herein and, in the case of a redemption, the notice requisite to the validity of such redemption shall have been given or irrevocable authority shall have been given by the Company to the Trustee to give such notice, under arrangements satisfactory to the

Trustee; and provided, further, that the Company shall have delivered to the Trustee and such Paying Agent:

(x) if such deposit shall have been made prior to the Maturity of such Debt Securities, a Company Order stating that the money and Eligible Obligations deposited in accordance with this Section shall be held in trust, as provided in Section 7.03;

(y) if Eligible Obligations shall have been deposited, an Opinion of Counsel that the obligations so deposited constitute Eligible Obligations and do not contain provisions permitting the redemption or other prepayment at the option of the issuer thereof, and an opinion of an independent public accountant of nationally recognized standing, selected by the Company, to the effect that the requirements set forth in clause (b) above have been satisfied; and

(z) if such deposit shall have been made prior to the Maturity of such Debt Securities, an Officer's Certificate stating the Company's intention that, upon delivery of such Officer's Certificate, its indebtedness in respect of such Debt Securities or portions thereof will have been satisfied and discharged as contemplated in this Section.

If the Company shall make any deposit of money and/or Eligible Obligations with respect to any Debt Securities, or any portion of the principal amount thereof, as contemplated by this section, the Company shall not deliver an Officer's Certificate described in clause (z) above unless the Company shall also deliver to the Trustee, together with such Officer's Certificate, an Opinion of Counsel to the effect that, as a result of a change in law occurring after the date of this Indenture, the Holders of such Debt Securities, or portions thereof, will not recognize income, gain or loss for United States federal income tax purposes as a result of the satisfaction and discharge of the Company's indebtedness in respect thereof and will be subject to United States federal income tax on the same amounts, at the same times and in the same manner as if such satisfaction and discharge had not been effected.

Upon the deposit of money or Eligible Obligations, or both, in accordance with this Section, together with the documents required by clauses (x), (y) and (z) above, the Trustee shall, upon receipt of a Company Request, acknowledge in writing that the Debt Security or Debt Securities or portions thereof with respect to which such deposit was made are deemed to have been paid for all purposes of this Indenture and that the entire indebtedness of the Company in respect thereof has been satisfied and discharged as contemplated in this Section. In the event that all of the conditions set forth in the first paragraph of this Section shall have been satisfied in respect of any Debt Securities or portions thereof except that, for any reason, the Officer's Certificate specified in clause (z) shall not have been delivered, such Debt Securities or portions thereof shall nevertheless be deemed to have been paid for all purposes of this Indenture, and the Holders of such Debt Securities or portions thereof shall nevertheless be no longer entitled to the benefits of this Indenture or of any of the covenants of the Company under Article VI (except the covenants contained in Sections 6.02 and 6.03) or any other covenants made in respect of such Debt Securities or portions thereof as contemplated by Section 3.01, but the indebtedness of the Company in respect of such Debt Securities or portions thereof shall not be deemed to have been satisfied and discharged prior to Maturity for any other purpose, and the Holders of such Debt Securities or portions thereof shall continue to be entitled to look to the Company for payment of

the indebtedness represented thereby; and, upon receipt of a Company Request, the Trustee shall acknowledge in writing that such Debt Securities or portions thereof are deemed to have been paid for all purposes of this Indenture.

If payment at Stated Maturity of less than all of the Debt Securities of any series, or any Tranche thereof, is to be provided for in the manner and with the effect provided in this Section, the Trustee shall select such Debt Securities, or portions of principal amount thereof, in the manner specified by Section 4.03 for selection for redemption of less than all the Debt Securities of a series or Tranche.

In the event that Debt Securities which shall be deemed to have been paid for purposes of this Indenture, and, if such is the case, in respect of which the Company's indebtedness shall have been satisfied and discharged, all as provided in this Section do not mature and are not to be redeemed within the sixty (60) day period commencing with the date of the deposit of moneys or Eligible Obligations, as aforesaid, the Company shall, as promptly as practicable, give a notice, in the same manner as a notice of redemption with respect to such Debt Securities, to the Holders of such Debt Securities to the effect that such deposit has been made and the effect thereof.

Notwithstanding that any Debt Securities shall be deemed to have been paid for purposes of this Indenture, as aforesaid, the obligations of the Company and the Trustee in respect of such Debt Securities under Sections 3.04, 3.05, 3.06, 4.04, 5.03 (as to notice of redemption), 6.02, 6.03, 9.07, 9.14 and 9.15 and this Article shall survive such satisfaction and discharge.

The Company shall pay, and shall indemnify the Trustee or any Paying Agent with which Eligible Obligations shall have been deposited as provided in this Section against any tax, fee or other charge imposed on or assessed against such Eligible Obligations or the principal or interest received in respect of such Eligible Obligations, including, but not limited to, any such tax payable by any entity deemed, for tax purposes, to have been created as a result of such deposit.

Anything herein to the contrary notwithstanding, (a) if, at any time after a Debt Security would be deemed to have been paid for purposes of this Indenture, and, if such is the case, the Company's indebtedness in respect thereof would be deemed to have been satisfied or discharged, pursuant to this

Section (without regard to the provisions of this paragraph), the Trustee or any Paying Agent, as the case may be, shall be required to return the money or Eligible Obligations, or combination thereof, deposited with it as aforesaid to the Company or its representative under any applicable Federal or State bankruptcy, insolvency or other similar law, such Debt Security shall thereupon be deemed retroactively not to have been paid and any satisfaction and discharge of the Company's indebtedness in respect thereof shall retroactively be deemed not to have been effected, and such Debt Security shall be deemed to remain Outstanding and (b) any satisfaction and discharge of the Company's indebtedness in respect of any Debt Security shall be subject to the provisions of the last paragraph of Section 6.03.

#### SECTION 7.02 Satisfaction and Discharge of Indenture.

This Indenture shall upon Company Request cease to be of further effect (except as hereinafter expressly provided), and the Trustee, at the expense of the Company, shall execute proper instruments acknowledging satisfaction and discharge of this Indenture, when

(a) no Debt Securities remain Outstanding hereunder; and

(b) the Company has paid or caused to be paid all other sums payable hereunder by the Company;

provided, however, that if, in accordance with the last paragraph of Section 7.01, any Debt Security, previously deemed to have been paid for purposes of this Indenture, shall be deemed retroactively not to have been so paid, this Indenture shall thereupon be deemed retroactively not to have been satisfied and discharged, as aforesaid, and to remain in full force and effect, and the Company shall execute and deliver such instruments as the Trustee shall reasonably request to evidence and acknowledge the same.

Notwithstanding the satisfaction and discharge of this Indenture as aforesaid, the obligations of the Company and the Trustee under Sections 3.04, 3.05, 3.06, 4.04, 5.03 (as to notice of redemption), 6.02, 6.03, 9.07, 9.14 and 9.15 and this Article shall survive such satisfaction and discharge.

Upon satisfaction and discharge of this Indenture as provided in this Section, the Trustee shall assign, transfer and turn over to the Company, subject to the lien provided by Section 9.07, any and all money, securities and other property then held by the Trustee for the benefit of the Holders of the Debt Securities other than money and Eligible Obligations held by the Trustee pursuant to Section 7.03.

#### SECTION 7.03 Application of Trust Money.

Neither the Eligible Obligations nor the money deposited pursuant to Section 7.01, nor the principal or interest payments on any such Eligible Obligations, shall be withdrawn or used for any purpose other than, and shall be held in trust for, the payment of the principal of, and premium, if any, and interest (including Additional Interest), if any, on, the Debt Securities or portions of principal amount thereof in respect of which such deposit was made, all subject, however, to the provisions of Section 6.03; provided, however, that, so long as there shall not have occurred and be continuing an Event of Default, or an event which, with the giving of notice or the passage of time, would become an Event of Default, any cash received from such principal or interest payments on such Eligible Obligations, if not then needed for such purpose, shall, to the extent practicable, be invested in Eligible Obligations of the type described in clause (b) in the first paragraph of Section 7.01 maturing at such times and in such amounts as shall be sufficient to pay when due the principal of and premium, if any, and interest (including Additional Interest), if any, due and to become due on such Debt Securities or portions thereof on and prior to the Maturity thereof, and interest earned from such reinvestment shall be paid over to the Company as received, free and clear of any trust, lien or pledge under this Indenture except the lien provided by Section 9.07; and provided, further, that, so long as there shall not have occurred and be continuing an Event of Default, or an event which, with the giving of notice or the passage of time, would become an Event of Default, any moneys held in accordance with this Section on the Maturity of all such Debt Securities in excess of the amount required to pay the principal of and premium, if any, and interest (including Additional Interest), if any, then due on such Debt Securities shall be paid over to the Company free and clear of any trust, lien or pledge under this Indenture except the lien provided by Section 9.07; and provided, further, that

if an Event of Default, or an event which, with the giving of notice or the passage of time, would become an Event of Default, shall have occurred and be continuing, moneys to be paid over to the Company pursuant to this Section shall be held until such Event of Default, or event which, with the giving of notice or the passage of time, would become an Event of Default, shall have been waived or cured.

## ARTICLE VIII

### EVENTS OF DEFAULT; REMEDIES

#### SECTION 8.01 Events of Default.

"Event of Default", wherever used herein with respect to Debt Securities of any series, means, except as otherwise specified pursuant to Section 3.01, any one of the following events:

(a) failure to pay interest (including Additional Interest), if any, on any Debt Security of such series within thirty (30) days after the same becomes due and payable; or

(b) failure to pay the principal of or premium, if any, on any Debt Security of such series when due and payable; or

(c) failure to perform or breach of any covenant or warranty of the Company in this Indenture (other than a covenant or warranty a default in the performance of which or breach of which is elsewhere in this Section specifically dealt with or which has expressly been included in this Indenture solely for the benefit of one or more series of Debt Securities other than such series) for a period of 60 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 principal amount of the Outstanding Debt Securities of such series, a written notice specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder, unless the Trustee, or the Trustee and the Holders of a principal amount of Debt Securities of such series not less than the principal amount of Debt Securities the Holders of which gave such notice, as the case may be, shall agree in writing to an extension of such period prior to its expiration; provided, however, that the Trustee, or the Trustee and the Holders of such principal amount of Debt Securities of such series, as the case may be, shall be deemed to have agreed to an extension of such period for a maximum of one hundred twenty (120) days if corrective action is initiated by the Company within such period and is being diligently pursued; or

(d) the entry by a court having jurisdiction in the premises of (1) a decree or order for relief in respect of the Company in an involuntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or (2) a decree or order adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition by one or more Persons other than the Company seeking reorganization, arrangement, adjustment or composition of or in respect of the Company under any applicable Federal or state law, or appointing a custodian, receiver, liquidator, assignee, trustee, sequestrator or other similar official for the Company or for any substantial part of its property, or ordering the winding up or



liquidation of its affairs, and any such decree or order for relief or any such other decree or order shall have remained unstayed and in effect for a period of 90 consecutive days; or

(e) the commencement by the Company of a voluntary case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or of any other case or proceeding to be adjudicated a bankrupt or insolvent, or the consent by it to the entry of a decree or order for relief in respect of the Company in case or proceeding under any applicable Federal or state bankruptcy, insolvency, reorganization or other similar law or to the commencement of any bankruptcy or insolvency case or proceeding against it, or the filing by it of a petition or answer or consent seeking reorganization or relief under any applicable Federal or state law, or the consent by it to the filing of such petition or to the appointment of or taking possession by a custodian, receiver, liquidator, assignee, trustee, sequestrator or similar official of the Company or of any substantial part of its property, or the making by it of an assignment for the benefit of creditors, or the admission by it in writing of its inability to pay its debts generally as they become due, or the authorization of such action by the Board of Directors; or

(f) any other Event of Default specified with respect to Debt Securities of such series.

#### SECTION 8.02 Acceleration of Maturity; Rescission and Annulment.

If an Event of Default due to the default in payment of principal of, or premium, if any, or interest (including Additional Interest) on, any series of Debt Securities or due to the default in the performance or breach of any other covenant or warranty of the Company applicable to the Debt Securities of such series but not applicable to all Outstanding Debt Securities shall have occurred and be continuing, either the Trustee or the Holders of not less than 25% in principal amount of the Debt Securities of such series may then declare the principal amount (or, if any of the Debt Securities of such series are Discount Debt Securities, such portion of the principal amount as may be specified in the terms thereof as contemplated by Section 3.01) of all Debt Securities of such series and premium, if payment of any thereof be in default, and interest (including Additional Interest) accrued thereon to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders). If an Event of Default due to default in the performance of any other of the covenants or warranties herein applicable to all Outstanding Debt Securities or an Event of Default specified in Section 8.01(d) or (e) shall have occurred and be continuing, either the Trustee or the Holders of not less than 25% in principal amount of all Debt Securities then Outstanding (considered as one class), and not the Holders of the Debt Securities of any one of such series, may declare the principal amount (or, if any of the Debt Securities are Discount Debt Securities, such portion of the principal amount of such Debt Securities as may be specified in the terms thereof as contemplated by Section 3.01) of all Debt Securities and premium, if payment of any thereof be in default, and interest accrued thereon to be due and payable immediately, by a notice in writing to the Company (and to the Trustee if given by the Holders). As a consequence of each such declaration (herein referred to as a declaration of acceleration) with respect to Debt Securities of any series, the principal amount (or portion thereof in the case of Discount Debt Securities) of such Debt Securities, premium, if any, and interest (including Additional Interest) accrued thereon shall become due and payable immediately.

With respect to a series of Debt Securities to which a credit enhancement is applicable, the applicable supplemental indenture may provide that the provider of such credit enhancement may, if default has occurred and is continuing with respect to such series, have all or any part of the rights with respect to remedies that would otherwise have been exercisable by the Holders of Debt Securities of that series.

At any time after such a declaration of acceleration with respect to Debt Securities of any series shall have been made and before a judgment or decree for payment of the money due shall have been obtained by the Trustee as hereinafter in this Article provided, the Event or Events of Default giving rise to such declaration of acceleration shall, without further act, be deemed to have been waived, and such declaration and its consequences shall, without further act, be deemed to have been rescinded and annulled, if

(a) the Company shall have paid or deposited with the Trustee a sum sufficient to pay

(1) all overdue interest on all Debt Securities of such series;

(2) the principal of and premium, if any, on any Debt Securities of such series which have become due otherwise than by such declaration of acceleration and interest and Additional Interest thereon at the rate or rates prescribed therefor in such Debt Securities;

(3) any accrued Additional Interest on all Debt Securities of such series;

(4) all amounts due to the Trustee under Section 9.07;

and

(b) any other Event or Events of Default with respect to Debt Securities of such series, other than the non-payment of the principal of Debt Securities of such series which shall have become due solely by such declaration of acceleration, shall have been cured or waived as provided in Section 8.13.

No such rescission shall affect any subsequent Event of Default or impair any right consequent thereon.

#### SECTION 8.03 Collection of Indebtedness and Suits for Enforcement by Trustee.

If an Event of Default described in clause (a) or (b) of Section 8.01 shall have occurred and be continuing, the Company shall, upon demand of the Trustee, pay to it, for the benefit of the Holders of the Debt Securities of the series with respect to which such Event of Default shall have occurred, the whole amount then due and payable on such Debt Securities for principal and premium, if any, and interest, if any, and, to the extent permitted by law, (i) interest on premium, if any, (ii) interest on any overdue principal and (iii) Additional Interest, at the rate or rates prescribed therefor in such Debt Securities, and, in addition thereto, such further amount as shall be sufficient to cover any amounts due to the Trustee under Section 9.07.

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

If an Event of Default with respect to Debt Securities of any series shall have occurred and be continuing, the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders of Debt Securities of such series 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 8.04 Trustee May File Proofs of Claim.

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

(a) to file and prove a claim for the whole amount of principal, premium, if any, and interest (including Additional Interest), if any, owing and unpaid in respect of the Debt Securities and to file such other papers or documents as may be necessary or advisable in order to have the claims of the Trustee (including any claim for amounts due to the Trustee under Section 9.07) and of the Holders allowed in such judicial proceeding, and

(b) to collect and receive any moneys or other property payable or deliverable on any such claims and to distribute the same, and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Holder to make such payments to the Trustee and, in the event that the Trustee shall consent to the making of such payments directly to the Holders, to pay to the Trustee any amounts due it under Section 9.07.

Nothing herein contained shall be deemed to authorize the Trustee to authorize or consent to or accept or adopt on behalf of any Holder any plan of reorganization, arrangement, adjustment or composition affecting the Debt 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 8.05 Trustee May Enforce Claims Without Possession of Debt Securities.

All rights of action and claims under this Indenture or the Debt Securities may be prosecuted and enforced by the Trustee without the possession of any of the Debt 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 the reasonable compensation, expenses, disbursements and advances of the Trustee, its agents and counsel, be for the ratable benefit of the Holders in respect of which such judgment has been recovered.

#### SECTION 8.06 Application of Money Collected.

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 premium, if any, or interest (including Additional Interest), if any, upon presentation of the Debt Securities in respect of which or for the benefit of which such money shall have been collected 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 under Section 9.07;

Second: To the payment of the amounts then due and unpaid upon the Debt Securities for principal of and premium, if any, and interest (including Additional Interest), if any, 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 Debt Securities for principal, premium, if any, and interest (including Additional Interest), if any, respectively; and

Third: To the payment of the remainder, if any, to the Company, or as a court of competent jurisdiction may direct in a final, non-appealable order.

#### SECTION 8.07 Limitation on Suits.

No Holder 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:

(a) such Holder shall have previously given written notice to the Trustee of a continuing Event of Default with respect to the Debt Securities of such series;

(b) the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class, shall have made a written request to the Trustee to institute proceedings in respect of such Event of Default in its own name as Trustee hereunder;

(c) such Holder or Holders shall have offered to the Trustee reasonable indemnity satisfactory to it against the costs, expenses and liabilities to be incurred in compliance with such request;

(d) the Trustee for 60 days after its receipt of such notice, request and offer of indemnity shall have failed to institute any such proceeding; and

(e) no direction inconsistent with such written request shall have been given to the Trustee during such 60-day period by the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all series in respect of which an Event of Default shall have occurred and be continuing, considered as one class;

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

#### SECTION 8.08 Unconditional Right of Holders to Receive Principal, Premium and Interest.

Notwithstanding any other provision in this Indenture, the Holder of any Debt Security shall have the right, which is absolute and unconditional, to receive payment of the principal of and premium, if any, and (subject to Section 3.07) interest (including Additional Interest), if any, on such Debt Security on the Stated Maturity or Maturities expressed in such Debt Security (or, in the case of redemption, on the Redemption Date) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

#### SECTION 8.09 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 shall have been discontinued or abandoned for any reason, or shall have 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, and Trustee and such Holder shall be restored severally and respectively to their former positions hereunder and thereafter all rights and remedies of the Trustee and such Holder shall continue as though no such proceeding had been instituted.

#### SECTION 8.10 Rights and Remedies Cumulative.

Except as otherwise provided in the last paragraph of Section 3.06, no right or remedy herein conferred upon or reserved to the Trustee or to the Holders is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other appropriate right or remedy.

#### SECTION 8.11 Delay or Omission Not Waiver.

No delay or omission of the Trustee or of any Holder 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 8.12 Control by Holders of Debt Securities.

If an Event of Default shall have occurred and be continuing in respect of a series of Debt Securities, the Holders of a majority in principal amount of the Outstanding Debt Securities of such series shall have the right to direct the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred on the Trustee, with respect to the Debt Securities of such series; provided, however, that if an Event of Default shall have occurred and be continuing with respect to more than one series of Debt Securities, the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all such series, considered as one class, shall have the right to make such direction, and not the Holders of the Debt Securities of any one of such series; and provided, further, that

- (a) such direction shall not be in conflict with any rule of law or with this Indenture, and could not involve the Trustee in personal liability in circumstances where indemnity would not in the Trustee's reasonable discretion be adequate, and
- (b) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction.

Before proceeding to exercise any right or power hereunder at the direction of such Holders, the Trustee shall be entitled to receive from such Holders reasonable security or indemnity, against the costs, expenses and liabilities which might be incurred by it in compliance with any such direction.

#### SECTION 8.13 Waiver of Past Defaults.

The Holders of not less than a majority in principal amount of the Outstanding Debt Securities of any series may on behalf of the Holders of all the Debt Securities of such series waive any past default hereunder with respect to such series and its consequences, except a default

- (a) in the payment of the principal of or premium, if any, or interest (including Additional Interest), if any, on any Debt Security of such series, or
- (b) in respect of a covenant or provision hereof which under Section 12.02 cannot be modified or amended without the consent of the Holder of each Outstanding Debt Security of such series affected.

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

#### SECTION 8.14 Undertaking for Costs.

The Company and the Trustee agree, and each Holder by his acceptance thereof shall be deemed to have agreed, that any court may in its discretion require, in any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for

any action taken, suffered or omitted by it as Trustee, the filing by any party litigant in such suit of an undertaking to pay the costs of such suit, and that such court may in its discretion assess reasonable costs, including reasonable attorneys' fees and expenses, against any party litigant in such suit, having due regard to the merits and good faith of the claims or defenses made by such party litigant; but the provisions of this Section shall not apply to any suit instituted by the Company, to any suit instituted by the Trustee, to any suit instituted by any Holder, or group of Holders, holding in the aggregate more than 10% in aggregate principal amount of the Outstanding Debt Securities of all series in respect of which such suit may be brought, considered as one class, or to any suit instituted by any Holder for the enforcement of the payment of the principal of or premium, if any, or interest (including Additional Interest), if any, on any Debt Security on or after the Stated Maturity or Maturities expressed in such Debt Security (or, in the case of redemption, on or after the Redemption Date).

#### SECTION 8.15 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.

### **ARTICLE IX**

#### **THE TRUSTEE**

#### SECTION 9.01 Certain Duties and Responsibilities.

- (a) The Trustee shall have and be subject to all the duties and responsibilities specified with respect to an indenture trustee in the Trust Indenture Act, and no implied covenants or obligations shall be read into this Indenture against the Trustee. For purposes of Sections 315(a) and 315(c) of the Trust Indenture Act, the term "default" is hereby defined as an Event of Default which has occurred and is continuing.
- (b) The Trustee, prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default of which a Responsible Officer of the Trustee has actual knowledge has occurred (which has not been cured or waived), the Trustee shall exercise such of the rights and powers vested in it by this Indenture, 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 such person's own affairs.
- (c) No provision of this Indenture shall be construed to relieve the Trustee from liability for its own negligent action, its own negligent failure to act or its own willful

misconduct, except that prior to the occurrence of an Event of Default and after the curing or waiving of all Events of Default which may have occurred:

- (i) the duties and obligations of the Trustee shall be determined solely by the express provisions of this Indenture, and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee; and
- (ii) in the absence of bad faith on the part of the Trustee, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture; but, in the case of any such certificates or opinions that by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the same to determine whether or not they conform to the requirements of this Indenture (but need not to confirm or investigate the accuracy of any mathematical calculations or other facts stated therein).
- (d) The Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer or Officers of the Trustee, unless it shall be proven that the Trustee was negligent in ascertaining the pertinent facts.
- (e) The Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith, in accordance with the direction of the Holders of Debt Securities pursuant to Section 8.12, relating to the time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture.
- (f) 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.
- (g) Notwithstanding anything contained in this Indenture to the contrary, the duties and responsibilities of the Trustee under this Indenture shall be subject to the protections, exculpations and limitations on liability afforded to the Trustee under the provisions of the Trust Indenture Act, including those provisions of such Act deemed by such Act to be included herein.
- (h) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section.

#### SECTION 9.02 Notice of Defaults.

The Trustee shall give the Holders notice of any default hereunder with respect to the Debt Securities of any series to the Holders of Debt Securities of such series of which it has knowledge (within the meaning of Section 9.03(h) hereof) in the manner and to the extent required to do so by the Trust Indenture Act, unless such default shall have been cured or waived; provided, however, that in the case of any default of the character specified in Section



8.01(c), no such notice to Holders shall be given until at least 60 days after the occurrence thereof. For the purpose of this Section, the term "default" means any event which is, or after notice or lapse of time, or both, would become, an Event of Default.

### SECTION 9.03 Certain Rights of Trustee.

Subject to the provisions of Section 9.01 and to the applicable provisions of the Trust Indenture Act:

(a) the 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 (whether in its original or facsimile form) 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, or as otherwise expressly provided herein, 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 Officer's Certificate;

(d) the Trustee may consult with counsel of its own selection 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 Holder pursuant to this Indenture, unless such Holder shall have offered to the Trustee reasonable security or indemnity 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 (subject to applicable legal requirements) be entitled to examine, during normal business hours, the books, records and premises of the Company, personally or by agent or attorney at the expense of the Company and shall incur no liability or additional liability of any kind by reason of such inquiry or investigation;

(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 charged with knowledge of any default or Event of Default with respect to the Debt Securities of any series for which it is acting as Trustee unless either (1) a Responsible Officer of the Trustee shall have actual knowledge of the default or Event of Default or (2) written notice of such default or Event of Default (which shall state that such notice is a "Notice of Default" or a "Notice of an Event of Default" hereunder, as the case may be) shall have been given to a Responsible Officer of the Trustee by the Company, any other obligor on such Debt Securities or by any Holder of such Debt Securities.

#### SECTION 9.04 Not Responsible for Recitals or Issuance of Debt Securities.

The recitals contained herein and in the Debt Securities (except the Trustee's certificates of authentication) shall be taken as the statements of the Company, and neither the Trustee nor any Authenticating Agent assumes responsibility for their correctness. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities. Neither the Trustee nor any Authenticating Agent shall be accountable for the use or application by the Company of Debt Securities or the proceeds thereof.

#### SECTION 9.05 May Hold Debt Securities.

Each of the Trustee, any Authenticating Agent, any Paying Agent, any Debt Security Registrar or any other agent of the Company, in its individual or any other capacity, may become the owner or pledgee of Debt Securities and, subject to Sections 9.08 and 9.13, may otherwise deal with the Company with the same rights it would have if it were not the Trustee, Authenticating Agent, Paying Agent, Debt Security Registrar or such other agent.

#### SECTION 9.06 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 investment of any money received by it hereunder except as expressly provided herein or otherwise agreed with, and for the sole benefit of, the Company.

#### SECTION 9.07 Compensation and Reimbursement.

The Company shall

(a) pay to the Trustee as agreed upon in writing from time to time, reasonable compensation for all services rendered by it hereunder (which compensation shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust);

(b) except as otherwise expressly provided herein, reimburse the Trustee upon its request for all expenses or disbursements reasonably incurred or made by the Trustee in accordance with any provision of this Indenture, including the costs of collection (including the reasonable compensation and the expenses and disbursements of its agents and counsel), except

to the extent that any such expense or disbursement may be attributable to its own negligence, willful misconduct or bad faith; and

(c) fully indemnify the Trustee and hold it harmless from and against any and all losses, demands, claims, liabilities, causes of action or expenses (including reasonable attorney's fees and expenses) incurred by it arising out of or in connection with the acceptance or administration of the trust or trusts hereunder or the performance of its duties hereunder (including the reasonable 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, except to the extent any such loss, demand, claim, liability, cause of action or expense may be attributable to its own negligence, willful misconduct or bad faith) and assume the defense of the Trustee with counsel acceptable to the Trustee, unless the Trustee shall have been advised by counsel that there may be a conflict of interest or one or more legal defenses available to it which are different from or additional to those available to the Company in which case the Trustee may employ, and the Company shall pay the fees and expenses of, its own counsel.

As security for the performance of the obligations of the Company under this Section, the Trustee shall have a lien prior to the Debt Securities upon all property and funds held or collected by the Trustee as such other than property and funds held in trust under Section 7.03 (except as otherwise provided in Section 7.03). "Trustee" for purposes of this Section shall include any predecessor Trustee; provided, however, that the negligence, willful misconduct or bad faith of any Trustee hereunder shall not affect the rights of any other Trustee hereunder.

When a Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 8.01(d) or Section 8.01(e), 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 termination of this Indenture and resignation or removal of the Trustee.

#### SECTION 9.08 Disqualification; Conflicting Interests.

If the Trustee shall have or acquire any conflicting interest within the meaning of the Trust Indenture Act, it shall either eliminate such conflicting interest or resign to the extent, in the manner and with the effect, and subject to the conditions, provided in the Trust Indenture Act and this Indenture. For purposes of Section 310(b)(1) of the Trust Indenture Act and to the extent permitted thereby, the Trustee shall not be deemed to have a conflicting interest by virtue of being a Trustee under this Indenture with respect to Debt Securities of more than one series.

#### SECTION 9.09 Corporate Trustee Required; Eligibility.

There shall at all times be a Trustee hereunder which shall be

(a) a corporation organized and doing business under the laws of the United States, any State or Territory thereof or the District of Columbia, authorized under such laws to exercise

corporate trust powers, having a combined capital and surplus of at least \$50,000,000 and subject to supervision or examination by Federal or State authority, or

(b) if and to the extent permitted by the Commission by rule, regulation or order upon application, a corporation or other Person organized and doing business under the laws of a foreign government, authorized under such laws to exercise corporate trust powers, having a combined capital and surplus of at least \$50,000,000 or the Dollar equivalent of the applicable foreign currency and subject to supervision or examination by authority of such foreign government or a political subdivision thereof substantially equivalent to supervision or examination applicable to United States institutional trustees, and, in either case, qualified and eligible under this Article and the Trust Indenture Act. If such corporation publishes reports of condition at least annually, pursuant to law or to the requirements of such supervising or examining authority, then for the purposes of this Section, the combined capital and surplus of such corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time the Trustee shall cease to be eligible in accordance with the provisions of this Section, it shall resign immediately in the manner and with the effect hereinafter specified in this Article.

#### SECTION 9.10 Resignation and Removal; Appointment of Successor.

(a) No resignation or removal of the Trustee and no appointment of a successor Trustee pursuant to this Article shall become effective until the acceptance of appointment by the successor Trustee in accordance with the applicable requirements of Section 9.11.

(b) The Trustee may resign at any time with respect to the Debt Securities of one or more series by giving written notice thereof to the Company. If the instrument of acceptance by a successor Trustee required by Section 9.11 shall not have been delivered to the Trustee within 30 days after the giving of such notice of resignation, the resigning Trustee may petition at the expense of the Company any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Debt Securities of such series.

(c) The Trustee may be removed at any time with respect to the Debt Securities of any series by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities of such series delivered to the Trustee and to the Company.

(d) If at any time:

(1) the Trustee shall fail to comply with Section 9.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, or

(2) the Trustee shall cease to be eligible under Section 9.09 and shall fail to resign after written request therefor by the Company or by any Holder who has been a bona fide Holder for at least six months, 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, (x) the Company by a Board Resolution may remove the Trustee with respect to all Debt Securities or (y) subject to Section 8.14, any Holder who has been a bona fide Holder 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 with respect to all Debt Securities and the appointment of a successor Trustee or Trustees.

(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 (other than as contemplated in clause (y) in subsection (d) of this Section), with respect to the Debt Securities of one or more series, the Company, by a Board Resolution, shall promptly appoint a successor Trustee or Trustees with respect to the Debt Securities of that or those series (it being understood that any such successor Trustee may be appointed with respect to the Debt Securities of one or more or all of such series and that at any time there shall be only one Trustee with respect to the Debt Securities of any particular series) and shall comply with the applicable requirements of Section 9.11. If, within one year after such resignation, removal or incapability, or the occurrence of such vacancy, a successor Trustee with respect to the Debt Securities of any series shall be appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities of such series delivered to the Company and the retiring Trustee, the successor Trustee so appointed shall, forthwith upon its acceptance of such appointment in accordance with the applicable requirements of Section 9.11, become the successor Trustee with respect to the Debt Securities of such series and to that extent supersede the successor Trustee appointed by the Company. If no successor Trustee with respect to the Debt Securities of any series shall have been so appointed by the Company or the Holders and accepted appointment in the manner required by Section 9.11, any Holder who has been a bona fide Holder of a Debt Security of such series for at least six months may, on behalf of itself and all others similarly situated, petition any court of competent jurisdiction for the appointment of a successor Trustee with respect to the Debt Securities of such series.

(f) So long as no event which is, or after notice or lapse of time, or both, would become, an Event of Default shall have occurred and be continuing, and except with respect to a Trustee appointed by Act of the Holders of a majority in principal amount of the Outstanding Debt Securities pursuant to subsection (e) of this Section, if the Company shall have delivered to the Trustee (i) a Board Resolution appointing a successor Trustee, effective as of a date specified therein, and (ii) an instrument of acceptance of such appointment, effective as of such date, by such successor Trustee in accordance with Section 9.11, the Trustee shall be deemed to have resigned as contemplated in subsection (b) of this Section, the successor Trustee shall be deemed to have been appointed by the Company pursuant to subsection (e) of this Section and such appointment shall be deemed to have been accepted as contemplated in Section 9.11, all as of such date, and all other provisions of this Section and Section 9.11 shall be applicable to such resignation, appointment and acceptance except to the extent inconsistent with this subsection (f).

(g) The Company or, should the Company fail so to act promptly, the successor Trustee, at the expense of the Company, shall give notice of each resignation and each removal of the Trustee with respect to the Debt Securities of any series and each appointment of a

successor Trustee with respect to the Debt Securities of any series by mailing written notice of such event by first-class mail, postage prepaid, to all Holders of Debt Securities of such series as their names and addresses appear in the Debt Security Register. Each notice shall include the name of the successor Trustee with respect to the Debt Securities of such series and the address of its corporate trust office.

#### SECTION 9.11 Acceptance of Appointment by Successor.

(a) In case of the appointment hereunder of a successor Trustee with respect to the Debt Securities of all series, every such successor Trustee so appointed 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; but, on the request of the Company or the successor Trustee, such retiring Trustee shall, upon payment of all sums owed to it, 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.

(b) In case of the appointment hereunder of a successor Trustee with respect to the Debt Securities of one or more (but not all) series, the Company, the retiring Trustee and each successor Trustee with respect to the Debt Securities of one or more series shall execute and deliver an indenture supplemental hereto wherein each successor Trustee shall accept such appointment and which (1) shall contain such provisions as shall be necessary or desirable to transfer and confirm to, and to vest in, each successor Trustee all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates, (2) if the retiring Trustee is not retiring with respect to all Debt Securities, shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of that or those series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee and (3) shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee; and upon the execution and delivery of such supplemental indenture the resignation or removal of the retiring Trustee shall become effective to the extent provided therein and each 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 with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates; but, on request of the Company or any successor Trustee, such retiring Trustee, upon payment of all sums owed to it, shall duly assign, transfer and deliver to such successor Trustee all property and money held by such retiring Trustee hereunder with respect to the Debt Securities of that or those series to which the appointment of such successor Trustee relates.

(c) Upon request of any such successor Trustee, the Company shall execute any instruments which fully vest in and confirm to such successor Trustee all such rights, powers and trusts referred to in subsection (a) or (b) of this Section, as the case may be.

(d) 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 9.12 Merger, Conversion, Consolidation or Succession to Business.

Any corporation into which the Trustee may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any corporation succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder, provided such corporation shall be otherwise qualified and eligible under this Article, without the execution or filing of any paper or any further act on the part of any of the parties hereto. In case any Debt 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 Debt Securities so authenticated with the same effect as if such successor Trustee had itself authenticated such Debt Securities.

#### SECTION 9.13 Preferential Collection of Claims Against Company.

If the Trustee shall be or become a creditor of the Company or any other obligor upon the Debt Securities (other than by reason of a relationship described in Section 311(b) of the Trust Indenture Act), the Trustee shall be subject to any and all applicable provisions of the Trust Indenture Act regarding the collection of claims against the Company or such other obligor.

#### SECTION 9.14 Co-trustees and Separate Trustees.

At any time or times, for the purpose of meeting the legal requirements of any applicable jurisdiction, the Company and the Trustee shall have power to appoint, and, upon the written request of the Trustee or of the Holders of at least thirty-three per centum (33%) in principal amount of the Debt Securities then Outstanding, the Company shall for such purpose join with the Trustee in the execution and delivery of all instruments and agreements necessary or proper to appoint, one or more Persons approved by the Trustee either to act as co-trustee, jointly with the Trustee, or to act as separate trustee, in either case with such powers as may be provided in the instrument of appointment, and to vest in such Person or Persons, in the capacity aforesaid, any property, title, right or power deemed necessary or desirable, subject to the other provisions of this Section. If the Company does not join in such appointment within 15 days after the receipt by it of a request so to do, or if an Event of Default shall have occurred and be continuing, the Trustee alone shall have power to make such appointment.

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

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

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

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

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

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

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

#### SECTION 9.15 Appointment of Authenticating Agent.

The Trustee may appoint an Authenticating Agent or Agents with respect to the Debt Securities of one or more series, or any Tranche thereof, which shall be authorized to act on behalf of the Trustee to authenticate Debt Securities of such series or Tranche issued upon original issuance, exchange, registration of transfer or partial redemption thereof or pursuant to Section 3.06, and Debt Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as if authenticated by the Trustee hereunder. Wherever reference is made in this Indenture to the authentication and delivery of Debt Securities by the Trustee or the Trustee's certificate of authentication, such reference shall be deemed to include authentication and delivery on behalf of the Trustee by an Authenticating Agent and a certificate of authentication executed on behalf of the Trustee by an Authenticating Agent. Each Authenticating Agent shall be acceptable to the Company and shall at all times be a corporation organized and doing business under the laws of the United States, any State or



territory thereof or the District of Columbia or the Commonwealth of Puerto Rico, authorized under such laws to act as Authenticating Agent, having a combined capital and surplus of not less than \$50,000,000 and subject to supervision or examination by Federal or State authority. If such Authenticating Agent 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 Authenticating Agent 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 an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, such Authenticating Agent shall resign immediately in the manner and with the effect specified in this Section.

Any corporation into which an Authenticating 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 such Authenticating Agent shall be a party, or any corporation succeeding to the corporate agency or corporate trust business of an Authenticating Agent, shall continue to be an Authenticating Agent, provided such corporation shall be otherwise eligible under this Section, without the execution or filing of any paper or any further act on the part of the Trustee or the Authenticating Agent.

An Authenticating Agent may resign at any time by giving 45 days written notice thereof to the Trustee and to the Company. The Trustee may at any time terminate the agency of an Authenticating Agent by giving written notice thereof to such Authenticating Agent and to the Company. Upon receiving such a notice of resignation or upon such a termination, or in case at any time such Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section, the Trustee may appoint a successor Authenticating Agent which shall be acceptable to the Company. Any successor Authenticating Agent upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as if originally named as an Authenticating Agent. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation for its services under this Section.

The provisions of Sections 3.08, 9.04 and 9.05 shall be applicable to each Authenticating Agent.

If an appointment with respect to the Debt Securities of one or more series, or any Tranche thereof, shall be made pursuant to this Section, the Debt Securities of such series or Tranche may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication substantially in the following form:

This is one of the Debt Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated:

By The Bank of New York, As Trustee

By

**As Authenticating Agent**

By  
**Authorized Signatory**

If all of the Debt Securities of a series may not be originally issued at one time, and if the Trustee does not have an office capable of authenticating Debt Securities upon original issuance located in a Place of Payment where the Company wishes to have Debt Securities of such series authenticated upon original issuance, the Trustee, if so requested by the Company in writing (which writing need not comply with Section 1.02 and need not be accompanied by an Opinion of Counsel), shall appoint, in accordance with this Section and in accordance with such procedures as shall be acceptable to the Trustee, an Authenticating Agent having an office in a Place of Payment designated by the Company with respect to such series of Debt Securities.

## **ARTICLE X**

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

#### **SECTION 10.01 Lists of Holders.**

Semiannually, not later than April 1 and October 1 in each year, commencing with the year 2002, and at such other times as the Trustee may request in writing, the Company shall furnish or cause to be furnished to the Trustee information as to the names and addresses of the Holders, and the Trustee shall preserve such information and similar information received by it in any other capacity and afford to the Holders access to information so preserved by it, all to such extent, if any, and in such manner as shall be required by the Trust Indenture Act; provided, however, that no such list need be furnished so long as the Trustee shall be the Debt Security Registrar. Every holder of Debt 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 the disclosure of any such information as to the names and addresses of the Holders of Debt Securities in accordance with Section 312 of the Trust Indenture Act, or any successor section of such Act, regardless of the source from which such information was derived, and that the Trustee shall not be held accountable by reason of mailing any material pursuant to a request made under Section 312(b) of the Trust Indenture Act, or any successor section of such Act.

SECTION 10.02 Reports by Trustee and Company.

Annually, not later than May 15 in each year, commencing May 15, 2003, the Trustee shall transmit to the Holders, the Commission and each securities exchange upon which any Debt Securities are listed, a report, dated as of each May 15 with respect to any events and other matters described in Section 313(a) of the Trust Indenture Act, in such manner and to the extent required by the Trust Indenture Act. The Trustee shall transmit to the Holders, the Commission and each securities exchange upon which any Debt Securities are listed, and the Company shall file with the Trustee (within thirty (60) days after filing with the Commission in the case of reports which pursuant to the Trust Indenture Act must be filed with the Commission and furnished to the Trustee) and transmit to the Holders, such other information, reports and other documents, if any, at such times and in such manner, as shall be required by the Trust Indenture Act. Delivery of such reports, information and documents by the Company 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 Officer's Certificates).

The Company shall notify the Trustee of the listing or delisting of any Debt Securities on any securities exchange.

**ARTICLE XI**

**CONSOLIDATION, MERGER,  
CONVEYANCE OR OTHER TRANSFER**

SECTION 11.01 Company May Consolidate, Etc., Only on Certain Terms.

The Company shall not consolidate with or merge into any other corporation, or convey or otherwise transfer or lease its properties and assets substantially as an entirety to any Person, unless

(a) the corporation formed by such consolidation or into which the Company is merged or the Person which acquires by conveyance or transfer, or which leases, the properties and assets of the Company substantially as an entirety shall be a Person organized and existing under the laws of the United States, 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 satisfactory to the Trustee, the due and punctual payment of the principal of, and premium, if any, and interest (including Additional Interest), if any, on all Outstanding Debt Securities and the performance of every covenant of this Indenture on the part of the Company to be performed or observed;

(b) immediately after giving effect to such transaction and treating any indebtedness for money borrowed which becomes an obligation of the Company as a result of such transaction as having been incurred by the Company at the time of 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 occurred and be continuing; and

(c) the Company shall have delivered to the Trustee an Officer's Certificate and an Opinion of Counsel, each stating that such consolidation, merger, conveyance, or other transfer or lease and such supplemental indenture comply with this Article and that all conditions precedent herein provided for relating to such transactions have been complied with.

#### SECTION 11.02 Successor Corporation Substituted.

Upon any consolidation by the Company with or merger by the Company into any other corporation or any conveyance, or other transfer or lease of the properties and assets of the Company substantially as an entirety in accordance with Section 11.01, the successor corporation formed by such consolidation or into which the Company is merged or the Person 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 Debt Securities Outstanding hereunder.

## ARTICLE XII

### SUPPLEMENTAL INDENTURES

#### SECTION 12.01 Supplemental Indentures Without Consent of Holders.

Without the consent of any Holders, the Company 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:

- (a) 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 Debt Securities, all as provided in Article XI; or
- (b) to add one or more covenants of the Company or other provisions for the benefit of all Holders or for the benefit of the Holders of, or to remain in effect only so long as there shall be Outstanding Debt Securities of, one or more specified series, or one or more specified Tranches thereof, or to surrender any right or power herein conferred upon the Company; or
- (c) to add any additional Events of Default with respect to all or any series of Debt Securities Outstanding hereunder; or
- (d) to change or eliminate any provision of this Indenture or to add any new provision to this Indenture; provided, however, that if such change, elimination or addition shall adversely affect the interests of the Holders of Debt Securities of any series or Tranche Outstanding on the date of such indenture supplemental hereto in any material respect, such change, elimination or addition shall become effective with respect to such series or Tranche only pursuant to the provisions of Section 12.02 hereof or when no Debt Security of such series or Tranche remains Outstanding; or
- (e) to provide collateral security for the Debt Securities; or

(f) to establish the form or terms of Debt Securities of any series or Tranche as contemplated by Sections 2.01 and 3.01; or

(g) to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for the giving of notice to, and the solicitation of the vote or consent of, the holders thereof, and for any and all other matters incidental thereto; or

(h) to evidence and provide for the acceptance of appointment hereunder by a separate or successor Trustee with respect to the Debt Securities of one or more series and to add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, pursuant to the requirements of Section 9.11(b); or

(i) to provide for the procedures required to permit the Company to utilize, at its option, a non-certificated system of registration for all, or any series or Tranche of, the Debt Securities; or to provide for the authentication and delivery of bearer securities and coupons appertaining thereto representing interest, if any, thereon and for the procedures for the registration, exchange and replacement thereof and for the giving of notice to, and the solicitation of the vote or consent of, the holders thereof, and for any and all other matters incidental thereto; or

(j) to change any place or places where (1) the principal of and premium, if any, and interest (including Additional Interest), if any, on all or any series of Debt Securities, or any Tranche thereof, shall be payable, (2) all or any series of Debt Securities, or any Tranche thereof, may be surrendered for registration of transfer, (3) all or any series of Debt Securities, or any Tranche thereof, may be surrendered for exchange and (4) notices and demands to or upon the Company in respect of all or any series of Debt Securities, or any Tranche thereof, and this Indenture may be served; or

(k) to cure any ambiguity or to correct or supplement any provision herein which may be defective or inconsistent with any other provision herein; provided that no such changes or additions shall adversely affect the interests of the Holders of Debt Securities of any series or Tranche in any material respect.

Without limiting the generality of the foregoing, if the Trust Indenture Act as in effect at the date of the execution and delivery of this Indenture or at any time thereafter shall be amended and

(x) if any such amendment shall require one or more changes to any provisions hereof or the inclusion herein of any additional provisions, or shall by operation of law be deemed to effect such changes or incorporate such provisions by reference or otherwise, this Indenture shall be deemed to have been amended so as to conform to such amendment to the Trust Indenture Act, and the Company and the Trustee may, without the consent of any Holders, enter into an indenture supplemental hereto to effect or evidence such changes or additional provisions; or

(y) if any such amendment shall permit one or more changes to, or the elimination of, any provisions hereof which, at the date of the execution and delivery hereof or at any time thereafter, are required by the Trust Indenture Act to be contained herein, this Indenture shall be deemed to have been amended to effect such changes or elimination, and the Company and the Trustee may, without the consent of any Holders, enter into an indenture supplemental hereto to evidence such amendment hereof.

#### SECTION 12.02 Supplemental Indentures With Consent of Holders.

With the consent of the Holders of not less than a majority in aggregate principal amount of the Debt Securities of all series then Outstanding under this Indenture, considered as one class, 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; provided, however, that if there shall be Debt Securities of more than one series Outstanding hereunder and if a proposed supplemental indenture shall directly affect the rights of the Holders of Debt Securities of one or more, but less than all, of such series, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all series so directly affected, considered as one class, shall be required; and provided, further, that if the Debt Securities of any series shall have been issued in more than one Tranche and if the proposed supplemental indenture shall directly affect the rights of the Holders of Debt Securities of one or more, but less than all, of such Tranches, then the consent only of the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of all Tranches so directly affected, considered as one class, shall be required; and provided, further, that no such supplemental indenture shall:

(a) change the Stated Maturity of the principal of, or any installment of principal of or interest (including Additional Interest) on any Debt Security, or reduce the principal amount thereof or the rate of interest thereon (or the amount of any installment of interest thereon) or change the method of calculating such rate or reduce any premium payable upon the redemption thereof, or reduce the amount of the principal of a Discount Debt Security that would be due and payable upon a declaration of acceleration of the Maturity thereof pursuant to Section 8.02, or change the coin or currency (or other property), in which any Debt Security or any premium or the interest (including any Additional Interest) thereon is payable, or impair the right to institute suit for the enforcement of any such payment on or after the Stated Maturity of any Debt Security (or, in the case of redemption, on or after the Redemption Date), without, in any such case, the consent of the Holder of such Debt Security, or

(b) reduce the percentage in principal amount of the Outstanding Debt Securities of any series or any Tranche thereof, the consent of the Holders of which is required for any such supplemental indenture, or the consent of the Holders of which is required for any waiver of compliance with any provision of this Indenture or of any default hereunder and its consequences, or reduce the requirements of Section 13.04 for quorum or voting, without, in any such case, the consent of the Holders of each Outstanding Debt Security of such series or Tranche, or

(c) modify any of the provisions of this Section, Section 6.07 or Section 8.13 with respect to the Debt Securities of any series, or any Tranche thereof (except to increase the percentages in principal amount referred to in this Section or such other Sections or to provide that other provisions of this Indenture cannot be modified or waived without the consent of the Holder of each Outstanding Debt Security affected thereby); provided, however, that this clause shall not be deemed to require the consent of any Holder with respect to changes in the references to "the Trustee" and concomitant changes in this Section, or the deletion of this proviso, in accordance with the requirements of Sections 9.11(b), 9.14 and 12.01(h).

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

Upon the request of the Company, accompanied by a copy of the Board Resolution authorizing the execution of any such supplemental indenture, compliance by the Company with Section 12.03 hereof, and the filing with the Trustee of evidence of the consent of the Holders of the Debt Securities required hereunder with respect to the proposed supplemental indenture, the Trustee shall join with the Company in the execution of such supplemental indenture unless the supplemental indenture affects the Trustee's own rights, duties or immunities under this Indenture, or otherwise, in which case the Trustee may in its discretion but shall not be obligated to enter into such supplemental indenture.

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. A waiver by a Holder of such Holder's right to consent under this Section shall be deemed to be a consent of such Holder.

#### SECTION 12.03 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 provided with, and (subject to Section 9.01) 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.

#### SECTION 12.04 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 Debt Securities theretofore or thereafter authenticated and delivered hereunder shall be bound thereby. Any supplemental indenture permitted by this Article may restate this Indenture in its entirety, and, upon the execution and delivery thereof, any such restatement shall supersede this Indenture as theretofore in effect for all purposes.

**SECTION 12.05 Conformity With Trust Indenture Act.**

Every supplemental indenture executed pursuant to this Article shall conform to the requirements of the Trust Indenture Act as then in effect.

**SECTION 12.06 Reference in Debt Securities to Supplemental Indentures.**

Debt Securities of any series, or any Tranche thereof, 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 Debt Securities of any series, or any Tranche thereof, 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 Debt Securities of such series or Tranche.

**SECTION 12.07 Modification Without Supplemental Indenture.**

If the terms of any particular series of Debt Securities shall have been established in a Board Resolution or an Officer's Certificate pursuant to a Board Resolution as contemplated by Section 3.01, and not in an indenture supplemental hereto, additions to, changes in or the elimination of any of such terms may be effected by means of a supplemental Board Resolution or Officer's Certificate, as the case may be, delivered to, and accepted by, the Trustee; provided, however, that such supplemental Board Resolution or Officer's Certificate shall not be accepted by the Trustee or otherwise be effective unless all conditions set forth in this Indenture which would be required to be satisfied if such additions, changes or elimination were contained in a supplemental indenture shall have been appropriately satisfied. Upon the acceptance thereof by the Trustee, any such supplemental Board Resolution or Officer's Certificate shall be deemed to be a "supplemental indenture" for purposes of Section 12.04 and 12.06.

**SECTION 12.08 Execution of Supplemental Indentures.**

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.

**ARTICLE XIII**

**MEETINGS OF HOLDERS; ACTION WITHOUT MEETING**

**SECTION 13.01 Purposes for Which Meetings May be Called.**

A meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, may be called at any time and from time to time pursuant to this Article to make, give or take any request, demand, authorization, direction, notice, consent, waiver or other action provided by this Indenture to be made, given or taken by Holders of Debt Securities of such series or Tranches.



### SECTION 13.02 Call, Notice and Place of Meetings.

(a) The Trustee may at any time call a meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, for any purpose specified in Section 13.01, to be held at such time and at such place in New York, New York, as the Trustee shall determine, or, with the approval of the Company, at any other place. Notice of every such meeting, setting forth the time and the place of such meeting and in general terms the action proposed to be taken at such meeting, shall be given, in the manner provided in Section 1.06, not less than 21 nor more than 180 days prior to the date fixed for the meeting.

(b) If the Trustee shall have been requested to call a meeting of the Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, by the Company or by the Holders of 33% in aggregate principal amount of all of such series and Tranches, considered as one class, for any purpose specified in Section 13.01, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have given the notice of such meeting within 21 days after receipt of such request or shall not thereafter proceed to cause the meeting to be held as provided herein, then the Company or the Holders of Debt Securities of such series and Tranches in the amount above specified, as the case may be, may determine the time and the place in New York, New York, or in such other place as shall be determined or approved by the Company, for such meeting and may call such meeting for such purposes by giving notice thereof as provided in subsection (a) of this Section.

(c) Any meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, shall be valid without notice if the Holders of all Outstanding Debt Securities of such series or Tranches are present in person or by proxy and if representatives of the Company and the Trustee are present, or if notice is waived in writing before or after the meeting by the Holders of all Outstanding Debt Securities of such series, or by such of them as are not present at the meeting in person or by proxy, and by the Company and the Trustee.

### SECTION 13.03 Persons Entitled to Vote at Meetings.

To be entitled to vote at any meeting of Holders of Debt Securities of one or more, or all, series, or any Tranche or Tranches thereof, a Person shall be (a) a Holder of one or more Outstanding Debt Securities of such series or Tranches, or (b) a Person appointed by an instrument in writing as proxy for a Holder or Holders of one or more Outstanding Debt Securities of such series or Tranches by such Holder or Holders. The only Persons who shall be entitled to attend any meeting of Holders of Debt Securities of any series or Tranche shall be the Persons entitled to vote at such meeting and their counsel, any representatives of the Trustee and its counsel and any representatives of the Company and its counsel.

### SECTION 13.04 Quorum; Action.

The Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of the series and Tranches with respect to which a meeting shall have been called as hereinbefore provided, considered as one class, shall constitute a quorum for a meeting of Holders of Debt Securities of such series and Tranches; provided, however, that if any action is to be taken at such meeting which this Indenture expressly provides may be taken by the Holders

of a specified percentage, which is less than a majority, in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class, the Persons entitled to vote such specified percentage in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class, shall constitute a quorum. In the absence of a quorum within one hour of the time appointed for any such meeting, the meeting shall, if convened at the request of Holders of Debt Securities of such series and Tranches, be dissolved. In any other case the meeting may be adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such meeting. In the absence of a quorum at any such adjourned meeting, such adjourned meeting may be further adjourned for such period as may be determined by the chairman of the meeting prior to the adjournment of such adjourned meeting. Except as provided by Section 13.05(e), notice of the reconvening of any meeting adjourned for more than 30 days shall be given as provided in Section 13.02(a) not less than ten days prior to the date on which the meeting is scheduled to be reconvened. Notice of the reconvening of an adjourned meeting shall state expressly the percentage, as provided above, of the principal amount of the Outstanding Debt Securities of such series and Tranches which shall constitute a quorum.

Except as limited by Section 12.02, any resolution presented to a meeting or adjourned meeting duly reconvened at which a quorum is present as aforesaid may be adopted only by the affirmative vote of the Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of the series and Tranches with respect to which such meeting shall have been called, considered as one class; provided, however, that, except as so limited, any resolution with respect to any action which this Indenture expressly provides may be taken by the Holders of a specified percentage, which is less than a majority, in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class, may be adopted at a meeting or an adjourned meeting duly reconvened and at which a quorum is present as aforesaid by the affirmative vote of the Holders of such specified percentage in principal amount of the Outstanding Debt Securities of such series and Tranches, considered as one class.

Any resolution passed or decision taken at any meeting of Holders of Debt Securities duly held in accordance with this Section shall be binding on all the Holders of Debt Securities of the series and Tranches with respect to which such meeting shall have been held, whether or not present or represented at the meeting.

#### SECTION 13.05 Attendance at Meetings; Determination of Voting Rights; Conduct and Adjournment of Meetings.

(a) Attendance at meetings of Holders of Debt Securities may be in person or by proxy; and, to the extent permitted by law, any such proxy shall remain in effect and be binding upon any future Holder of the Debt Securities with respect to which it was given unless and until specifically revoked by the Holder or future Holder of such Debt Securities before being voted.

(b) Notwithstanding any other provisions of this Indenture, the Trustee may make such reasonable regulations as it may deem advisable for any meeting of Holders of Debt Securities in regard to proof of the holding of such Debt Securities and of the appointment of proxies and in regard to the appointment and duties of inspectors of votes, the submission and examination of proxies, certificates and other evidence of the right to vote, and such other

matters concerning the conduct of the meeting as it shall deem appropriate. Except as otherwise permitted or required by any such regulations, the holding of Debt Securities shall be proved in the manner specified in Section 1.04 and the appointment of any proxy shall be proved in the manner specified in Section

1.04. Such regulations may provide that written instruments appointing proxies, regular on their face, may be presumed valid and genuine without the proof specified in Section 1.04 or other proof.

(c) The Trustee shall, by an instrument in writing, appoint a temporary chairman of the meeting, unless the meeting shall have been called by the Company or by Holders as provided in Section 13.02(b), in which case the Company or the Holders of Debt Securities of the series and Tranches calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a permanent secretary of the meeting shall be elected by vote of the Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of all series and Tranches represented at the meeting, considered as one class.

(d) At any meeting each Holder or proxy shall be entitled to one vote for each \$1 principal amount of Debt Securities held or represented by him; provided, however, that no vote shall be cast or counted at any meeting in respect of any Debt Security challenged as not Outstanding and ruled by the chairman of the meeting to be not Outstanding. The chairman of the meeting shall have no right to vote, except as a Holder of a Debt Security or proxy.

(e) Any meeting duly called pursuant to Section 13.02 at which a quorum is present may be adjourned from time to time by Persons entitled to vote a majority in aggregate principal amount of the Outstanding Debt Securities of all series and Tranches represented at the meeting, considered as one class; and the meeting may be held as so adjourned without further notice.

#### SECTION 13.06 Counting Votes and Recording Action of Meetings.

The vote upon any resolution submitted to any meeting of Holders shall be by written ballots on which shall be subscribed the signatures of the Holders or of their representatives by proxy and the principal amounts and serial numbers of the Outstanding Debt Securities, of the series and Tranches with respect to which the meeting shall have been called, held or represented by them. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports of all votes cast at the meeting. A record of the proceedings of each meeting of Holders shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was given as provided in Section 13.02 and, if applicable, Section 13.04. Each copy shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one such copy shall be delivered to the Company, and another to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting. Any record so signed and verified shall be conclusive evidence of the matters therein stated.

SECTION 13.07 Action Without Meeting.

In lieu of a vote of Holders at a meeting as hereinbefore contemplated in this Article, any request, demand, authorization, direction, notice, consent, waiver or other action may be made, given or taken by Holders by written instruments as provided in Section 1.04.

**ARTICLE XIV**

**IMMUNITY OF INCORPORATORS,  
STOCKHOLDERS, OFFICERS AND DIRECTORS**

SECTION 14.01 Liability Solely Corporate.

No recourse shall be had for the payment of the principal of or premium, if any, or interest (including Additional Interest), if any, on any Debt Securities, or any part thereof, or for any claim based thereon or otherwise in respect thereof, or of the indebtedness represented thereby, or upon any obligation, covenant or agreement under this Indenture, against any incorporator, stockholder, officer or director, as such, past, present or future of the Company or of any predecessor or successor corporation (either directly or through the Company or a predecessor or successor corporation), whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly agreed and understood that this Indenture and all the Debt Securities are solely corporate obligations, and that no personal liability whatsoever shall attach to, or be incurred by, any incorporator, stockholder, officer or director, past, present or future, of the Company or of any predecessor or successor corporation, either directly or indirectly through the Company or any predecessor or successor corporation, because of the indebtedness hereby authorized or under or by reason of any of the obligations, covenants or agreements contained in this Indenture or in any of the Debt Securities or to be implied herefrom or therefrom, and that any such personal liability is hereby expressly waived and released as a condition of, and as part of the consideration for, the execution of this Indenture and the issuance of the Debt Securities.

[Signature page follows]

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

**DEVON ENERGY CORPORATION**

*By: /s/ William T. Vaughn*

-----  
*Name: William T. Vaughn*

-----  
*Title: Senior Vice President - Finance*  
-----

[Trustee's signature page follows]

**THE BANK OF NEW YORK, Trustee**

By: /s/

-----  
*Authorized Representative*

**EXHIBIT 4.2**

**DEVON ENERGY CORPORATION**

to

**THE BANK OF NEW YORK,**

**as Trustee**

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Supplemental Indenture No. 1 Dated as of March 25, 2002

to

Indenture Dated as of March 1, 2002

---

\$1,000,000,000

**7.95% Senior Debentures due 2032**

SUPPLEMENTAL INDENTURE NO. 1 dated as of March 25, 2002 (the "Supplemental Indenture"), between DEVON ENERGY CORPORATION, a corporation duly organized and existing under the laws of the State of Delaware (herein called the "Company"), and THE BANK OF NEW YORK, a New York banking corporation, as Trustee (herein called the "Trustee").

**RECITALS OF THE COMPANY**

The Company has heretofore delivered to the Trustee an Indenture dated as of March 1, 2002 (the "Senior Indenture") providing for the issuance from time to time of Debt Securities of the Company (the "Debt Securities").

Section 3.01 of the Senior Indenture provides that various matters with respect to any series of Debt Securities issued under the Senior Indenture may be established in an indenture supplemental to the Senior Indenture.

Section 12.01(f) of the Senior Indenture provides for the Company and the Trustee to enter into an indenture supplemental to the Senior Indenture to establish the form or terms of Debt Securities of any series as contemplated by Sections 2.01 and 3.01 of the Senior Indenture.

All the conditions and requirements necessary to make this Supplemental Indenture, when duly executed and delivered, a valid and legally binding agreement in accordance with its terms and for the purposes herein expressed, have been performed and fulfilled.

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

For and in consideration of the premises and the purchase of the series of Debt Securities provided for herein by the Holders thereof, it is mutually covenanted and agreed, for the equal and proportionate benefit of all Holders of the series of Debt Securities provided for herein, as follows:

**ARTICLE ONE**

**RELATION TO SENIOR INDENTURE; DEFINITIONS**

SECTION 1.1. RELATION TO SENIOR INDENTURE. This Supplemental Indenture constitutes an integral part of the Senior Indenture.

SECTION 1.2. DEFINITIONS. (a) For all purposes of this Supplemental Indenture, except as otherwise expressly provided for or unless the context otherwise requires:

- (1) Capitalized terms used but not defined herein shall have the respective meanings assigned to them in the Senior Indenture; and
- (2) All references herein to Articles and Sections, unless otherwise specified, refer to the corresponding Articles and Sections of this Supplemental Indenture.
- (b) The following definitions applicable to the series of Debt Securities provided for herein shall be in addition to those indicated in Section 1.01 of the Senior Indenture:

"Adjusted Treasury Rate" means, with respect to any Redemption Date, the yield, under the heading which represents the average for the immediately preceding week, appearing in the most recently published statistical release designated "H.15(519)" or any successor publication which is published weekly by the Board of Governors of the Federal Reserve System and which establishes yields on actively traded U.S. Treasury securities adjusted to constant maturity under the caption "Treasury Constant Maturities" for the maturity corresponding to the Optional Redemption Comparable Treasury Issue (if no maturity is within three months before or after the remaining term of the Debentures, yields for the two published maturities most closely corresponding to the Optional Redemption Comparable Treasury Issue will be determined and the Adjusted Treasury Rate will be interpolated or extrapolated from such yields on a straight line basis, rounding to the nearest month); or 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 Optional Redemption Comparable Treasury Issue, calculated using a price for the Optional Redemption Comparable Treasury Issue (expressed as a percentage of its principal amount) equal to the Optional Redemption Comparable Treasury Price for such Redemption Date.



"Independent Investment Banker" means Banc of America Securities LLC or UBS Warburg LLC, as selected by the Company, or if either such firm is unwilling or unable to serve as such, an independent investment and banking institution of national standing appointed by the Trustee.

"Optional Redemption Reference Treasury Dealer" means each of up to five dealers to be selected by the Company, and their respective successors; provided that if any of the foregoing ceases to be, and has no affiliate that is, a primary U.S. governmental securities dealer (a "Primary Treasury Dealer"), the Company will substitute for it another Primary Treasury Dealer.

"Optional Redemption Comparable Treasury Issue" means the U.S. Treasury security selected by an Independent Investment Banker as having a maturity comparable to the remaining term of the Debentures to be redeemed 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 term of the Debentures or, if, in the reasonable judgment of the Independent Investment Banker, there is no such security, then the Optional Redemption Comparable Treasury Issue will mean the U.S. Treasury security or securities selected by the Independent Investment Banker as having an actual or interpolated maturity or maturities comparable to the remaining term of the Debentures.

"Optional Redemption Comparable Treasury Price" means (1) the average of five Optional Redemption Reference Treasury Dealer Quotations for the applicable Redemption Date, after excluding the highest and lowest Optional Redemption Reference Treasury Dealer Quotations, or (2) if the Independent Investment Banker obtains fewer than five such Optional Redemption Reference Treasury Dealer Quotations, the average of all such quotations.

"Optional Redemption Reference Treasury Dealer Quotations" means, with respect to each Optional Redemption Reference Treasury Dealer and any Redemption Date for the Debentures, the average, as determined by the Independent Investment Banker of the bid and asked prices for the Optional Redemption Comparable Treasury Issue (expressed in each case as a percentage of its principal amount) quoted in writing to the Independent Investment Banker and the Trustee at 5:00 p.m., New York City time, on the third Business Day preceding such Redemption Date.

## **ARTICLE TWO**

### **THE SERIES OF DEBENTURES**

**SECTION 2.1. TITLE OF THE DEBT SECURITIES.** There is hereby created under the Senior Indenture a series of Debt Securities designated the "7.95% Senior Debentures due 2032" (the "Debentures").

**SECTION 2.2. LIMITATIONS ON AGGREGATE PRINCIPAL AMOUNT.** The aggregate principal amount of the Debentures shall be initially limited to \$1,000,000,000, subject to the Company's right to increase such limit following the original issuance of the Debentures upon delivery to the Trustee of a Company Order specifying any higher limit. Except as provided in this Section, the Company shall not execute and the Trustee shall not authenticate or deliver Debentures in excess of such aggregate principal amount.

Nothing contained in this Section 2.2 or elsewhere in this Supplemental Indenture, or in the Debentures, is intended to or shall limit execution by the Company or authentication or delivery by the Trustee of the Debentures under the circumstances contemplated in Section 3.04, 3.05, 3.06, 4.06 and 12.06 of the Senior Indenture.

**SECTION 2.3. INTEREST AND INTEREST RATES; MATURITY DATE OF DEBENTURES.** The Debentures will bear interest at a rate of 7.95% per annum, from March 25, 2002 or from the immediately preceding Interest Payment Date to which interest has been paid or duly provided for, payable semi-annually in arrears on April 15 and October 15 of each year, commencing October 15, 2002 (each, an "Interest Payment Date"), to the Person in whose name such Debenture is registered at the close of business on April 1 or October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date (each, a "Regular Record Date"). Interest will be computed on the basis of a 360-day year consisting of twelve 30-day months. The interest so payable on any Debenture which is not punctually paid or duly provided for on any Interest Payment Date shall forthwith cease to be payable to the Person in whose name such Debenture is registered on the relevant Regular Record Date, and such defaulted interest shall instead be payable to the Person in whose name such Debenture is registered on the Special Record Date or other specified date determined in accordance with the Senior Indenture.

The Debentures will mature on April 15, 2032.

**SECTION 2.4. REDEMPTION.**

(a) The Debentures shall be redeemable before their Stated Maturity in accordance with this Section 2.4 and otherwise in accordance with the provisions of Article IV of the Senior Indenture. In the event of any conflict between this Section 2.4 (including the definitions of terms used herein) and Article IV of the Senior Indenture (including the definitions of terms used therein), this Section 2.4 shall control.

(b) The Debentures may be redeemed at any time at the option of the Company as set forth in the form of Debenture attached as Exhibit A hereto.

**SECTION 2.5. PLACES OF PAYMENT.** The Places of Payment where the Debentures may be presented or surrendered for payment, where the Debentures may be surrendered for registration of transfer or exchange and where notices and demands to or upon the Company in respect of the Debentures and the Senior Indenture may be served shall be at the Corporate Trust Office of the Trustee in the State of New York which shall initially be located at 101 Barclay Street, 21 West, New York, New York 10286.

**SECTION 2.6. METHOD OF PAYMENT.** Payment of the principal of, premium, if any, and interest on the Debentures will be made at the office or agency of the Company maintained for that purpose in The City of New York (which shall initially be an office or agency of the Trustee), in such coin or currency of the United States as at the time of payment is legal tender for payment of public and private debts; PROVIDED, HOWEVER, that at the option of the Company, payments of interest on the Debentures may be made by check mailed to

the address of the Person entitled thereto as such address shall appear in the Debt Security Register.

**SECTION 2.7. CURRENCY.** Principal, premium, if any, and interest on the Debentures shall be payable in Dollars.

**SECTION 2.8. REGISTERED SECURITIES; GLOBAL FORM.** The Debentures shall be issuable and transferable in fully registered form, without coupons. The Debentures shall each be issued in the form of one or more permanent Global Securities. The Depository for the Debentures shall be The Depository Trust Company. The Debentures shall not be issuable in definitive form except as provided in Section 2.03 of the Senior Indenture.

**SECTION 2.9. FORM OF DEBENTURES.** The Debentures shall be substantially in the form attached as Exhibit A hereto.

**SECTION 2.10. REGISTRAR AND PAYING AGENT.** The Trustee shall initially serve as Debt Security Registrar and Paying Agent for the Debentures.

**SECTION 2.11. EVENTS OF DEFAULT.** In addition to the Events of Default specified in Section 8.01 of the Senior Indenture, the following shall constitute an Event of Default with respect to the Debentures:

"default by the Company in the payment of any principal of any Funded Debt of the Company outstanding in an aggregate principal amount in excess of \$50,000,000 at the final stated maturity thereof or the occurrence of any other default thereunder, the effect of which default is to cause such Funded Debt to become, or to be declared, due prior to its final stated maturity unless (A) such default shall be cured, by payment or otherwise, within 60 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 principal amount of the outstanding Debentures a written notice specifying such default and requiring it to be remedied and stating that such notice is a "Notice of Default" hereunder, and the receipt by the Company of such written notice or (B) the acceleration is not rescinded or annulled or the default that caused the acceleration is not cured with 60 days after the receipt by the Company of such written notice."

### **ARTICLE THREE**

#### **MISCELLANEOUS PROVISIONS**

**SECTION 3.1. RATIFICATION OF SENIOR INDENTURE.** Except as expressly modified or amended hereby, the Senior Indenture continues in full force and effect and is in all respects confirmed and preserved.

**SECTION 3.2 GOVERNING LAW.** This Supplemental Indenture and each Debenture shall be governed by and construed in accordance with the laws of the State of New York. This Supplemental Indenture is subject to the provisions of the Trust Indenture Act of 1939, as amended and shall, to the extent applicable, be governed by such provisions.

SECTION 3.3. COUNTERPARTS. This Supplemental 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.

SECTION 3.4. RECITALS. The recitals contained herein shall be taken as 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 Supplemental Indenture.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have caused this Supplemental Indenture to be duly executed by their respective officers hereunto duly authorized, all as of the day and year first written above.

**DEVON ENERGY CORPORATION**

By: /s/ William T. Vaughn

-----  
Name: William T. Vaughn  
Title: Senior Vice President - Finance

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

By:

Name:

Title:

UNLESS THIS SECURITY IS PRESENTED BY AN UNAUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY ("DTC"), 55 WATER STREET, NEW YORK, NEW YORK TO THE ISSUER OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND SUCH SECURITY ISSUED IS REGISTERED IN THE NAME OF CEDE & CO., OR SUCH OTHER NAME AS 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, SINCE THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

UNLESS AND UNTIL THIS SECURITY IS EXCHANGED IN WHOLE OR IN PART FOR SECURITIES IN CERTIFICATED FORM, THIS SECURITY MAY NOT BE TRANSFERRED EXCEPT AS A WHOLE BY DTC TO A NOMINEE THEREOF OR BY A NOMINEE THEREOF TO DTC OR ANOTHER NOMINEE OF DTC OR BY DTC OR ANY SUCH NOMINEE TO A SUCCESSOR OF DTC OR A NOMINEE OF SUCH SUCCESSOR.

**DEVON ENERGY CORPORATION**

**7.95% Senior Debenture Due 2032**

**Registered No. \_\_\_\_\_ PRINCIPAL AMOUNT**  
**CUSIP NO. 251799 AA 0 \$ \_\_\_\_\_**

DEVON ENERGY CORPORATION, a Delaware corporation (herein referred to as the "Company" which term includes any successor entity under the Indenture referred to), for value received, hereby promises to pay to \_\_\_\_\_, or registered assigns, upon presentation, the principal sum of \$\_\_\_\_\_ on April 15, 2032 (the "Stated Maturity Date") and to pay interest thereon from March 25, 2002 or from the most recent Interest Payment Date to which interest has been paid or duly provided for, semi-annually on April 15 and October 15 in each year (each, an "Interest Payment Date"), commencing October 15, 2002, at the rate of 7.95% per annum, until the principal hereof is paid or duly provided for. The interest so payable, and punctually paid or duly provided for, on any Interest Payment Date will, as provided in such Indenture, be paid to the Holder in whose name this Debt Security (or one or more Predecessor Debt Securities) is registered at the close of business on the Regular Record Date for such interest, which shall be the April 1 and October 1 (whether or not a Business Day), as the case may be, next preceding such Interest Payment Date at the office or agency of the Company maintained for such purpose; PROVIDED, HOWEVER, that such interest may be paid, at the Company's option, by mailing a check to such Holder at its registered address. 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 be paid to the Holder in whose name this Debt Security (or one or more Predecessor Debt 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 Debt Securities of this series not less than 10 days prior to such Special Record Date, or may be paid at any time in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Securities of this series may be listed, and upon such notice as may be required by such exchange, all as more fully provided in the Indenture. Interest will be computed on the basis of a 360-day year consisting of twelve 30-day months.

The principal of this Debt Security payable on the Stated Maturity Date or the principal of, premium, if any, and, if the Redemption Date is not an Interest Payment Date, interest on this Security payable on the Redemption Date will be paid against presentation of this Debt Security 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 as at the time of payment is legal tender for the payment of public and private debts.

Interest payable on this Debt Security on any Interest Payment Date and on the Stated Maturity Date or Redemption Date, as the case may be, will include interest accrued from and including the next preceding Interest Payment Date in respect of which interest has been paid or duly provided for (or from and including March 25, 2002, if no interest has been paid on this Debt Security) to but excluding such Interest Payment Date or the Stated Maturity Date or Redemption Date, as the case may be. If any Interest Payment Date or the Stated Maturity Date or Redemption Date falls on a day that is not a Business Day, principal, premium, if any, and/or interest payable with respect to such Interest Payment Date or Stated Maturity Date or Redemption Date, as the case may be, will be paid on the next succeeding Business Day with the same force and effect as if it were paid on the date such payment was due, and no interest shall accrue on the amount so payable for the period from and after such Interest Payment Date or Stated Maturity Date or Redemption Date, as the case may be.

All payments of principal, premium, if any, and interest in respect of this Debt Security will be made by the Company in immediately available funds.

Reference is hereby made to the further provisions of this Debt 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 by manual signature of one of its authorized signatories, this Debt 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 executed by one of its duly authorized officers.

Dated: \_\_\_\_\_

**DEVON ENERGY CORPORATION**

By:

Name:

Title:

**TRUSTEE'S CERTIFICATE OF AUTHENTICATION:**

This is one of the Debt Securities of the series designated therein referred to in the within-mentioned Indenture.

Dated: \_\_\_\_\_

**THE BANK OF NEW YORK**

By:  
**Authorized Signatory**

A-3



**DEVON ENERGY CORPORATION**

This Debt Security is one of a duly authorized issue of securities of the Company (herein called the "Debt Securities"), issued and to be issued in one or more series under an Indenture, dated as of March 1, 2002, as supplemented by Supplemental Indenture No. 1, dated as of March 25, 2002 (as so supplemented, herein called 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 with respect to the series of which this Debt Security is a part), 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 Company, the Trustee and the Holders of the Debt Securities, and of the terms upon which the Debt Securities are, and are to be, authenticated and delivered. This Debt Security is one of the duly authorized series of Debt Securities designated on the face hereof, and the aggregate principal amount of the Debt Securities to be issued under such series is initially limited to \$1,000,000,000, subject to the Company's right to increase such limit as provided in the Indenture (except for Debt Securities authenticated and delivered upon transfer of, or in exchange for, or in lieu of other Debt Securities). All terms used in this Debt Security which are defined in the Indenture shall have the meanings assigned to them in the Indenture.

If an Event of Default, as defined in the Indenture, with respect to the Debt Securities of this series, shall occur and be continuing, the Principal of the Debt Securities of this series may be declared due and payable in the manner and with the effect provided in the Indenture.

This Debt Security will be redeemable, in whole or in part, at any time, at the Company's option, at a redemption price equal to the greater of (1) 100% of the principal amount of this Debt Security then outstanding to be redeemed, or (2) the sum of the present values of the remaining scheduled payments of principal and interest hereon (exclusive of interest accrued to the Redemption Date) from the Redemption Date to the Stated Maturity Date computed by discounting such payments to the Redemption Date on a semiannual basis (assuming a 360-day year consisting of twelve 30-day months) at a rate equal to the sum of 30 basis points plus the Adjusted Treasury Rate on the third Business Day prior to the Redemption Date, as calculated by an Independent Investment Banker, plus accrued and unpaid interest, up to, but not including the Redemption Date.

Notice of redemption will be given by mail to Holders of Debt Securities, not less than 30 nor more than 60 days prior to the Redemption Date, all as provided in the Indenture.

In the event of redemption of this Debt Security in part only, a new Debt Security or Debt Securities for the unredeemed portion hereof shall be issued in the name of the Holder hereof upon the cancellation hereof.

The Indenture permits, with certain exceptions as provided therein, the amendment thereof and the modification of the rights and obligations of the Company and the rights of the Holders of the Debt Securities under the Indenture at any time by the Company and the Trustee with the consent of the Holders of not less than a majority of the aggregate principal amount of

all Debt Securities issued under the Indenture at the time Outstanding and affect thereby. The Indenture also contains provisions permitting the Holders of not less than a majority of the aggregate principal amount of the Outstanding Debt Securities, on behalf of the Holders of all such securities, to waive compliance by the Company with certain provisions of the Indenture. Furthermore, provisions in the Indenture permit the Holders of not less than a majority of the aggregate principal amount, in certain instances, of the Outstanding Debt Securities of any series to waive, on behalf of all of the Holders of Debt Securities of such series, certain past defaults under the Indenture and their consequences. Any such consent or waiver by the Holder of this Debt Security shall be conclusive and binding upon such Holder and upon all future Holders of this Debt Security and other Debt Securities issued upon the registration of transfer hereof or in exchange herefor or in lieu hereof, whether or not notation of such consent or waiver is made upon this Debt Security.

No reference herein to the Indenture and no provision of this Debt Security or of the Indenture shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of, premium, if any, and interest on this Debt Security at the times, places and rate, and in the coin or currency, herein prescribed.

As provided in the Indenture and subject to certain limitations therein and herein set forth, the transfer of this Debt Security is registrable in the Debt Security Register of the Company upon surrender of this Debt Security for registration of transfer at the office or agency of the Company in any place where the principal of, premium, if any, and interest on this Debt Security are payable, duly endorsed by, or accompanied by a written instrument of transfer in form satisfactory to the Company and the Debt Security Registrar duly executed by, the Holder hereof or by his attorney duly authorized in writing, and thereupon one or more new Debt Securities, of authorized denominations and for the same aggregate principal amount, will be issued to the designated transferee or transferees.

As provided in the Indenture and subject to certain limitations therein and herein set forth, this Debt Security is exchangeable for a like aggregate principal amount of Debt Securities of different authorized denominations but otherwise having the same terms and conditions, as requested by the Holder hereof surrendering the same.

The Debt Securities of this series are issuable only in registered form without coupons in denominations of \$1,000 and any integral multiple 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 presentment of this Debt 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 Debt Security is registered as the owner hereof for all purposes, whether or not his Debt Security be overdue, and neither the Company, the Trustee nor any such agent shall be affected by notice to the contrary.

No recourse shall be had for the payment of the principal of or premium, if any, or the interest on this Debt Security, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Indenture or any indenture supplemental thereto, against any past, present or future stockholder, employee, officer or director, as such, of the Company or of any successor, either directly or through the Company or any successor, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

The Indenture and the Debt Securities shall be governed by and construed in accordance with the laws of the State of New York applicable to agreements made and to be performed entirely in such State.

Pursuant to a recommendation promulgated by the Committee on Uniform Security Identification Procedures, the Company has caused "CUSIP" numbers to be printed on the Debt Securities of this series as a convenience to the Holders of such Debt Securities. No representation is made as to the correctness or accuracy of such CUSIP numbers as printed on the Debt Securities, and reliance may be placed only on the other identification numbers printed hereon.

**ASSIGNMENT FORM**

FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto

(Please Print or Type Name and Address Including Zip Code of Assignee)

the within Debt Security of Devon Energy Corporation and hereby does irrevocably constitute and appoint \_\_\_\_\_ Attorney to transfer said security on the books of the within-named Corporation with full power of substitution in the premises.

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(Please Insert Social Security or Other Identifying Number of Assignee)

Dated: \_\_\_\_\_

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**SIGNATURE OF GUARANTEE**

Signatures must be guaranteed by an "eligible guarantor institution" meeting the requirements of The Bank of New York, which requirements include membership or participation in the Security Transfer Agent Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by The Bank of New York in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934 as amended.

NOTICE: The signature to this assignment must correspond with the name as it appears on the first page of the within Debt Security in every particular, without alteration or enlargement of any change whatever.

EXHIBIT 4.4

[DEVON ENERGY LETTERHEAD]

NEWS RELEASE

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Investor contact: Zack Hager

(405) 552-4526

Media contact: Brian Engel  
(405) 228-7750

DEVON ENERGY ISSUES \$1 BILLION OF 30-YEAR NOTES  
TO REPLACE EXISTING DEBT

OKLAHOMA CITY, (March 25, 2002) -- Devon Energy Corp. (AMEX: DVN, TSE: NSX) today announced that it has issued \$1 billion of 30-year notes. The 7.950 percent notes are due April 15, 2032.

"We are very pleased to have issued these 30-year notes under such attractive terms," said J. Larry Nichols, Devon's chairman, president and chief executive officer. "By replacing shorter-term debt, we have significantly extended our principal amortization schedule. We plan to defer principal amortization even further by applying another \$1 billion or so from the sales of our non-core properties to debt repayment."

The notes were priced at 220 basis points above Treasuries to yield 7.995 percent. Devon will receive net proceeds of approximately \$986 million after underwriting fees and expenses. Proceeds of the notes will be used to repay debt Devon currently has outstanding under a five-year term loan and commercial paper borrowings. Devon incurred a \$3 billion five-year term loan to fund portions of its recent acquisitions of Anderson Exploration Ltd. and Mitchell Energy & Development Corp.

This press release includes "forward-looking statements" as defined by the Securities and Exchange Commission. Such statements are those concerning the contemplated transactions and strategic plans, expectations and objectives for future operations. All statements, other than statements of historical facts, included in this press release that address activities, events or developments that the company expects, believes or anticipates will or may occur in the future are forward-looking statements. These statements are based on certain assumptions made by the company based on its experience and perception of historical trends, current conditions, expected future developments and other factors it believes are appropriate in the circumstances. Such statements are subject to a number of assumptions, risks and uncertainties, many of which are beyond the control of the company. Investors are cautioned that any such statements are not guarantees of future performance and that actual results or developments may differ materially from those projected in the forward-looking statements.

Devon Energy Corporation is an Oklahoma City-based independent energy company engaged in oil and gas exploration, production and property acquisitions. Devon ranks among the top five U.S.-based independent oil and gas producers and is included in the S&P 500 Index.

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**End of Filing**

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