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As filed with the Securities and Exchange Commission on January 14, 2013.

Registration No. 333-

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549

FORM S-3
REGISTRATION STATEMENT UNDER THE SECURITIES ACT OF 1933

Bonanza Creek Energy, Inc.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation or organization)	61-1630631 (I.R.S. Employer Identification No.)
--	--

410 17th Street, Suite 1400
Denver, Colorado 80202
(720) 440-6100

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

Michael R. Starzer
President and Chief Executive Officer
Bonanza Creek Energy, Inc.
410 17th Street, Suite 1400
Denver, Colorado 80202
(720) 440-6100

Christopher I. Humber, Esq.
Senior Vice President, General Counsel &
Secretary
Bonanza Creek Energy, Inc.
410 17th Street, Suite 1400
Denver, Colorado 80202
(720) 440-6100

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

Copies to:
Dallas Parker, Esq.
Mayer Brown LLP
700 Louisiana Street, Suite 3400
Houston, Texas 77002
(713) 238-3000

Approximate Date of Commencement of Proposed Sale to the Public:
From time to time after the effective date of this registration statement.

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

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

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

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

If this Form is a registration statement pursuant to General Instruction I.D. or a post-effective amendment thereto that shall become effective upon filing with the Commission pursuant to Rule 462(e) under the Securities Act, check the following box.

If this Form is a post-effective amendment to a registration statement filed pursuant to General Instruction I.D. filed to register additional securities or additional classes of

securities pursuant to Rule 413(b) under the Securities Act, check the following box.

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, or a smaller reporting company. See the definitions of "large accelerated filer," "accelerated filer" and "smaller reporting company" in Rule 12b-2 of the Securities Exchange Act of 1934, as amended (the "Exchange Act"). (Check one):

Large accelerated filer

Accelerated filer

Non-accelerated filer

Smaller reporting company

(Do not check if a smaller reporting company)

CALCULATION OF REGISTRATION FEE

Title of each class of securities to be registered	Amount to be registered(1)(2)	Proposed maximum offering price per unit(2)	Proposed maximum aggregate offering price(2)	Amount of registration fee(3)
Primary Offering:				
Common Stock, par value \$0.001 per share				
Preferred Stock, par value \$0.001 per share(4)				
Debt Securities(5)				
Warrants(6)				
Units				
Total for sale by Registrant				
Secondary Offering:				
Common Stock, par value \$0.001 per share				
Total			\$1,000,000,000	\$136,400

- (1) Pursuant to Rule 416 under the Securities Act of 1933, as amended (the "Securities Act"), the shares being registered hereunder include such indeterminate number of shares of common stock and preferred stock as may be issuable with respect to the shares being registered hereunder as a result of stock splits, stock dividends or similar transactions. The securities registered hereunder also include such indeterminate number of shares of common stock and preferred stock, such indeterminate number of warrants to purchase common stock, preferred stock, debt securities and such indeterminate number of units and principal amount of debt securities as may be issued upon conversion or exchange of any preferred stock, warrants, debt securities registered hereunder that provide for conversion, redemption, repurchase or exchange, upon exercise of warrants or pursuant to the anti-dilution provisions of any such securities.
- (2) This registration statement covers up to \$1,000,000,000 of an indeterminate principal amount or number of shares of common stock and preferred stock, such indeterminate number of warrants to purchase common stock, preferred stock or debt securities and such indeterminate number of units and principal amount of debt securities as shall have an aggregate initial offering price not to exceed \$1,000,000,000 (or the equivalent thereof in one or more foreign currencies, foreign currency units or composite currencies), including common stock sold by selling stockholders described in this registration statement. If any debt securities are issued at an original issue discount, then the offering price of such debt securities shall be in such greater principal amount as shall result in an aggregate offering price not to exceed \$1,000,000,000, less the aggregate dollar amount of all securities previously issued hereunder. Any securities registered hereunder may be sold separately or as units together with any of the other securities registered hereunder.
- (3) Estimated solely for the purpose of calculating the registration fee pursuant to Rule 457(o) under the Securities Act.
- (4) Subject to note (2), an indeterminate number of these securities may or may not be convertible into our common stock.
- (5) Subject to note (2), an indeterminate amount of these securities may be senior or subordinated debt securities and may or may not be convertible into our common stock or preferred stock.
- (6) Subject to note (2) above, an indeterminate number of warrants to purchase shares of our common stock, preferred stock or debt securities is being registered hereunder.

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

The information in this prospectus is not complete and may be changed. The selling stockholders may not sell these securities pursuant to this prospectus until the registration statement filed with the Securities and Exchange Commission becomes effective. This prospectus is not an offer to sell these securities and the selling stockholders are not soliciting offers to buy these securities in any state where the offer or sale is not permitted.

SUBJECT TO COMPLETION, DATED JANUARY 14, 2013

PROSPECTUS



\$1,000,000,000

**Common Stock
Preferred Stock
Debt Securities
Warrants
Units**

We may offer and sell from time to time securities in one or more offerings in amounts, at prices and on terms determined at the time of the offering. This prospectus provides you with a general description of the securities we may offer. We may offer and sell the following securities:

- Common stock;
- Preferred stock, which may or may not be convertible into our common stock;
- Senior or subordinated debt securities, which may or may not be convertible into our common stock or preferred stock;
- Warrants to purchase common stock, preferred stock or debt securities; and
- Units comprised of common stock, preferred stock, debt securities and warrants in any combination.

In addition, selling stockholders to be named in one or more prospectus supplements may offer, from time to time, shares of our common stock. We will not receive the proceeds from sales of common stock by these selling stockholders.

We will provide specific terms of any offering and these securities in one or more supplements to this prospectus. We may also authorize one or more free writing prospectuses to be provided to you in connection with these offerings. Any prospectus supplement and any related free writing prospectus may also add to, update, or change information contained in this prospectus. You should carefully read this prospectus, the applicable prospectus supplement and any related free writing prospectus, as well as the documents incorporated or deemed to be incorporated by reference in this prospectus, before you purchase any of the securities offered hereby.

These securities may be offered and sold in the same offering or in separate offerings, to or through underwriters, dealers, and agents, or directly to purchasers. The names of any underwriters, dealers, or agents involved in the sale of our securities, any applicable fees, commissions, discounts and any over-allotment options held by them will be described in the applicable prospectus supplement. The price to the public of such securities and the net proceeds that we expect to receive from such sale will also be set forth in a prospectus supplement.

Our common stock is traded on the New York Stock Exchange (NYSE) under the symbol "BCEI."

Investing in our securities involves a high degree of risk. See "Risk Factors" on page 4 of this prospectus and in the documents that are incorporated by reference herein and contained in the applicable prospectus supplement and

any related free writing prospectus.

Neither the Securities and Exchange Commission nor any state securities commission has approved or disapproved of these securities or determined if this prospectus is truthful or complete. Any representation to the contrary is a criminal offense.

The date of this prospectus is January , 2013.

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ABOUT THIS PROSPECTUS

This prospectus is part of a registration statement we filed with the United States Securities and Exchange Commission (the "SEC") using a "shelf" registration process. Under this shelf process, we may sell any combination of the securities described in this prospectus, and selling stockholders to be named in one or more prospectus supplements may, from time to time, sell our common stock in one or more offerings up to a total dollar amount of proceeds of \$1,000,000,000.

This prospectus only provides you with a general description of the securities we and the selling stockholders may offer. Each time we or the selling stockholders sell securities, we will provide a prospectus supplement containing specific information about the terms of that offering. We may also authorize one or more free writing prospectuses to be provided to you that may contain material information relating to these offerings. The prospectus supplement and any related free writing prospectus may also add, update or change information contained in this prospectus. You should read both this prospectus, any prospectus supplement and any related free writing prospectus, together with additional information described under "Where You Can Find More Information" and "Information Incorporated by Reference."

Wherever references are made in this prospectus to information that will be included in a prospectus supplement or a related free writing prospectus, to the extent permitted by applicable law, rules or regulations, we may instead include such information or add, update or change the information contained in this prospectus by means of a post-effective amendment to the registration statement of which this prospectus is a part, through filings we make with the SEC that are incorporated by reference in this prospectus or by any other method as may then be permitted under applicable law, rules or regulations.

You should rely only on the information contained in or incorporated by reference into this prospectus. We have not authorized any other person to provide you with different or additional information. If anyone provides you with different or additional information, you should not rely on it. The information in this prospectus is as of the date on the front cover. The information we have filed and will file with the SEC that is incorporated by reference into this prospectus is as of the filing date of those documents. Our business, financial condition, results of operations and prospects may have changed since those dates and may change again.

The terms "we," "us," "our," "our company," "the company" and "Bonanza Creek Energy" refer to Bonanza Creek Energy, Inc. and its subsidiaries, unless the context otherwise requires or where otherwise indicated.

THIS PROSPECTUS MAY NOT BE USED TO SELL ANY SECURITIES UNLESS ACCOMPANIED BY A PROSPECTUS SUPPLEMENT.

We are not making an offer of these securities in any jurisdiction where the offer is not permitted. You should not assume that the information in this prospectus or a prospectus supplement is accurate as of any date other than the date on the front of the document.

CAUTIONARY STATEMENT REGARDING FORWARD-LOOKING STATEMENTS

This prospectus, including information incorporated herein by reference, contains various statements, including those that express belief, expectation or intention, as well as those that are not statements of historic fact, that are forward-looking statements within the meaning of Section 27A of the Securities Act, and Section 21E of the Exchange Act. These forward-looking statements may include projections and estimates concerning our capital expenditures, our liquidity and capital resources, our estimated revenues and losses, the timing and success of specific projects, outcomes and effects of litigation, claims and disputes, our business strategy and other statements concerning our operations, economic performance and financial condition. When used in this prospectus, the words "could," "believe," "anticipate," "intend," "estimate," "expect," "may," "continue," "predict," "potential," "project" and similar expressions are intended to identify forward-looking statements, although not all forward-looking statements contain such identifying words. We have based these forward-looking statements on certain assumptions and analyses we have made in light of our experience and our perception of historical trends, current conditions and expected future developments as well as other factors we believe are appropriate under the circumstances. The actual results or developments anticipated by these forward-looking statements are subject to a number of risks and uncertainties, many of which are beyond our control, and may not be realized or, even if substantially realized, may not have the expected consequences. Forward-looking statements may include statements about:

- our ability to replace oil and natural gas reserves; declines or volatility in the prices we receive for our oil and natural gas;
- our financial position;
- our cash flow and liquidity;
- general economic conditions, whether internationally, nationally or in the regional and local market areas in which we do business;
- the recent economic slowdown that has and may continue to adversely affect consumption of oil and natural gas by businesses and consumers;
- our ability to generate sufficient cash flow from operations, borrowings or other sources to enable us to fully develop our undeveloped acreage positions;
- the presence or recoverability of estimated oil and natural gas reserves and the actual future production rates and associated costs;
- uncertainties associated with estimates of proved oil and gas reserves and, in particular, probable and possible resources;
- the possibility that the industry may be subject to future regulatory or legislative actions (including additional taxes and changes in environmental regulation);
- environmental risks;
- drilling and operating risks;
- exploration and development risks;
- competition in the oil and natural gas industry;
- management's ability to execute our plans to meet our goals;
- our ability to retain key members of our senior management and key technical employees;

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- access to adequate gathering systems and pipeline take-away capacity to execute our drilling program;
- our ability to secure firm transportation for oil and natural gas we produce and to sell the oil and natural gas at market prices;
- costs associated with perfecting title for mineral rights in some of our properties;
- continued hostilities in the Middle East and other sustained military campaigns or acts of terrorism or sabotage; and other economic, competitive, governmental, legislative, regulatory, geopolitical and technological factors that may negatively impact our businesses, operations or pricing.

All forward-looking statements speak only as of the date of this prospectus. We disclaim any obligation to update or revise these statements unless required by law, and you should not place undue reliance on these forward-looking statements. Although we believe that our plans, intentions and expectations reflected in or suggested by the forward-looking statements we make in this prospectus are reasonable, we can give no assurance that these plans, intentions or expectations will be achieved. We disclose important factors that could cause our actual results to differ materially from our expectations under "Risk Factors" and elsewhere in this prospectus. These cautionary statements qualify all forward-looking statements attributable to us or persons acting on our behalf.

THE COMPANY

We are an independent oil and natural gas company engaged in the acquisition, exploration, development and production of onshore oil and associated liquids-rich natural gas in the United States. Our assets and operations are concentrated primarily in the Wattenberg Field in Colorado (Rocky Mountain region) and southern Arkansas (Mid-Continent region). Our management team has extensive experience acquiring and operating oil and gas properties, which we believe will contribute to the development of our sizable inventory of projects including those targeting the the Niobrara oil shale formation in our Rocky Mountain region and oily Cotton Valley sands in our Mid-Continent region.

We were incorporated under the laws of the State of Delaware on December 2, 2010. Our principal executive offices are located at 410 17th Street, Suite 1400, Denver, Colorado 80202. The telephone number at our principal executive offices is (720) 440-6100. Our website address is www.bonanzacrk.com. Information contained on our website is not deemed part of this prospectus.

RATIO OF EARNINGS TO FIXED CHARGES

For purposes of computing the ratio of earnings to fixed charges, earnings represent pre-tax income (loss) from continuing operations plus fixed charges. Fixed charges represent estimated interest within rental expense. The following table sets forth our ratios of earnings to fixed charges for each period indicated.

	Nine Months Ended	Year Ended December 31,				
	September 30, 2012	2011	2010(1)	2009(2)	2008(2)	2007(2)
Ratio of earnings to fixed charges	22.83	7.88	1.54	(4.29) ⁽³⁾	4.65	(4.43) ⁽⁴⁾

- (1) Based on combined financial information for the 8 day period ended December 31, 2010 for Bonanza Creek Energy, Inc. and the 357 day period ended December 23, 2010 for Bonanza Creek Energy, LLC, a predecessor company.
- (2) Based on financial information for Bonanza Creek Energy, LLC, a predecessor company.
- (3) The coverage deficiency was \$129.8 million.
- (4) The coverage deficiency was \$40.4 million.

RISK FACTORS

Investing in our securities involves significant risks. You should review carefully the risks and uncertainties described under the heading "Risk Factors" contained in our most recent Annual Report on Form 10-K, our Quarterly Reports on Form 10-Q and any Current Reports on Form 8-K that may be filed from time to time, and other disclosures in those documents relating to risks that may affect us, including disclosures regarding commitments and contingencies in the notes to our financial statements. All of the foregoing documents are incorporated by reference into this prospectus to the extent described in "Information Incorporated by Reference." Also, please read "Cautionary Statement Regarding Forward-Looking Statements." Additional risk factors that you should carefully consider may be included in a prospectus supplement relating to an offering of securities by us or a selling stockholder or any related free writing prospectus.

The risks and uncertainties described in this prospectus, any applicable prospectus supplement, any related free writing prospectus and the documents incorporated by reference herein are not the only ones that we face. Additional risks and uncertainties that we do not presently know about or that we currently believe are not material may also adversely affect our business. If any of the risks and uncertainties described in this prospectus, any applicable prospectus supplement, any related free writing prospectus or the documents incorporated by reference herein actually occur, our business, financial condition and results of operations could be materially and adversely affected.

USE OF PROCEEDS

Except as described in any prospectus supplement, we currently intend to use the net proceeds from the sale of securities by us in order to fund or accelerate development growth plans; refinance, in whole or in part, existing indebtedness; finance, in whole or in part, the costs of acquisitions or capital expenditures; or general corporate purposes. Until we apply the proceeds from a sale of securities to their intended purposes, we may invest the proceeds in short-term investments. The specific allocations of the proceeds we receive from the sale of our securities will be described in the applicable prospectus supplement.

We will not receive any proceeds from the sale of shares of our common stock by any of our selling stockholders.

DESCRIPTION OF CAPITAL STOCK

Our authorized capital stock consists of 225,000,000 shares of common stock, par value \$0.001 per share, of which approximately 40,115,536 were issued and outstanding as of December 31, 2012; and 25,000,000 shares of preferred stock, par value \$0.001 per share, of which no shares were issued and outstanding as of December 31, 2012.

The rights of our stockholders are governed by the Delaware General Corporation Law (the "DGCL"), our second amended and restated certificate of incorporation and our second amended and restated bylaws. The following is a summary of the material terms of our capital stock and is qualified in its entirety by reference to our second amended and restated certificate of incorporation and our second amended and restated bylaws, each of which is incorporated by reference in this prospectus.

Our common stock is listed on the NYSE under the symbol "BCEI."

Common Stock

Dividend and Liquidation Rights. Holders of our common stock may receive dividends when, as and if declared by our board of directors out of funds lawfully available for the payment of dividends. As a Delaware corporation, we may pay dividends out of surplus or, if there is no surplus, out of net profits for the fiscal year in which a dividend is declared and/or the preceding fiscal year. Section 170 of the DGCL also provides that dividends may not be paid out of net profits if, after the payment of the dividend, capital is less than the capital represented by the outstanding stock of all classes having a preference upon the distribution of assets.

The right of holders of our common stock to receive dividends and distributions upon liquidation will be subject to the satisfaction of any applicable preference granted to the holders of any preferred stock that may then be outstanding.

Voting and Other Rights. Holders of common stock are entitled to one vote per share on all matters to be voted upon by the stockholders. The holders of common stock do not have cumulative voting rights in the election of directors. The affirmative vote of at least a majority of our outstanding voting stock will be required to amend or repeal provisions of our second amended and restated certificate of incorporation.

No Preemptive, Conversion or Redemption Rights. Our common stock has no preemptive, conversion or exchange rights and is not subject to further calls or assessment by us. There are no redemption, retraction, purchase for cancellation or sinking fund provisions applicable to our common stock, nor are there any provisions discriminating against any existing or prospective holder of our common stock as a result of such holder owning a substantial amount of common stock. There are no restrictions on alienability of the common stock subject to this registration statement.

Preferred Stock

Our amended and restated certificate of incorporation authorizes our board of directors to establish one or more series of preferred stock. With respect to any series of preferred stock, our board of directors is authorized to determine the terms and rights of that series, including:

- the designation of the series and the number of shares to constitute the series;
- the dividend rate of the series, the conditions and dates upon which such dividends shall be payable, the relation which such dividends shall bear to the dividends payable on any other class or classes of stock, and whether such dividends shall be cumulative or noncumulative;
- whether the shares of the series shall be subject to redemption by us and, if made subject to such redemption, the times, prices and other terms and conditions of such redemption;

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- the terms and amount of any sinking fund provided for the purchase or redemption of the shares of the series;
- whether or not the shares of the series shall be convertible into or exchangeable for shares of any other class or classes or of any other series of any class or classes of stock, and, if provision is made for conversion or exchange, the times, prices, rates, adjustments and other terms and conditions of such conversion or exchange;
- the extent, if any, to which the holders of the shares of the series shall be entitled to vote with respect to the election of directors or otherwise;
- the restrictions, if any, on the issue or reissue of any additional preferred stock; and
- the rights of the holders of the shares of the series upon the dissolution, liquidation or winding up of the company.

We could issue a series of preferred stock that could impede the completion of a merger, tender offer or other takeover attempt. We will make any determination to issue preferred stock based on our judgment as to the best interests of our company and our stockholders. In so acting, we could issue preferred stock having terms that could discourage an acquisition attempt or other transaction that some, or a majority, of our stockholders might believe to be in their best interests or in which stockholders might receive a premium for their common stock over the then-current market price of the common stock.

Registration Rights

We have entered into a registration rights agreement with certain of our stockholders relating to the shares of our common stock held by them and covered by the agreement. Under the registration rights agreement, the rights holders have the right, subject to certain terms and conditions, to require us to register under the Securities Act for offer and sale all or a portion of the shares of common stock held by such stockholders.

Certain Anti-Takeover Matters

Our second amended and restated certificate of incorporation and second amended and restated bylaws also contain provisions that we describe in the following paragraphs, which may delay, defer, discourage or prevent a change in control of our company, the removal of our existing management or directors, or an offer by a potential acquirer to our stockholders, including an offer by a potential acquirer at a price higher than the market price for the stockholders' shares.

Among other things, our second amended and restated certificate of incorporation and bylaws:

- establish advance notice procedures with regard to stockholder proposals relating to the nomination of candidates for election as directors or new business to be brought before meetings of our stockholders. These procedures provide that notice of stockholder proposals must be timely given in writing to our corporate secretary prior to the meeting at which the action is to be taken. Generally, to be timely, notice must be received at our principal executive offices not less than 120 days prior to the first anniversary date of the annual meeting for the preceding year. Our bylaws specify the requirements as to form and content of all stockholders' notices. These requirements may preclude stockholders from bringing matters before the stockholders at an annual or special meeting;
- provide our board of directors the ability to authorize undesignated preferred stock. This ability makes it possible for our board of directors to issue, without stockholder approval, preferred stock with voting or other rights or preferences that could impede the success of any attempt to change control of us;

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- our board of directors is divided into three classes serving staggered three-year terms, which could have the effect of increasing the length of time necessary to change the composition of a majority of the board of directors;
- provide that the authorized number of directors may be changed only by resolution of the board of directors;
- provide that all vacancies, including newly created directorships, may, except as otherwise required by law, be filled by the affirmative vote of a majority of directors then in office, even if less than a quorum;
- provide that stockholders may only act at a duly called meeting and may not act by written consent in lieu of a meeting;
- provide that stockholders are not permitted to call special meetings of stockholders. Only our board of directors, Chairperson, Chief Executive Officer and President are permitted to call a meeting of stockholders; and
- provide that our board of directors may alter or repeal our bylaws or approve new bylaws without further stockholder approval.

Delaware Anti-Takeover Law

Our company is a Delaware corporation subject to the provisions of Section 203 of the DGCL, an anti-takeover law. In general, Section 203 prohibits a publicly held Delaware corporation from engaging in a "business combination" with an "interested stockholder" for a period of three years after the date of the transaction in which the person became an interested stockholder, unless the business combination is approved in a prescribed manner.

Section 203 defines a "business combination" as a merger, asset sale or other transaction resulting in a financial benefit to the interested stockholders. Section 203 defines an "interested stockholder" as a person who, together with affiliates and associates, owns, or, in some cases, within three years prior, did own, 15% or more of the corporation's voting stock. Under Section 203, a business combination between us and an interested stockholder is prohibited unless:

- our board of directors approved either the business combination or the transaction that resulted in the stockholder becoming an interested stockholder prior to the date the person attained the status;
- upon consummation of the transaction that resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of our voting stock outstanding at the time the transaction commenced, excluding, for purposes of determining the number of shares outstanding, shares owned by persons who are directors and also officers and issued employee stock plans, under which employee participants do not have the right to determine confidentially whether shares held under the plan will be tendered in a tender or exchange offer; or
- the business combination is approved by our board of directors on or subsequent to the date the person became an interested stockholder and authorized at an annual or special meeting of the stockholders by the affirmative vote of the holders of at least 66 ²/₃% of the outstanding voting stock that is not owned by the interested stockholder.

This provision has an anti-takeover effect with respect to transactions not approved in advance by our board of directors, including discouraging takeover attempts that might result in a premium over the market price for the shares of our common stock. With approval of our stockholders, we could amend our certificate of incorporation in the future to elect not to be governed by the anti-takeover law.

Transfer Agent and Registrar

The transfer agent and registrar for our common stock is Computershare Trust Company, Inc.

DESCRIPTION OF DEBT SECURITIES

The following description of the debt securities sets forth the material terms and provisions of the debt securities to which any prospectus supplement and/or other offering material may relate. The particular terms of the debt securities offered by any prospectus supplement and/or other offering material and the extent, if any, to which the provisions described in this prospectus may apply to the offered debt securities will be described in the prospectus supplement and/or other offering material relating to the offered debt securities. As used in this section, the terms "we," "us," "our," "our company," "the Company," and "Bonanza Creek" refer to Bonanza Creek Energy, Inc., a Delaware corporation, and not any of its subsidiaries, unless the context requires.

Senior debt securities will be issued under an indenture between us and a trustee that we will select. A form of the indenture is filed as an exhibit to the registration statement of which this prospectus is a part. The indenture relating to the senior debt securities, as amended or otherwise supplemented by any supplemental indentures, is referred to in this prospectus as the senior indenture. Subordinated debt securities will be issued under an indenture between us and a trustee that we will select. A form of the indenture is filed as an exhibit to the registration statement of which this prospectus is a part. The indenture relating to the subordinated debt securities, as amended or otherwise supplemented by any supplemental indentures, is referred to in this prospectus as the subordinated indenture. The senior indenture and the subordinated indenture are sometimes referred to in this prospectus collectively as the indentures, and each individually, as an indenture.

The following summaries of the material provisions of the indentures and the debt securities do not purport to be complete and are subject to, and are qualified in their entirety by reference to, all of the provisions of the indentures, including the definitions of specified terms used in the indentures, and the debt securities. Wherever particular articles, sections or defined terms of an indenture are referred to, it is intended that those articles, sections or defined terms will be incorporated herein by reference, and the statement in connection with which reference is made is qualified in its entirety by the article, section or defined term in the indenture.

General

The indentures do not limit the amount of debt, either secured or unsecured, which we may issue under the indentures or otherwise. We may from time to time, without giving notice to or seeking the consent of the holders of a series of debt securities issued under an indenture, issue debt securities under that indenture having the same terms (except for the issue date, and, in some cases, the public offering price and the first interest payment date) as, and ranking equally and ratably with, the debt securities of a series previously issued under that indenture. Any additional debt securities having such similar terms, together with the debt securities of the applicable series, will constitute a single series of securities under the applicable indenture, including for purposes of voting and redemptions. No such additional debt securities may be issued if an event of default under the applicable indenture has occurred and is continuing with respect to the applicable series of debt securities.

The debt securities may be issued in one or more series with the same or various maturities and may be sold at par, a premium or an original issue discount. Some of the debt securities may be issued under the applicable indenture as original issue discount securities to be sold at a substantial discount below their principal amount. Federal income tax and other considerations applicable to any original issue discount securities will be described in the related prospectus supplement and/or other offering material.

Unless otherwise provided in a prospectus supplement, the senior debt securities will be unsecured obligations of ours and will rank equally with all of our other unsecured and unsubordinated indebtedness outstanding from time to time. The subordinated debt securities will be unsecured obligations of ours, subordinated in right of payment to the prior payment in full of all senior debt

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securities of ours as described below under "Subordination of the Subordinated Debt Securities" and in the applicable prospectus supplement. The indentures do not limit the amount of senior, *pari passu* and junior indebtedness that we may issue.

We conduct a substantial amount of our operations through subsidiaries and expect that we will continue to do so. The debt securities will not be guaranteed by any of our existing or future subsidiaries. Our subsidiaries are separate and distinct legal entities and have no obligation, contingent or otherwise, to pay any amounts due with respect to the debt securities or to make any funds available therefor, whether by dividends, loans or other payments. Our right to participate as a shareholder in any distribution of assets of any subsidiary upon its liquidation or reorganization or otherwise and the ability of a holder of debt securities to benefit as our creditor from any distribution are subject to prior claims of creditors of the subsidiary. As a result, the debt securities will effectively rank junior in right of payment to all existing and future debt and other liabilities (including trade payables) of our subsidiaries. In addition, to the extent the debt securities are unsecured, the debt securities will also effectively rank junior in right of payment to any secured debt that we may have outstanding to the extent of the value of the assets securing such debt.

The prospectus supplement and/or other offering material relating to the particular series of debt securities offered thereby will describe the following terms of the offered debt securities:

- the title of the offered debt securities;
- any limit upon the aggregate principal amount of the offered debt securities;
- the date or dates (or the manner of calculating the date or dates) on which the principal of the offered debt securities is payable;
- the rate or rates (or the manner of calculating the rate or rates) at which the offered debt securities shall bear interest, if any, the date or dates from which such interest shall accrue, the interest payment dates on which such interest shall be payable and the regular record date for the interest payable on any interest payment date;
- the place or places where the principal of and premium, if any, and interest, if any, on the offered debt securities will be payable;
- the period or periods within which, the price or prices at which, the currency in which, and the terms and conditions upon which the offered debt securities may be redeemed, in whole or in part, at our option;
- our obligation, if any, to redeem or purchase the offered debt securities pursuant to any sinking fund or analogous provisions or at the option of a holder thereof and the period or periods within which, the price or prices in the currency at which, the currency in which, and the terms and conditions upon which the offered debt securities shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- whether the offered debt securities are senior debt securities or subordinated debt securities and, if subordinated debt securities, the specific subordination provisions applicable thereto;
- the denominations in which the offered debt securities shall be issuable if other than in minimum denominations of \$2,000 and any integral multiples of \$1,000 in excess thereof;
- if other than the currency of the United States of America, the currencies in which payments of interest or principal of (and premium, if any, with respect to) the offered debt securities are to be made;
- if the interest on or principal of (or premium, if any, with respect to) the offered debt securities are to be payable, at our election or at the election of a holder thereof or otherwise, in a

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currency other than that in which such debt securities are payable, the period or periods within which, and the other terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the currency in which such debt securities are denominated or stated to be payable and the currency in which such debt securities or any of them are to be so payable;

- whether the amount of payments of interest on or principal of (or premium, if any, with respect to) the offered debt securities of such series may be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on one or more currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;
- the extent to which any offered debt securities will be issuable in permanent global form, the manner in which any payments on a permanent global debt security will be made, and the appointment of any depository relating thereto;
- the inapplicability of specified provisions relating to discharge and defeasance described in this prospectus with respect to the offered debt securities;
- any deletions from, modifications of or additions to the events of default or covenants with respect to the offered debt securities of such series, whether or not such events of default or covenants are consistent with the events of default or covenants set forth herein;
- if any of the offered debt securities are to be issuable upon the exercise of warrants, and, if so, the time, manner and place for such debt securities to be authenticated and delivered;
- the terms of any right to convert the offered debt securities of such series into, or exchange the debt securities for, our common stock or other securities or property or cash in lieu of our common stock or other securities or property, or any combination thereof; and
- any other terms of the series (which terms shall not be inconsistent with the provisions of the related indenture).

Payments

Unless otherwise indicated in any prospectus supplement and/or other offering material, principal of and premium, if any, and interest, if any, on the offered debt securities will be payable, and transfers of the offered debt securities will be registrable, at the corporate trust office of the trustee. Alternatively, at our option, payment of interest may be made by check mailed to the address of the person entitled thereto as it appears in the debt security register.

Denominations, Registration and Transfer

Unless otherwise indicated in any prospectus supplement and/or other offering material, the offered debt securities will be issued only in fully registered form without coupons in minimum denominations of \$2,000 and integral multiples of \$1,000 in excess thereof, or the equivalent in foreign currency. No service charge will be made for any registration of transfer or exchange of offered debt securities, but we may require payment of a sum sufficient to cover any tax or other governmental charge payable in connection with any transfer or exchange.

If the purchase price of any of the offered debt securities is denominated in a foreign currency or currencies or if the principal of, premium, if any, or interest, if any, on any series of offered debt securities is payable in a foreign currency or currencies, the restrictions, elections, tax consequences, specific terms and other information with respect to the issue of offered debt securities and the foreign

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currency or currencies will be described in the related prospectus supplement and/or other offering material.

We will not be required to issue, register the transfer of, or exchange debt securities of any series during the period from 15 days prior to the mailing of a notice of redemption of debt securities of that series to the date the notice is mailed. We will also not be required to register the transfer of or exchange any debt security so selected for redemption, except the unredeemed portion of any debt security being redeemed in part.

Conversion and Exchange

The terms, if any, on which debt securities of any series are convertible into or exchangeable for common stock or preferred stock, property or cash, or a combination of any of the foregoing, will be set forth in the related prospectus supplement and/or other offering material. Terms may include provisions for conversion or exchange that is either mandatory, at the option of the holder, or at our option. The number of shares of common stock or preferred stock to be received by the holders of the debt securities will be calculated in the manner, according to the factors and at the time as described in the related prospectus supplement and/or other offering material.

Merger

Each indenture provides that we may, without the consent of the holders of debt securities, consolidate with, or sell, lease or convey all or substantially all of our assets to, or merge into any other corporation, provided that:

- immediately after giving effect to the transaction, no default under the applicable indenture has occurred and is continuing;
- the successor corporation is a corporation organized and existing under the laws of the United States or a state thereof; and
- the successor corporation expressly assumes the due and punctual payment of the principal of and premium, if any, and interest on all debt securities, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of the applicable indenture to be performed by us.

In addition, we must provide to the trustee an opinion of legal counsel that any such transaction and any assumption by a successor corporation complies with the applicable provisions of the indenture and that we have complied with all conditions precedent provided in the indenture relating to such transaction.

Other than the covenants described above, or as set forth in any accompanying prospectus supplement and/or other offering material, neither indenture contains any covenants or other provisions designed to afford holders of the debt securities protection in the event of a takeover, recapitalization or a highly leveraged transaction involving us.

Modification of the Indentures

With the consent of the holders of more than 50% in aggregate principal amount of any series of debt securities then outstanding under the applicable indenture, waivers, modifications and alterations of the terms of either indenture may be made which affect the rights of such holders of the series of debt securities. However, no modification or alteration may, without the consent of all holders of any series of debt securities then outstanding affected thereby:

- change the stated maturity of the principal of, or any premium or installment of interest on, any debt security of that series;

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- reduce the principal amount of, or the rate, or modify the calculation of such rate, of interest on, or any premium payable upon the redemption of, any debt security;
- reduce the amount of the principal of an original issue discount security that would be due and payable upon a declaration of acceleration of the maturity thereof or the amount thereof provable in bankruptcy;
- change the redemption provisions of any debt security or adversely affect the right of repayment at the option of any holder of any debt security of that series;
- change the place of payment or the coin or currency in which the principal of, any premium or interest on any debt security of that series is payable;
- impair the right to institute suit for the enforcement of any payment on or after the stated maturity of any debt security of that series or, in the case of redemption, on or after the redemption date or, in the case of repayment at the option of any holder, on or after the repayment date;
- make any change that adversely affects the right to convert or exchange any debt security into or for shares of common stock or preferred stock or other securities, cash or property in accordance with its terms;
- modify any of the provisions of the indenture relating to the offices for notices and payments, filling vacancies in the trustee's office, and paying agent provisions in a manner adverse to holders of the debt securities; or
- reduce the percentage of debt securities of that series, the holders of which are required to consent to:
 - any supplemental indenture;
 - rescind and annul a declaration that the debt securities of that series are due and payable as a result of the occurrence of an event of default;
 - waive any past event of default under the applicable indenture and its consequences; and
 - waive compliance with other specified provisions of the applicable indenture.

In addition, as described in the description of "Events of Default" set forth below, holders of more than 50% in aggregate principal amount of the debt securities of any series then outstanding may waive past events of default with respect to such series of debt securities in specified circumstances and may direct the trustee in enforcement of remedies.

We and the trustee may, without the consent of any holders, modify and supplement the applicable indenture:

- to evidence the succession of another corporation to us under the applicable indenture, or successive successions, and the assumption by the successor corporation of the covenants, agreements and obligations of us pursuant to the applicable indenture;
- to add to the covenants applicable to us such further covenants, restrictions, conditions or provisions as our board of directors and the trustee shall consider to be for the protection of the holders of debt securities of any or all series, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or event of default with respect to such series permitting the enforcement of all or any of the several remedies provided in the applicable indenture; provided, however, that in respect of any such additional covenant, restriction or condition, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or

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longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the trustee upon such default;

- to cure any ambiguity or to correct or supplement any provision contained in the applicable indenture or in any supplemental indenture which may be defective or inconsistent with any other provision contained in the indenture or in any supplemental indenture;
- to convey, transfer, assign, mortgage or pledge any property to or with the trustee;
- to make other provisions in regard to matters or questions arising under the applicable indenture as shall not adversely affect the interests of the holders and to make any change that would provide additional rights or benefits to the holders of any or all series or that does not adversely affect the legal rights under the applicable indenture of any such holder;
- to evidence and provide for the acceptance of appointment by another corporation as a successor trustee under the applicable indenture with respect to one or more series of debt securities and to add to or change any of the provisions of the indenture as shall be necessary to provide for or facilitate the administration of the trusts under the indenture by more than one trustee;
- to modify, amend or supplement the applicable indenture in such a manner as to permit the qualification of any supplemental indenture under the Trust Indenture Act of 1939 as then in effect, except that nothing contained in the indentures shall permit or authorize the inclusion in any supplemental indenture of the provisions referred to in Section 316(a)(2) of the Trust Indenture Act of 1939;
- to provide for the issuance under the applicable indenture of debt securities in coupon form (including debt securities registrable as to principal only) and to provide for exchangeability of such debt securities with debt securities of the same series issued hereunder in fully registered form and to make all appropriate changes for such purpose;
- to change or eliminate any of the provisions of the applicable indenture, provided, however, that any such change or elimination shall become effective only when there is no debt security outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; and
- to establish any additional form of debt security and to provide for the issuance of any additional series of debt securities.

Legal Defeasance and Covenant Defeasance

Each indenture will provide that, at our option, we:

- will be discharged from any and all obligations in respect of the debt securities of a series, except for certain obligations set forth in the indenture that survive such discharge ("legal defeasance"); or
- may omit to comply with certain restrictive covenants of the indenture, including those described under "Merger," and the occurrence of an event described in clause (4) under "Events of Default" with respect to any such covenants will no longer be an event of default ("covenant defeasance");

in each case, if

- we irrevocably deposit with the trustee, in trust, specifically pledged as security for, and dedicated solely to, the benefit of the holders of such series of debt securities, (i) lawful money,

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(ii) direct obligations of the government which issued the currency in which such debt securities are denominated, or obligations of a person controlled or supervised by and acting as an agency or instrumentality of such government and which obligations are guaranteed by such government (which direct or guaranteed obligations are full faith and credit obligations of such government, are denominated in the currency in which such debt securities are denominated and which are not callable or redeemable at the option of the issuer thereof) or (iii) a combination thereof, in each case in an amount sufficient, after payment of all federal, state and local taxes in respect thereof payable by the trustee, in the opinion of a nationally-recognized firm of independent public accountants expressed in a written certification thereof delivered to the trustee, to pay when due the principal, premium, if any, and interest to maturity or to the redemption date, as the case may be, with respect to the debt securities of such series then outstanding, and any mandatory sinking fund payments or similar payments or payment pursuant to any call for redemption applicable to such debt securities of such series on the day on which such payments are due and payable in accordance with the terms of the applicable indenture and such debt securities;

- no event of default or event which with the giving of notice or lapse of time, or both, would become an event of default with respect to debt securities of such series shall have occurred and be continuing on the date of the deposit or insofar as an event of default resulting from certain events involving our bankruptcy or insolvency are concerned, at any time during the period ending on the 91st day after the date of the deposit or, if longer, ending on the day following the expiration date of the longest preference period applicable to us in respect of the deposit (and this condition will not be deemed satisfied until the expiration of such period);
- the defeasance will not cause the trustee to have any conflicting interest with respect to any of our securities or result in the trust arising from the deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;
- the defeasance will not result in a breach or violation of, or constitute a default under, the indenture or any other agreement or instrument to which we are a party or by which we bound;
- we have delivered an opinion of counsel to the effect that the holders will not recognize income, gain or loss for federal income tax purposes as a result of the defeasance and will be subject to federal income tax in the same manner as if the defeasance had not occurred, which opinion of counsel, in the case of legal defeasance, must refer to and be based upon a published ruling of the Internal Revenue Service, a private ruling of the Internal Revenue Service addressed to us, or otherwise a change in applicable federal income tax law occurring after the date of the indenture; and
- we shall have delivered an officer's certificate and an opinion of counsel stating that the conditions to such defeasance set forth in the indenture have been complied with.

If we fail to comply with our remaining obligations under the indenture after a covenant defeasance with respect to the debt securities of any series and such debt securities are declared due and payable because of the occurrence of any event of default, the amount of money and government obligations on deposit with the trustee may be insufficient to pay amounts due on such debt securities at the time of the acceleration resulting from the event of default. We will, however, remain liable for those payments.

Satisfaction and Discharge

With respect to any series of debt securities, the applicable indenture will be discharged and will cease to be of further effect (except as to surviving rights of registration of transfer or exchange of debt

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securities of such series, as expressly provided for in the indenture) as to all outstanding debt securities of such series when:

- (1) either (a) all the debt securities of such series theretofore authenticated and delivered (except lost, stolen or destroyed debt securities which have been replaced or paid and debt securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by us and thereafter repaid to us or discharged from such trust) have been delivered to the trustee for cancellation or (b) all of the debt securities of such series (i) have become due and payable, (ii) will become due and payable at their stated maturity within one year or (iii) if redeemable at our option, are to be called for redemption within one year under arrangements satisfactory to the trustee for the giving of notice of redemption by the trustee in the name, and at the expense, of us, and we have irrevocably deposited or caused to be deposited with the trustee lawful money, direct or guaranteed government obligations, or a combination thereof, of the nature and in the amounts described above under the heading "Legal Defeasance and Covenant Defeasance" above in an amount sufficient to pay and discharge the entire indebtedness on the debt securities of such series not theretofore delivered to the trustee for cancellation, for principal of, premium, if any, and interest on the debt securities of such series to the date of deposit together with irrevocable instructions from us directing the trustee to apply such funds to the payment thereof at maturity or redemption, as the case may be;
- (2) we have paid all other sums payable under the indenture in respect of such series of debt securities; and
- (3) we have delivered to the trustee an officers' certificate and an opinion of counsel stating that all conditions precedent under the indenture relating to the satisfaction and discharge of the indenture with respect to such series of debt securities have been complied with.

Events of Default

As to any series of debt securities, an event of default is defined in the applicable indenture as being:

- (1) failure to pay any interest on the debt securities of that series when due, which failure continues for 30 days;
- (2) failure to pay principal or premium, if any, with respect to the debt securities of that series when due;
- (3) failure to pay or satisfy any sinking fund payment or similar obligation with respect to debt securities of that series when due;
- (4) failure to observe or perform any other covenant, warranty or agreement in the applicable indenture or debt securities of that series, other than a covenant, warranty or agreement, a default in whose performance or whose breach is specifically dealt with in the section of the applicable indenture governing events of default, if the failure continues for 60 days after written notice by the trustee or the holders of at least 25% in aggregate principal amount of the debt securities of that series then outstanding;
- (5) if any event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of ours, whether such indebtedness now exists or is hereafter created or incurred, happens and consists of default in the payment of more than \$25,000,000 in principal amount of such indebtedness at the maturity thereof, after giving effect to any applicable grace period, or results in such indebtedness in principal amount in excess of \$25,000,000 becoming or being declared due and

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payable prior to the date on which it would otherwise become due and payable, and such default is not cured or such acceleration is not rescinded or annulled within a period of 30 days after there has been given written notice as provided in the applicable indenture;

- (6) we shall fail within 60 days to pay, bond or otherwise discharge any uninsured judgment or court order for the payment of money in excess of \$25,000,000, which is not stayed on appeal or is not otherwise being appropriately contested in good faith;
- (7) specified events of bankruptcy, insolvency, receivership or reorganization; or
- (8) any other event of default provided with respect to debt securities of that series.

Notice and Declaration of Defaults

So long as the debt securities of any series remain outstanding, we will be required to furnish annually to the trustee a certificate of one of our corporate officers stating whether, to the best of such officer's knowledge, we are in default under any of the provisions of the applicable indenture, and specifying all defaults, and the nature thereof, of which such officer has knowledge. We will also be required to furnish to the trustee copies of specified reports filed by us with the SEC.

Each indenture provides that the trustee will, within 90 days after the occurrence of a default with respect to any series for which there are debt securities outstanding which is continuing, give to the holders of those debt securities notice of all uncured defaults known to it, including events specified above without grace periods. Except in the case of default in the payment of principal, premium, if any, or interest on any of the debt securities of any series or the payment of any sinking fund installment on the debt securities of any series, the trustee may withhold notice to the holders if the trustee in good faith determines that withholding notice is in the interest of the holders of the debt securities.

If a specified event of bankruptcy, insolvency, receivership, or reorganization occurs and is continuing, then the principal amount of (or, if the debt securities of that series are original issue discount debt securities, such portion of the principal amount as may be specified in their terms as due and payable upon acceleration) and any accrued and unpaid interest on that series will immediately become due and payable without any declaration or other act on the part of the trustee or any holder. If any other event of default occurs and is continuing, the trustee or the holders of not less than 25% in aggregate principal amount of the outstanding debt securities of any series may declare the principal amount of the debt securities of that series immediately due and payable. In some cases, the holders of a majority in principal amount of the debt securities of any series then outstanding may waive any past default and its consequences, except a default in the payment of principal, premium, if any, or interest, including sinking fund payments.

Actions upon Default

Subject to the provisions of the applicable indenture relating to the duties of the trustee in case an event of default with respect to any series of debt securities occurs and is continuing, the applicable indenture provides that the trustee will be under no obligation to exercise any of its rights or powers under the applicable indenture at the request, order or direction of any of the holders of debt securities outstanding of any series unless the holders have offered to the trustee reasonable indemnity. The right of a holder to institute a proceeding with respect to the applicable indenture is subject to conditions precedent including notice and indemnity to the trustee, but the holder has a right to receipt of principal, premium, if any, and interest on their due dates or to institute suit for the enforcement thereof, subject to specified limitations with respect to defaulted interest.

The holders of a majority in principal amount of the debt securities outstanding of the series in default will have the right to direct the time, method and place for conducting any proceeding for any remedy available to the trustee, or exercising any power or trust conferred on the trustee. Any direction

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by the holders will be in accordance with law and the provisions of the related indenture, provided that the trustee may decline to follow any such direction if the trustee determines on the advice of counsel that the proceeding may not be lawfully taken or would be materially or unjustly prejudicial to holders not joining in the direction. The trustee will be under no obligation to act in accordance with the direction unless the holders offer the trustee reasonable security or indemnity against costs, expenses and liabilities which may be incurred thereby.

Subordination of Subordinated Debt Securities

Except as set forth in the related prospectus supplement and/or other offering material, the subordinated debt securities will be subordinated, in right of payment, to the prior payment in full of the senior indebtedness, including the senior debt securities, whether outstanding at the date of the subordinated indenture or thereafter incurred, assumed or guaranteed. The term "senior indebtedness" means:

- the principal, premium, if any, and unpaid interest on indebtedness for money borrowed;
- purchase money and similar obligations;
- obligations under capital leases;
- guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which we are responsible for the payment of, indebtedness of others;
- renewals, extensions and refunding of any senior indebtedness;
- interest or obligations in respect of any senior indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings; and
- obligations associated with derivative products, including interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts, and similar arrangements unless, in each case, the instrument by which we incurred, assumed or guaranteed the indebtedness or obligations described in the foregoing clauses expressly provides that the indebtedness or obligation is not senior in right of payment to the subordinated debt securities.

Upon any distribution of our assets in connection with any dissolution, winding up, liquidation or reorganization of our company, whether in a bankruptcy, insolvency, reorganization or receivership proceeding or upon an assignment for the benefit of creditors or any other marshalling of our assets and liabilities or otherwise, except a distribution in connection with a merger or consolidation or a conveyance or transfer of all or substantially all of our properties in accordance with the subordinated indenture, the holders of all senior indebtedness will first be entitled to receive payment of the full amount due on the senior indebtedness, or provision will be made for that payment in money or money's worth, before the holders of any of the subordinated debt securities are entitled to receive any payment in respect of the subordinated debt securities.

In the event that a payment default occurs and is continuing with respect to the senior indebtedness, the holders of all senior indebtedness will first be entitled to receive payment of the full amount due on the senior indebtedness, or provision will be made for that payment in money or money's worth, before the holders of any of the subordinated debt securities are entitled to receive any payment in respect of the subordinated debt securities. In the event that the principal of the subordinated debt securities of any series is declared due and payable pursuant to the subordinated indenture and that declaration is not rescinded and annulled, the holders of all senior indebtedness outstanding at the time of the declaration will first be entitled to receive payment of the full amount due on the senior indebtedness, or provision will be made for that payment in money or money's worth, before the holders of any of the subordinated debt securities are entitled to receive any payment in respect of the subordinated debt securities.

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This subordination will not prevent the occurrence of any event of default with respect to the subordinated debt securities. There is no limitation on the issuance of additional senior indebtedness in the subordinated indenture.

Governing Law

The indentures and the debt securities will be governed by, and construed in accordance with, the laws of the State of New York.

Concerning the Trustee

We may from time to time maintain lines of credit, and have other customary banking relationships, with the trustee or its affiliates under the senior indenture or the trustee or its affiliates under the subordinated indenture.

The indentures and provisions of the Trust Indenture Act of 1939 that are incorporated by reference in the indentures contain limitations on the rights of the trustee, should it become one of our creditors, to obtain payment of claims in certain cases or to realize on certain property received by it in respect of any such claim as security or otherwise. The trustee is permitted to engage in other transactions with us or any of our affiliates. However, if it acquires any conflicting interest (as defined under the Trust Indenture Act of 1939), it must eliminate such conflict or resign.

Book-Entry, Delivery and Settlement

We will issue the debt securities in whole or in part in the form of one or more global certificates, which we refer to as global securities. We will deposit the global securities with or on behalf of The Depository Trust Company, which we refer to as DTC, and registered in the name of Cede & Co., as nominee of DTC.

We have provided the following descriptions of the operations and procedures of DTC solely as a matter of convenience. These operations and procedures are solely within the control of DTC and are subject to change by them from time to time. Neither we, any underwriter nor the trustee take any responsibility for these operations or procedures, and you are urged to contact DTC directly to discuss these matters.

DTC has advised us that:

- DTC is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the Federal Reserve System, a "clearing corporation" within the meaning of the New York Uniform Commercial Code and a "clearing agency" registered under Section 17A of the Securities Exchange Act of 1934;
- DTC holds securities that its direct participants deposit with DTC and facilitates the settlement among direct participants of securities transactions, such as transfers and pledges, in deposited securities through electronic computerized book-entry changes in direct participants' accounts, thereby eliminating the need for physical movement of securities certificates;
- Direct participants include securities brokers and dealers, trust companies, clearing corporations and other organizations;
- DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation, which is owned by the users of its regulated subsidiaries;

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- Access to the DTC system is also available to indirect participants such as securities brokers and dealers, banks and trust companies that clear through or maintain a custodial relationship with a direct participant, either directly or indirectly; and
- The rules applicable to DTC and its direct and indirect participants are on file with the SEC.

We expect that under procedures established by DTC:

- Upon deposit of the global securities with DTC or its custodian, DTC will credit on its internal system the accounts of direct participants designated by the underwriters with portions of the principal amounts of the global securities; and
- Ownership of the debt securities will be shown on, and the transfer of ownership of the debt securities will be effected only through, records maintained by DTC or its nominee, with respect to interests of direct participants, and the records of direct and indirect participants, with respect to interests of persons other than participants.

Investors in the global securities who are participants in DTC's system may hold their interests therein directly through DTC. Investors in the global notes who are not participants may hold their interests therein indirectly through organizations which are participants in such system. All interests in securities may be subject to the procedures and requirements of DTC.

The laws of some jurisdictions require that purchasers of securities take physical delivery of those securities in the form of a certificate. For that reason, it may not be possible to transfer interests in a global security to those persons. In addition, because DTC can act only on behalf of its participants, who in turn act on behalf of persons who hold interests through participants, the ability of a person having an interest in a global security to pledge or transfer that interest to persons or entities that do not participate in DTC's system, or otherwise to take actions in respect of that interest, may be affected by the lack of a physical definitive security in respect of that interest.

So long as DTC or its nominee is the registered owner of a global security, DTC or that nominee will be considered the sole owner or holder of the debt securities represented by that global security for all purposes under the applicable indenture and under the debt securities. Except as described below, owners of beneficial interests in a global security will not be entitled to have debt securities represented by that global security registered in their names, will not receive or be entitled to receive the debt securities in the form of a physical certificate and will not be considered the owners or holders of the debt securities under the applicable indenture or under the debt securities, and may not be entitled to give the trustee directions, instructions or approvals. For that reason, each holder owning a beneficial interest in a global security must rely on DTC's procedures and, if that holder is not a direct or indirect participant in DTC, on the procedures of the DTC participant through which that holder owns its interest, to exercise any rights of a holder of debt securities under the applicable indenture or the global security.

Neither we nor the trustee will have any responsibility or liability for any aspect of DTC's records relating to the debt securities or relating to payments made by DTC on account of the debt securities, or any responsibility to maintain, supervise or review any of DTC's records relating to the debt securities.

We will make payments on the debt securities represented by the global securities to DTC or its nominee, as the registered owner of the debt securities. We expect that when DTC or its nominee receives any payment on the debt securities represented by a global security, DTC will credit participants' accounts with payments in amounts proportionate to their beneficial interests in the global security as shown in DTC's records. We also expect that payments by DTC's participants to owners of beneficial interests in the global security held through those participants will be governed by standing instructions and customary practice as is now the case with securities held for the accounts of

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customers registered in the names of nominees for such customers. DTC's participants will be responsible for those payments.

Payments on the debt securities represented by the global securities will be made in immediately available funds. Transfers between participants in DTC will be made in accordance with DTC's rules and will be settled in immediately available funds.

Transfers between participants in DTC will be effected in accordance with DTC's procedures and will be settled in same-day funds.

DTC has advised us that it will take any action permitted to be taken by a holder of notes only at the direction of one or more participants to whose account DTC has credited the interests in the global securities and only in respect of such portion of the aggregate principal amount of the notes as to which such participant or participants has or have given such direction. However, if there is an event of default under the notes, DTC reserves the right to exchange the global securities for certificated notes, and to distribute such notes to its participants.

Although DTC has agreed to the foregoing procedures to facilitate transfers of interests in the global securities among participants in DTC, it is under no obligation to perform or to continue to perform such procedures, and may discontinue such procedures at any time. None of the company, the trustee or any of their respective agents will have any responsibility for the performance by DTC or its respective direct or indirect participants of their respective obligations under the rules and procedures governing their operations.

Exchange of Global Securities for Certificated Securities

We will issue certificated debt securities to each person that DTC identifies as the beneficial owner of debt securities represented by the global securities upon surrender by DTC of the global securities only if:

- DTC notifies us that it is no longer willing or able to act as a depository for the global securities, and we have not appointed a successor depository within 90 days of that notice;
- An event of default with respect to the debt securities has occurred and is continuing; or
- We decide not to have the debt securities represented by a global security.

Neither we nor the trustee will be liable for any delay by DTC, its nominee or any direct or indirect participant in identifying the beneficial owners of the related debt securities. We and the trustee may conclusively rely on, and will be protected in relying on, instructions from DTC or its nominee, including instructions about the registration and delivery, and the respective principal amounts, of the debt securities to be issued.

Same Day Settlement and Payment

We will make payments in respect of the notes represented by the global securities (including principal, premium, if any, and interest) by wire transfer of immediately available funds to the accounts specified by the global securities holder. We will make all payments of principal, interest and premium, if any, with respect to certificated notes by wire transfer of immediately available funds to the accounts specified by the holders of the certificated notes or, if no such account is specified, by mailing a check to each such holder's registered address. The notes represented by the global securities are expected to be eligible to trade in DTC's Same-Day Funds Settlement System, and any permitted secondary market trading activity in such notes will, therefore, be required by DTC to be settled in immediately available funds. The company expects that secondary trading in any certificated notes will also be settled in immediately available funds.

DESCRIPTION OF WARRANTS

The following description, together with the additional information we may include in any applicable prospectus or prospectus supplement, summarizes the material terms and provisions of the warrants that we may offer under this prospectus and the related warrant agreements and warrant certificates. While the terms summarized below will apply generally to any warrants that we may offer, we will describe the particular terms of any series of warrants in more detail in the applicable prospectus or prospectus supplement. If we indicate in the prospectus or prospectus supplement, the terms of any warrants offered under that prospectus or prospectus supplement may differ from the terms described below. Specific warrant agreements will contain additional important terms and provisions and will be incorporated by reference as an exhibit to the registration statement that includes this prospectus.

General

We may issue warrants for the purchase of common stock, preferred stock or debt securities in one or more series. We may issue warrants independently or together with common stock, preferred stock and debt securities, and the warrants may be attached to or separate from these securities.

We will evidence each series of warrants by warrant certificates that we will issue under a separate agreement. We may enter into the warrant agreement with a warrant agent. We will indicate the name and address and other information regarding the warrant agent in the applicable prospectus or prospectus supplement relating to a particular series of warrants.

Before exercising their warrants, holders of warrants will not have any of the rights of holders of the securities purchasable upon such exercise, including in the case of warrants to purchase common stock or preferred stock, the right to receive dividends, if any, or, payments upon our liquidation, dissolution or winding up or to exercise voting rights, if any.

Additional Information

We will describe in an applicable prospectus or prospectus supplement the terms of the series of warrants, including:

- the offering price and aggregate number of warrants offered;
- the currency for which the warrants may be purchased;
- if applicable, the designation and terms of the securities with which the warrants are issued and the number of warrants issued with each such security or each principal amount of such security;
- if applicable, the date on and after which the warrants and the related securities will be separately transferable;
- in the case of warrants to purchase debt securities, the number of debt securities purchasable upon exercise of one warrant and the price at which such securities may be purchased upon exercise;
- in the case of warrants to purchase common stock or preferred stock, the number of shares of common stock or preferred stock, as the case may be, purchasable upon the exercise of one warrant and the price at which these shares may be purchased upon such exercise;
- the effect of any merger, consolidation, sale or other disposition of our business on the warrant agreement and the warrants;
- the terms of any rights to redeem or call the warrants;

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- any provisions for changes to or adjustments in the exercise price or number of securities issuable upon exercise of the warrants;
- the dates on which the right to exercise the warrants will commence and expire;
- the manner in which the warrant agreement and warrants may be modified;
- a discussion on any material or special United States federal income tax consequences of holding or exercising the warrants;
- the terms of the securities issuable upon exercise of the warrants; and
- any other specific terms, preferences, rights or limitations of or restrictions on the warrants.

Exercise of Warrants

Each warrant will entitle the holder to purchase the securities that we specify in the applicable prospectus or prospectus supplement at the exercise price that we describe in the applicable prospectus or prospectus supplement. Unless we otherwise specify in the applicable prospectus or prospectus supplement, holders of the warrants may exercise the warrants at any time up to 5 p.m., Eastern time, on the expiration date that we set forth in the applicable prospectus or prospectus supplement. After the close of business on the expiration date, unexercised warrants will become void.

Holders of the warrants may exercise the warrants by delivering the warrant certificate representing the warrants to be exercised together with specified information, and paying the required amount to the warrant agent in immediately available funds, as provided in the applicable prospectus or prospectus supplement. We will set forth on the reverse side of the warrant certificate and in the applicable prospectus or prospectus supplement the information that the holder of the warrant will be required to deliver to the warrant agent.

Upon receipt of the required payment and the warrant certificate properly completed and duly executed at the corporate trust office of the warrant agent or any other office indicated in the applicable prospectus or prospectus supplement, we will issue and deliver the securities purchasable upon such exercise. If fewer than all of the warrants represented by the warrant certificate are exercised, then we will issue a new warrant certificate for the remaining amount of warrants. If we so indicate in the applicable prospectus or prospectus supplement, holders of the warrants may surrender securities as all or part of the exercise price for warrants.

Enforceability of Rights by Holders of Warrants

Each warrant agent will act solely as our agent under the applicable warrant agreement and will not assume any obligation or relationship of agency or trust with any holder of any warrant. A single bank or trust company may act as warrant agent for more than one issue of warrants. A warrant agent will have no duty or responsibility in case of any default by us under the applicable warrant agreement or warrant, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a warrant may, without the consent of the related warrant agent or the holder of any other warrant, enforce by appropriate legal action its right to exercise, and receive the securities purchasable upon exercise of, its warrants.

DESCRIPTION OF UNITS

General

We may issue units comprised of one or more shares of common stock, shares of preferred stock, debt securities and warrants in any combination. Each unit will be issued so that the holder of the unit is also the holder of each security included in the unit. Thus, the holder of a unit will have the rights and obligations of a holder of each included security. The unit agreement under which a unit is issued may provide that the securities included in the unit may not be held or transferred separately, at any time or at any time before a specified date.

We will describe in the applicable prospectus supplement the terms of the series of units, including, but not limited to:

- the designation and terms of the units and of the securities comprising the units, including whether and under what circumstances those securities may be held or transferred separately;
- any provisions of the governing unit agreement that differ from those described below; and
- any provisions for the issuance, payment, settlement, transfer or exchange of the units or of the securities comprising the units.

The provisions described in this section, as well as those described under "Description of Capital Stock," "Description of Debt Securities," and "Description of Warrants" will apply to each unit and to any common stock, preferred stock, debt security or warrant included in each unit, respectively.

Issuance in Series

We may issue units in such amounts and in numerous distinct series as we determine.

Enforceability of Rights by Holders of Units

Each unit agent will act solely as our agent under the applicable unit agreement and will not assume any obligation or relationship of agency or trust with any holder of any unit. A single bank or trust company may act as unit agent for more than one series of units. A unit agent will have no duty or responsibility in case of any default by us under the applicable unit agreement or unit, including any duty or responsibility to initiate any proceedings at law or otherwise, or to make any demand upon us. Any holder of a unit may, without the consent of the related unit agent or the holder of any other unit, enforce by appropriate legal action its rights as holder under any security included in the unit.

We, the unit agents and any of their agents may treat the registered holder of any unit certificate as an absolute owner of the units evidenced by that certificate for any purpose and as the person entitled to exercise the rights attaching to the units so requested, despite any notice to the contrary.

SELLING STOCKHOLDERS

This prospectus also relates to the possible resale by certain of our stockholders, who we refer to in this prospectus as the "selling stockholders," who own shares of our common stock that were issued and outstanding prior to the original date of filing of the registration statement of which this prospectus forms a part. The selling stockholders originally acquired the shares of our common stock included in this prospectus through private placements of our common stock prior to our initial public offering pursuant to an exemption from registration under Section 4(2) of the Securities Act and Regulation D promulgated thereunder. Information about the selling stockholders, where applicable, including their identities and the number of shares of common stock to be registered on their behalf, will be set forth in an applicable prospectus supplement, documents incorporated by reference or in a free writing prospectus we file with the SEC. The selling stockholders shall not sell any shares of our common stock pursuant to this prospectus until we have identified such selling stockholders and the shares being offered for resale by such selling stockholders in a subsequent prospectus supplement. However, the selling stockholders may sell or transfer all or a portion of their shares of our common stock pursuant to any available exemption from the registration requirements of the Securities Act.

PLAN OF DISTRIBUTION

We or the selling stockholders may sell the offered securities to one or more underwriters for public offering and sale by them or may sell the offered securities to investors directly or through agents, which agents may be affiliated with us. Direct sales to investors may be accomplished through subscription offerings or through subscription rights distributed to our shareholders. In connection with subscription offerings or the distribution of subscription rights to shareholders, if all of the underlying offered securities are not subscribed for, we may sell such unsubscribed offered securities to third parties directly or through agents and, in addition, whether or not all of the underlying offered securities are subscribed for, we may concurrently offer additional offered securities to third parties directly or through agents, which agents may be affiliated with us. Any underwriter or agent involved in the offer and sale of the offered securities will be named in the applicable prospectus supplement or related free writing prospectus.

The distribution of the offered securities may be effected from time to time in one or more transactions at a fixed price or prices, which may be changed, or at prices related to the prevailing market prices at the time of sale or at negotiated prices, any of which may represent a discount from the prevailing market price. We also may, from time to time, authorize underwriters acting as our agents to offer and sell the offered securities upon the terms and conditions set forth in the applicable prospectus supplement or related free writing prospectus. In connection with the sale of offered securities, underwriters may be deemed to have received compensation from us or the selling stockholders in the form of underwriting discounts or commissions and may also receive commissions from purchasers of offered securities for whom they may act as agent. Underwriters may sell offered securities to or through dealers, and such dealers may receive compensation in the form of discounts, concessions or commissions from the underwriters and/or commissions from the purchasers for whom they may act as agent.

Any underwriting compensation paid by us or the selling stockholders to underwriters or agents in connection with the offering of offered securities, and any discounts, concessions or commissions allowed by underwriters to participating dealers, will be set forth in the applicable prospectus supplement or related free writing prospectus. Underwriters, dealers and agents participating in the distribution of the offered securities may be deemed to be underwriters, and any discounts and commissions received by them and any profit realized by them on resale of the offered securities may be deemed to be underwriting discounts and commissions, under the Securities Act. Underwriters, dealers and agents may be entitled, under agreements entered into with us or the selling stockholders, to indemnification against and contribution toward civil liabilities, including liabilities under the Securities Act. Any such indemnification agreements will be described in the applicable prospectus supplement or related free writing prospectus.

Some of the underwriters and their affiliates may be customers of, engage in transactions with and perform services for us, our subsidiaries and the selling stockholders in the ordinary course of business.

LEGAL MATTERS

Mayer Brown LLP of Houston, Texas, has provided its opinion on the validity of the securities offered by this prospectus.

EXPERTS

The consolidated financial statements of Bonanza Creek Energy, Inc. and its subsidiaries as of December 31, 2011 and 2010, and for the year ended December 31, 2011 and the period from its inception (December 23, 2010) to December 31, 2010, and Bonanza Creek Energy Company, LLC and subsidiaries (predecessor) consolidated financial statements for the period January 1, 2010 to December 23, 2010 and the year ended December 31, 2009, included in our Annual Report on

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Form 10-K for the year ended December 31, 2011 have been audited by Hein & Associates LLP, independent registered public accounting firm, as set forth in their report thereon, included therein, and incorporated herein by reference. Such consolidated financial statements are incorporated herein by reference in reliance upon such reports given on the authority of such firm as experts in accounting and auditing.

The historical oil and natural gas reserve information as of January 1, 2012 and related information included and incorporated by reference in this prospectus have been derived from engineering reports prepared by Cawley, Gillespie & Associates, Inc. The estimates have been so incorporated in reliance upon the reports of such firm given upon their authority as experts in petroleum engineering.

WHERE YOU CAN FIND MORE INFORMATION

We are subject to the information requirements of the Exchange Act, and in accordance therewith we are required to file periodic reports, proxy statements and other information with the SEC. Such reports, proxy statements and other information filed by us can be inspected and copies at the SEC's Public Reference Room located at 100 F Street, N.E. Washington, D.C. 20549 at the prescribed rates. The SEC also maintains a site on the World Wide Web that contains reports, proxy and information statements and other information regarding registrants that file electronically. The address of such site is <http://www.sec.gov>. Please call 1-800-SEC-0330 for further information on the operation of the SEC's Public Reference Room.

This prospectus omits certain information that is contained in the registration statement on file with the SEC, of which this prospectus is a part. For further information with respect to us and our securities, reference is made to the registration statement, including the exhibits incorporated therein by reference or filed therewith. Statements herein contained concerning the provisions of any document are not necessarily complete and, in each instance, reference is made to the copy of such document filed as an exhibit or incorporated by reference to the registration statement. Each such statement is qualified in its entirety by such reference. The registration statement and the exhibits may be inspected without charge at the offices of the SEC or copies thereof obtained at prescribed rates from the public reference section of the SEC at the addresses set forth above.

INFORMATION INCORPORATED BY REFERENCE

The SEC allows us to "incorporate by reference" the information we have filed with it, which means that we can disclose important information to you by referring you to those documents. The information we incorporate by reference is an important part of this prospectus, and later information that we file with the SEC will automatically update and supersede this information. The following documents we filed with the SEC (File number 000-35371) pursuant to the Exchange Act are incorporated herein by reference (excluding any information "furnished" on any Current Report on Form 8-K):

- our Annual Report on Form 10-K for the fiscal year ended December 31, 2011, filed with the SEC on March 22, 2012;
- our Quarterly Reports on Form 10-Q for the period ended March 31, 2012, filed with the SEC on May 11, 2012; for the period ended June 30, 2012, filed with the SEC on August 13, 2012; and for the period ended September 30, 2012, filed with the SEC on November 9, 2012;
- our Current Reports on Form 8-K, filed with the SEC on June 18, 2012, August 6, 2012, August 8, 2012, October 30, 2012 and January 9, 2013;
- our Definitive Proxy Statement, filed with the SEC on April 30, 2012; and

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- the description of our common stock set forth in our registration statement on Form 8-A filed with the SEC on December 9, 2011.

We incorporate by reference the documents listed above and any future filings we make with the SEC under Sections 13(a), 13(c), 14 or 15(d) of the Securities Exchange Act of 1934, as amended (excluding any information "furnished" on any Current Report on Form 8-K), after the date of this prospectus and prior to the termination of this offering. Any statement contained in a document incorporated or deemed to be incorporated by reference herein shall be deemed to be modified or superseded for purposes of this prospectus to the extent that a statement contained herein or in any other subsequently filed document which also is incorporated or deemed to be incorporated by reference herein modifies or supersedes such statement. Any such statement so modified or superseded shall not be deemed, except as so modified or superseded, to constitute a part of this prospectus.

You may obtain free of charge, upon written or oral request, a copy of any or all of the information incorporated by reference in this prospectus, other than exhibits to such information (unless such exhibits are specifically incorporated by reference into the information that this prospectus incorporates). Requests for such copies should be directed to:

Bonanza Creek Energy, Inc.
Attention: General Counsel
410 17th Street, Suite 1400
Denver, CO 80202
Phone: (720) 440-6100
ir@bonanzacrk.com



\$1,000,000,000

Common Stock

Preferred Stock

Debt Securities

Warrants

Units

PROSPECTUS

PART II
INFORMATION NOT REQUIRED IN PROSPECTUS

ITEM 14. EXPENSES OF ISSUANCE AND DISTRIBUTION

The following table sets forth various estimated expenses in connection with the sale and distribution of the securities being registered, other than underwriting discounts and commissions. These expenses have been estimated solely for the purposes of this item. Actual expenses may vary.

SEC registration fee	\$ 136,400
Printing expenses	(1)
Legal fees and expenses	(1)
Accounting fees and expenses	(1)
Engineering fees and expenses	(1)
Miscellaneous	(1)

- (1) Estimated expenses are not presently known because they depend upon, among other things, the number of offerings that will be made pursuant to this registration statement, the amount and type of securities being offered and the timing of such offerings. The foregoing sets forth the general categories of expenses (other than underwriting discounts and commissions) that we anticipate we will incur in connection with the offering of securities under this registration statement on Form S-3. An estimate of the aggregate expenses in connection with the issuance and distribution of the securities being offered will be included in the applicable prospectus supplement.

Pursuant to our Registration Rights Agreement, we will pay the expenses incurred in connection with the sale and distribution of the securities being registered on behalf of any selling stockholder, but the selling stockholders will pay the underwriting commissions and fees associated with the sale of their respective shares in any underwritten offering.

ITEM 15. INDEMNIFICATION OF DIRECTORS AND OFFICERS

Our second amended and restated certificate of incorporation provides that a director will not be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (1) for any breach of the director's duty of loyalty to the corporation or its stockholders, (2) for acts or omissions not in good faith or which involved intentional misconduct or a knowing violation of the law, (3) under section 174 of the DGCL for unlawful payment of dividends or improper redemption of stock or (4) for any transaction from which the director derived an improper personal benefit. In addition, if the DGCL is amended to authorize the further elimination or limitation of the liability of directors, then the liability of a director of the corporation will be limited to the fullest extent permitted by the amended DGCL.

Section 145 of the DGCL provides that a corporation may indemnify directors and officers as well as other employees and individuals against expenses, including attorneys' fees, judgments, fines and amounts paid in settlement in connection with specified actions, suits and proceedings whether civil, criminal, administrative, or investigative, other than a derivative action by or in the right of the corporation, if they acted in good faith and in a manner they reasonably believed to be in or not opposed to the best interests of the corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe their conduct was unlawful. A similar standard is applicable in the case of derivative actions, except that indemnification extends only to expenses, including attorneys' fees, incurred in connection with the defense or settlement of such action and the statute requires court approval before there can be any indemnification where the person seeking indemnification has been found liable to the corporation. The statute provides that it is not exclusive of other indemnification

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that may be granted by a corporation's certificate of incorporation, bylaws, disinterested director vote, stockholder vote, agreement or otherwise.

Our second amended and restated certificate of incorporation contains indemnification rights for our directors and our officers. Additionally, our second amended and restated bylaws provides that we will indemnify and advance expenses to any officer or director to the fullest extent authorized by the DGCL and that persons who are not directors or officers may be similarly indemnified for service to the company to the extent authorized by our board of directors. We have obtained directors' and officers' insurance to cover our directors, officers and some of our employees for certain liabilities. Further, we have entered into written indemnity agreements with our directors and executive officers. Under these agreements, if a director or officer makes a claim of indemnification to us, either a majority of the independent directors or independent legal counsel selected by the independent directors will review the relevant facts and make a determination whether the officer or director has met the standards of conduct under Delaware law that would permit (under Delaware law) and require (under the indemnity agreement) us to indemnify the officer or director.

The foregoing is only a general summary of certain aspects of Delaware law and our second amended and restated certificate of incorporation, and our second amended and restated bylaws dealing with indemnification of directors and officers, and does not purport to be complete. It is qualified in its entirety by reference to the detailed provisions of Section 145 of the DGCL, our second amended and restated certificate of incorporation and second amended and restated bylaws.

ITEM 16. EXHIBITS

See "Exhibit Index."

ITEM 17. UNDERTAKINGS

(a) The Registrant hereby undertakes:

(1) To file, during any period in which offers or sales are being made, a post-effective amendment to this registration statement:

(i) To include any prospectus required by Section 10(a)(3) of the Securities Act of 1933, as amended (the "Securities Act");

(ii) To reflect in the prospectus any facts or events arising after the effective date of this registration statement (or the most recent post-effective amendment thereof) which, individually or in the aggregate, represent a fundamental change in the information set forth in the registration statement. Notwithstanding the foregoing, any increase or decrease in volume of securities offered (if the total dollar value of securities offered would not exceed that which was registered) and any deviation from the low or high end of the estimated maximum offering range may be reflected in the form of prospectus filed with the Securities and Exchange Commission (the "Commission") pursuant to Rule 424(b) if, in the aggregate, the changes in volume and price represent no more than a 20% change in the maximum aggregate offering price set forth in the "Calculation of Registration Fee" table in the effective registration statement; and

(iii) To include any material information with respect to the plan of distribution not previously disclosed in this registration statement or any material change to such information in this registration statement;

Provided, however, that paragraphs (a)(1)(i), (a)(1)(ii) and (a)(1)(iii) do not apply if the information required to be included in a post-effective amendment by those paragraphs is contained in reports filed with or furnished to the Commission by the Registrant pursuant to

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Section 13 or 15(d) of the Securities Exchange Act of 1934 (the "Exchange Act") that are incorporated by reference in this registration statement, or is contained in a form of prospectus filed pursuant to Rule 424(b) that is part of this registration statement.

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

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

(4) That, for the purpose of determining liability under the Securities Act to any purchaser:

(i) Each prospectus filed by the Registrant pursuant to Rule 424(b)(3) shall be deemed to be part of the registration statement as of the date the filed prospectus was deemed part of and included in the registration statement; and

(ii) Each prospectus required to be filed pursuant to Rule 424(b)(2), (b)(5), or (b)(7) as part of a registration statement in reliance on Rule 430B relating to an offering made pursuant to Rule 415(a)(1)(i), (vii), or (x) for the purpose of providing the information required by Section 10(a) of the Securities Act shall be deemed to be part of and included in the registration statement as of the earlier of the date such form of prospectus is first used after effectiveness or the date of the first contract of sale of securities in the offering described in the prospectus. As provided in Rule 430B, for liability purposes of the issuer and any person that is at that date an underwriter, such date shall be deemed to be a new effective date of the registration statement relating to the securities in the registration statement to which that prospectus relates, and the offering of such securities at that time shall be deemed to be the initial bona fide offering thereof. Provided, however, that no statement made in a registration statement or prospectus that is part of the registration statement or made in a document incorporated or deemed incorporated by reference into the registration statement or prospectus that is part of the registration statement will, as to a purchaser with a time of contract of sale prior to such effective date, supersede or modify any statement that was made in the registration statement or prospectus that was part of the registration statement or made in any such document immediately prior to such effective date; or

(5) That, for the purpose of determining liability of a registrant under the Securities Act of 1933 to any purchaser in the initial distribution of the securities, the undersigned Registrant undertakes that in a primary offering of securities pursuant to this registration statement, regardless of the underwriting method used to sell the securities to the purchaser, if the securities are offered or sold to such purchaser by means of any of the following communications, the undersigned Registrant will be a seller to the purchaser and will be considered to offer or sell such securities to such purchaser:

(i) Any preliminary prospectus or prospectus of the undersigned Registrant relating to the offering required to be filed pursuant to Rule 424;

(ii) Any free writing prospectus relating to the offering prepared by or on behalf of the undersigned Registrant or used or referred to by the undersigned Registrant;

(iii) The portion of any other free writing prospectus relating to the offering containing material information about the undersigned Registrant or its securities provided by or on behalf of the undersigned Registrant; and

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(iv) Any other communication that is an offer in the offering made by the undersigned Registrant to the purchaser.

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

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

(d) The undersigned Registrant hereby undertakes that:

(i) For purposes of determining any liability under the Securities Act of 1933, the information omitted from the form of prospectus filed as part of this registration statement in reliance upon Rule 430A and contained in a form of prospectus filed by the registrant pursuant to Rule 424(b)(1) or (4), or 497(h) under the Securities Act of 1933 shall be deemed to be part of this registration statement as of the time it was declared effective.

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

(e) The undersigned Registrant hereby undertakes to file an application for the purpose of determining the eligibility of the trustee to act under subsection (a) of Section 310 of the Trust Indenture Act in accordance with the rules and regulations prescribed by the Commission under Section 305(b)(2) of the Trust Indenture Act.

SIGNATURES

Pursuant to the requirements of the Securities Act of 1933, the registrant certifies that it has reasonable grounds to believe that it meets all of the requirements for filing a registration statement on Form S-3 and has duly caused this registration statement to be signed on its behalf by the undersigned, thereunto duly authorized, in the City of Denver, State of Colorado, on January 14, 2013.

BONANZA CREEK ENERGY, INC.

By: /s/ MICHAEL R. STARZER

Name: Michael R. Starzer

Title: *President and Chief Executive Officer*

POWER OF ATTORNEY

Each person whose signature appears below hereby constitutes and appoints Michael R. Starzer, Gary A. Grove and Christopher I. Humber, and each of them, his true and lawful attorney-in-fact and agent, with full power of substitution and resubstitution, for him and in his name, place, and stead in any and all capacities, to sign this registration statement on Form S-3 filed by Bonanza Creek Energy, Inc. pursuant to the Securities Act of 1933, as amended (the "Securities Act"), and any and all amendments to this registration statement (including post-effective amendments and registration statements filed pursuant to Rule 462(b) under the Securities Act, and otherwise), and to file the same, with all exhibits thereto and all other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite and necessary to be done to the end that such registration statement or registration statements shall comply with the Securities Act and the applicable rules and regulations adopted or issued pursuant thereto, as fully and to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents, or any of them or their substitutes or resubstitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Act of 1933, this registration statement has been signed by the following persons in the capacities and on the dates indicated.

Date: January 14, 2013

By: /s/ MICHAEL R. STARZER

Michael R. Starzer,
Director, President and Chief Executive Officer
(Principal Executive Officer)

Date: January 14, 2013

By: /s/ GARY A. GROVE

Gary A Grove,
Director, Executive Vice President—Engineering and
Planning

EXHIBIT INDEX

<u>Exhibit No.</u>	<u>Description of Exhibit</u>
1.1*	Form of Underwriting Agreement.
4.1	Second Amended and Restated Certificate of Incorporation of Bonanza Creek Energy, Inc., filed with the Secretary of State of the State of Delaware on December 16, 2011 (incorporated by reference to Exhibit 3.1 to the Company's Current Report on Form 8-K filed on December 22, 2011).
4.2	Second Amended and Restated Bylaws of Bonanza Creek Energy, Inc. (incorporated by reference to Exhibit 3.2 to the Company's Current Report on Form 8-K filed on December 22, 2011).
4.3*	Specimen of Certificate for Preferred Stock, par value \$0.001.
4.4	Form of Senior Debt Indenture.
4.5	Form of Subordinated Debt Indenture.
4.6*	Form of Warrant Agreement.
5.1	Opinion of Mayer Brown LLP.
12.1	Statement Regarding Computation of Ratio of Earnings to Fixed Charges.
23.1	Consent of Hein & Associates LLP.
23.2	Consent of Independent Petroleum Engineers, Cawley, Gillespie & Associates, Inc.
23.3	Consent of Mayer Brown LLP (included in Exhibit 5.1).
24.1	Power of Attorney (included on signature page).
25.1**	Form T-1 Statement of Eligibility of Trustee under Debt Indenture.

* To be filed as an exhibit to a Current Report on Form 8-K of the registrant in connection with a specific offering.

** To be filed pursuant to Section 305(b)(2) of the Trust Indenture Act.

BONANZA CREEK ENERGY, INC.

to

[•],

Trustee**INDENTURE***Dated as of***Debt Securities****TABLE OF CONTENTS***

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* This table of contents shall not, for any purpose, be deemed to be a part of the Indenture.

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CROSS REFERENCE SHEET

Between

Provisions of Sections 310 through 318(a) inclusive of Trust Indenture Act of 1939 and the Indenture dated as of _____, between
 Bonanza Creek Energy, Inc. and _____, a national banking association, as trustee.

Section of Act	Section of Indenture
310(a)(1) and (2)	8.09
310(a)(3) and (4)	*
310(b)	8.08 and 8.10
310(c)	*
311(a)	8.13
311(b)	8.13
311(c)	*
312(a)	6.01 and 6.02(a)
312(b)	6.02(b)
312(c)	6.02(c)
313(a)(1), (2), (3), (4), (6) and (7)	6.04(a)
313(a)(5)	*
313(b)(1)	*
313(b)(2)	6.04
313(c)	6.04
313(d)	6.04
314(a)(1)	6.03
314(a)(2)	6.03
314(a)(3)	6.03
314(b)	*
314(c)(1)	5.05
314(c)(2)	15.05
314(c)(3)	*

314(d)	*
314(e)	15.05
314(f)	*
315(a), (c) and (d)	8.01
315(b)	7.08
315(e)	7.09
316(a)(1)	7.07
316(a)(2)	*
316(a) last para.	9.03
316(b)	7.10
317(a)	7.02
317(b)	5.04
318(a)	15.07

* Not Applicable.

This cross reference sheet shall not, for any purpose, be considered part of the Indenture.

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THIS INDENTURE, dated as of _____, between Bonanza Creek Energy, Inc., a Delaware corporation (the “Company”), and [•], a national banking association, as trustee (the “Trustee”).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issue from time to time of its unsecured debentures, notes, bonds or other evidences of indebtedness to be issued in one or more series as in this Indenture provided, up to such principal amount or amounts as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

ARTICLE 1. DEFINITIONS

SECTION 1.01. *Definitions.* The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture which are defined in the Trust Indenture Act of 1939 or which are by reference therein defined in the Securities Act of 1933, as amended, shall have (except as herein otherwise expressly provided or unless the context otherwise requires) the meanings assigned to such terms in said Trust Indenture Act of 1939 and in said Securities Act as in force at the date of the execution of this Indenture. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States for domestic companies at the date of such computation. All references to such terms herein shall be both to the singular or the plural, as the context so requires. Unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or Section, as the case may be, of this Indenture. 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. The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation.”

Affiliate:

The term “Affiliate”, when used with respect to 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:

The term “Authenticating Agent” means the agent of the Trustee, if any, which at the time shall be appointed and acting pursuant to Section 8.14.

Board of Directors:

The term “Board of Directors” means the Board of Directors of the Company or any authorized committee of such Board designated by the Board of Directors or the by-laws or the articles of incorporation of the Company to act for such Board for purposes of this Indenture.

Board Resolution:

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

Business Day:

The term “Business Day”, when used with respect to any Place of Payment or any other particular location, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions or trust companies in that Place of Payment or other location are authorized or obligated by law, regulation or executive order to close.

Commission:

The term “Commission” means the U.S. Securities and Exchange Commission.

Company:

“Company” means the party named as the “Company” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The forgoing sentence shall likewise apply to any subsequent such successor or successors.

Company Request and Company Order:

The terms “Company Request” and “Company Order” mean, respectively, a written request or order signed in the name of the Company by its Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer or a Vice President, and by its Treasurer, Secretary, Assistant Secretary or Assistant Treasurer, and delivered to the Trustee.

Conversion Date:

The term “Conversion Date” has the meaning set forth in Section 3.11.

Corporate Trust Office:

The term “Corporate Trust Office” means the designated office of the Trustee at which, at any particular time, its corporate trust business shall be administered, which office at the date hereof is located at _____ Attention: Corporate Trust Administration unit, or such other address as the Trustee may designate from time to time by notice to the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Company).

Currency Determination Agent:

The term “Currency Determination Agent” means the financial institution, if any, from time to time selected by the Company for purposes of Section 3.11.

Debt Security or Debt Securities:

The terms “Debt Security” or “Debt Securities” means any notes, debentures or other indebtedness of any series, as the case may be, issued by the Company from time to time, and authenticated and delivered under this Indenture.

Debt Security Register:

The term “Debt Security Register” has the meaning set forth in Section 3.06.

Debt Security Registrar:

The term “Debt Security Registrar” has the meaning set forth in Section 3.06.

Depository:

The term “Depository” means, unless otherwise specified by the Company pursuant to Section 3.01, with respect to Debt Securities of any series

issuable or issued as a Global Debt Security, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation.

Dollar:

The term “Dollar” means the coin or currency of the United States of America which as of the time of payment is legal tender for the payment of public and private debts.

Dollar Equivalent of the Foreign Currency:

The term “Dollar Equivalent of the Foreign Currency” shall have the meaning set forth in Section 3.11.

Event of Default:

The term “Event of Default” has the meaning specified in Section 7.01.

Foreign Currency:

The term “Foreign Currency” means a currency issued by the government of any country other than the United States of America.

Global Debt Security:

The term “Global Debt Security” means a Debt Security issued in global form pursuant to Section 2.04 hereof to evidence all or part of a series of Debt Securities.

Government Obligations:

The term “Government Obligations” means securities which are (i) direct obligations of the government which issued the currency in which the Debt Securities of a series are denominated or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the government which issued the currency in which the Debt Securities of such series are denominated, the payment of which obligations is unconditionally guaranteed by such government, and which, in either case, are full faith and credit obligations of such government, are denominated in the currency in which the Debt Securities of such series are denominated and which are not callable or redeemable at the option of the issuer thereof.

Holder:

The term “Holder” means any Person in whose name a Debt Security of any series is registered in the Debt Security Register applicable to Debt Securities of such series.

Indenture:

The term “Indenture” means this instrument as originally executed and delivered or, if amended or supplemented as herein provided pursuant to the applicable provisions hereof, as so amended or supplemented.

Indexed Debt Security:

The term “Indexed Debt Security” means a Debt Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

Interest:

The term “interest”, when used with respect to an Original Issue Discount Debt Security which by its terms bears interest only after maturity, means interest payable after maturity.

Interest Payment Date:

The term “Interest Payment Date”, when used with respect to any series of Debt Securities, means the Stated Maturity of an installment of interest on such Debt Securities.

Market Exchange Rate:

The term "Market Exchange Rate" shall have the meaning set forth in Section 3.11.

Officers' Certificate:

The term "Officers' Certificate", when used with respect to the Company, means a certificate signed by its Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer or a Vice President and by its Treasurer, Secretary, Assistant Secretary or Assistant Treasurer and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 15.05 to the extent required by the provisions of such Section.

Opinion of Counsel:

The term "Opinion of Counsel" means an opinion in writing signed by legal counsel who may be an employee of or counsel to the Company and who shall be reasonably acceptable to the Trustee. Each such opinion shall include the statements provided for in Sections 2.02, 3.04, 11.05, 12.03, 13.01, 13.02 and 15.05 to the extent required by the provisions of such Sections.

Original Issue Discount Debt Security:

The term "Original Issue 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 7.01.

Outstanding:

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

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(i) such Debt Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

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

(iii) such Debt Securities that have been paid pursuant to Section 3.07 or such Debt Securities in exchange for or in lieu of which other such Debt Securities have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee is presented that any such Debt Securities are held by Persons in whose hands any of such Debt Securities are a legal, valid and binding obligation of the Company, and

(iv) such Debt Securities the indebtedness in respect to which has been discharged in accordance with Section 13.01.

provided, however, that in determining whether the Holders of the requisite principal amount of such Outstanding Debt Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, such Debt Securities owned by the Company or any other obligor upon such Debt Securities or any Affiliate of the Company or such other obligor (except in the case in which the Company or such other obligor or Affiliate owns all Debt Securities Outstanding under the Indenture, or all Outstanding Debt Securities of each such series, as the case may be, without regard to this proviso) shall be disregarded and deemed not to be Outstanding in the manner set forth in Section 9.03.

Person:

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

Place of Payment:

The term "Place of Payment", when used with respect to the Debt Securities of any series, means the place or places where the principal of (premium, if any) and interest on the Debt Securities of that series are payable as specified in accordance with Section 3.01.

Predecessor Debt Security:

The term "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 3.07 in lieu of a mutilated, lost, destroyed or stolen Debt Security

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shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Debt Security.

Redemption Date:

The term “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:

The term “Redemption Price”, when used with respect to any Debt Security to be redeemed, means the price specified in such Debt Security at which it is to be redeemed pursuant to this Indenture.

Regular Record Date:

The term “Regular Record Date” for the interest payable on any Debt Security on any Interest Payment Date means the date specified in such Debt Security as the “Regular Record Date” as contemplated by Section 3.01.

Responsible Officer:

The term “Responsible Officer”, when used with respect to the Trustee, means any officer of the Trustee assigned to the Corporate Trust Administration unit (or any successor division or unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Indenture and, for the purposes of Section 7.07, Section 7.08 and Section 8.01(c)(2), shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

The term “Responsible Officer”, when used with respect to the Company, means the Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Treasurer or Secretary, or any Vice President, Assistant Secretary or Assistant Treasurer, in each case, of the Company.

Special Record Date:

The term “Special Record Date” for the payment of any Defaulted Interest (as defined in Section 3.08) means a date fixed by the Trustee pursuant to Section 3.08.

Stated Maturity:

The term “Stated Maturity” when used with respect to any Debt Security or any installment of principal thereof or of interest thereon, means the date specified in such Debt Security as the fixed date on which the principal of such Debt Security, or such installment of interest, is due and payable.

Subsidiary:

The term “Subsidiary” means any Person of which the Company, or the Company and one or more Subsidiaries, or any one or more Subsidiaries, directly or indirectly own more than 50% of the Voting Stock.

Trustee:

“Trustee” means the party named as the “Trustee” in the first paragraph of this Indenture until a successor replaces it 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 the Debt Securities of that series.

Trust Indenture Act of 1939:

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

Voting Stock:

The term “Voting Stock” means outstanding shares of capital stock or similar equity interests having under ordinary circumstances voting power for the election of directors, managers or the substantial equivalent thereof whether at all times or only so long as no senior class of stock or similar equity interest has such voting power by reason of the happening of any contingency.

SECTION 2.01. *Forms Generally.* The Debt Securities of each series and the certificates of authentication thereon shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture (the provisions of which shall be appropriate to reflect the terms of each series of Debt Securities, including the currency or denomination, which may be Dollars or Foreign Currency), 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 signing of such Debt Securities. Any portion of the text of any Debt Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Debt Security.

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SECTION 2.02. *Forms of Debt Securities.* The Debt Securities of each series shall be in such form or forms (including global form) as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto.

Prior to the delivery of a Debt Security of any series in any such form to the Trustee for the Debt Securities of such series for authentication, the Company shall deliver to the Trustee the following:

- (a) The Board Resolution or indenture supplemental hereto by or pursuant to which such form of Debt Security has been approved;
- (b) An Officers' Certificate dated the date such Certificate is delivered to the Trustee stating that all conditions precedent provided for in this Indenture relating to the authentication and delivery of Debt Securities in such form have been complied with; and
- (c) The Opinion of Counsel described in Section 3.04.

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

SECTION 2.03. *Form of Trustee's Certificate of Authentication.* The following is the form of the Certificate of Authentication of the Trustee to be endorsed on all Debt Securities substantially as follows:

This is one of the Debt Securities of the series designated therein issued under the within-mentioned Indenture.

[•],
as Trustee

By

Authorized Signatory

SECTION 2.04. *Debt Securities in Global Form.* (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 Debt Securities, then the Company shall execute and the Trustee or its agent shall, in accordance with Section 3.04 and the Company Order delivered to the Trustee or its agent thereunder, authenticate and deliver such Global Debt Security or Global Debt 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 Debt Security or Global Debt Securities, or such portion thereof as the Company shall specify in a Company Order, (ii) shall be registered in the name of the Depository for such Global Debt Security or Global Debt Securities or its nominee, (iii) shall be delivered by the Trustee or its agent to the Depository or pursuant to the Depository's instruction or held by the Trustee as custodian for the Depository and (iv) shall bear a legend substantially to

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the following effect: "Unless this certificate is presented by an authorized representative of the Depository to the Company or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of the nominee of the Depository or in such other name as is requested by an authorized representative of the Depository (and any payment is made to the nominee of the Depository or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, the nominee of the Depository, has an interest herein."

(b) Notwithstanding any other provision of this Section 2.04 or of Section 3.06, and subject to the provisions of paragraph (c) below, unless the terms of a Global Debt Security expressly permit such Global Debt Security to be exchanged in whole or in part for individual certificates representing Debt Securities, a Global Debt Security may be transferred, in whole but not in part and in the manner provided in Section 3.06, only to a nominee of the Depository for such Global Debt Security, or to the Depository, or a successor Depository for such Global Debt Security selected or approved by the Company, or to a nominee of such successor Depository.

(c) (1) If at any time the Depository for a Global Debt Security notifies the Company that it is unwilling or unable to continue as Depository for such Global Debt Security or if at any time the Depository for the Global Debt Securities for such series shall no longer be eligible or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a

successor Depository with respect to such Global Debt Security. If a successor Depository for such Global Debt 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 or its agent, upon receipt of a Company Request for the authentication and delivery of certificates representing Debt Securities of such series in exchange for such Global Debt Security, will authenticate and deliver, certificates representing Debt Securities of such series of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Debt Security in exchange for such Global Debt Security.

(2) The Company may at any time and in its sole discretion (subject, however, to the procedures of the Depository) determine that the Debt Securities of any series or portion thereof issued or issuable in the form of one or more Global Debt Securities shall no longer be represented by such Global Debt Security or Global Debt Securities. In such event the Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of certificates representing Debt Securities of such series in exchange in whole or in part for such Global Debt Security, will authenticate and deliver certificates representing Debt Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Debt Security or Global Debt Securities representing such series or portion thereof in exchange for such Global Debt Security or Global Debt Securities.

(3) If an Event of Default with respect to Debt Securities issued or issuable in the form of a Global Debt Security has occurred and is continuing, the Depository for such Global

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Debt Security may surrender such Global Debt Security in exchange in whole or in part for certificates representing Debt Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depository. Thereupon the Company shall execute, and the Trustee or its agent shall authenticate and deliver, without a service charge, (A) to each Person specified by the Depository a certificate or certificates representing Debt Securities of the same series of like tenor and terms and of any authorized denomination as requested by such Person in an aggregate principal amount equal to and in exchange for such Person's beneficial interest as specified by the Depository in the Global Debt Security; and (B) to such Depository a new Global Debt 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 Debt Security and the aggregate principal amount of certificates representing Debt Securities delivered to Holders thereof.

(4) In any exchange provided for in any of the preceding three paragraphs, the Company will execute and the Trustee or its agent will authenticate and deliver certificates representing Debt Securities in definitive registered form in authorized denominations for Debt Securities of the same series or any integral multiple thereof. Upon the exchange of the entire principal amount of a Global Debt Security for certificates representing Debt Securities, such Global Debt Security shall be cancelled by the Trustee or its agent. Except as provided in the preceding paragraph, certificates representing Debt Securities issued in exchange for a Global Debt Security pursuant to this Section shall be registered in such names and in such authorized denominations for Debt Securities of that series or any integral multiple thereof, as the Depository shall instruct the Trustee or its agent. The Trustee or the Debt Security Registrar shall deliver at its Corporate Trust Office such certificates representing Debt Securities to the Holders in whose names such Debt Securities are so registered.

ARTICLE 3. THE DEBT SECURITIES.

SECTION 3.01. *Title and Terms.* The aggregate principal amount of Debt Securities which may be authenticated and delivered under this Indenture is unlimited. The Debt Securities may be issued up to the aggregate principal amount of Debt Securities from time to time authorized by or pursuant to a Board Resolution.

The Debt Securities may be issued in one or more series. All Debt Securities of each series issued under this Indenture shall in all respects be equally and ratably entitled to the benefits hereof with respect to such series without preference, priority or distinction on account of the actual time or times of the authentication and delivery or maturity of the Debt Securities of such series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate to the extent not established in a Board Resolution, or established in one or more indentures supplemental hereto, prior to the issuance of Debt Securities of any series:

- (a) the title of the Debt Securities of the series (which shall distinguish the Debt Securities of the series from all other series of Debt Securities);
- (b) any limit upon the aggregate principal amount of the Debt Securities of the series which may be authenticated and delivered under this Indenture (except for Debt Securities

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authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of that series pursuant to this Article Three, the second paragraph of Section 4.03, or Section 11.04);

- (c) the date or dates (or the manner of calculation thereof) on which the principal of the Debt Securities of the series is payable;
- (d) the rate or rates (or the manner of calculation thereof) at which the Debt Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the Regular Record Date for the interest payable on any Interest Payment Date;

- (e) the Place of Payment;
- (f) the period or periods within which, the price or prices at which, the currency or currency units in which, and the terms and conditions upon which Debt Securities of the series may be redeemed, in whole or in part, at the option of the Company;
- (g) the obligation, if any, of the Company to redeem or purchase Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices in the currency at which, the currency or currency units in which, and the terms and conditions upon which Debt Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (h) the denominations in which the Debt Securities of such series shall be issuable if other than minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof;
- (i) if other than Dollars, the currencies in which payments of interest or principal of (and premium, if any, with respect to) the Debt Securities of the series are to be made;
- (j) if the interest on or principal of (or premium, if any, with respect to) the Debt Securities of the series are to be payable, at the election of the Company or a Holder thereof or otherwise, in a currency other than that in which such Debt Securities are payable, the period or periods within which, and the other terms and conditions upon which, such election may be made, and the time and manner of determining the exchange rate between the currency in such Debt Securities are denominated or stated to be payable and the currency in which such Debt Securities or any of them are to be so payable;
- (k) whether the amount of payments of interest on or principal of (or premium, if any, with respect to) the Debt Securities of such series may be determined with reference to an index, formula or other method (which index, formula or method or method may be based, without limitation, on one or more currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;

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- (l) the extent to which any Debt Securities will be issuable in permanent global form, the manner in which any payments on a permanent global Debt Security will be made, and the appointment of any Depository relating thereto;
- (m) any deletions from, modifications of or additions to the Events of Default or covenants with respect to the Debt Securities of such series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;
- (n) if any of the Debt Securities of such series are to be issuable upon the exercise of warrants, this shall be so established as well as the time, manner and place for such Debt Securities to be authenticated and delivered;
- (o) the inapplicability of any of the provisions of Article 13 with respect to any series of Debt Securities;
- (p) the terms of any right to convert the Debt Securities of such series into, or exchange the Debt Securities for, the Company's common stock or other securities or property or cash in lieu of the Company's common stock or other securities or property, or any combination thereof; and
- (q) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

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

Notwithstanding Section 3.01(b) and unless otherwise expressly provided with respect to a series of Debt Securities, the aggregate principal amount of a series of Debt Securities may be increased and additional Debt Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

SECTION 3.02. *Denominations.* The Debt Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated in Section 3.01. In the absence of any specification with respect to the Debt Securities of any series, the Debt Securities of such series shall be issuable in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, which may be in Dollars or any Foreign Currency.

SECTION 3.03. *Payment of Principal and Interest.* The principal of, premium, if any, and interest on the Debt Securities shall be payable at the office or agency of the Company designated for that purpose in the Place of Payment, as provided in Section 5.02; provided, however, that interest may be payable at the option of the Company by check mailed to the

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address of the Person entitled thereto as such address shall appear on the Debt Security Register on the Regular Record Date for such interest payment.

SECTION 3.04. *Execution of Debt Securities.* The Debt Securities shall be executed manually or by facsimile in the name and on behalf of the Company by its Chairman of the Board of Directors, its President, one of its Vice Presidents or its Treasurer and by its Secretary or one of its Assistant Secretaries. Only such Debt Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, manually executed by the Trustee, shall be entitled to the benefits of this Indenture or be valid or become obligatory for any purpose. Such certificate by the Trustee upon any Debt Security executed by the Company shall be conclusive evidence that the Debt Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have executed any of the Debt Securities shall cease to be such officer before the Debt Securities so executed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Debt Securities nevertheless shall be valid and binding and may be authenticated and delivered or disposed of as though the Person who executed such Debt Securities had not ceased to be such officer of the Company; and any Debt Securities may be executed on behalf of the Company by such Persons as, at the actual date of the execution of such Debt Security, shall be the proper officers of the Company, although at the date of such Debt Security or of the execution of this Indenture any such Person was not such an officer.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Debt Securities of any series, properly created in accordance with Section 3.01 and executed by the Company, to the Trustee for authentication; and the Trustee shall authenticate and deliver such Debt Securities upon receipt of a Company Order. In the event that any other Person performs the Trustee's duties as Authenticating Agent pursuant to a duly executed agreement, the Company shall notify the Trustee in writing of the issuance of any Debt Securities hereunder, such notice to be delivered in accordance with the provisions of Section 15.03 on the date such Debt Securities are delivered by the Company for authentication to such other Person.

Prior to any such authentication and delivery, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, in addition to the Officers' Certificates relating to the issuance of any series of Debt Securities pursuant to Sections 2.02, 3.01 (if required by that Section), and Section 15.05, Opinions of Counsel stating that:

(a) all instruments furnished to the Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Debt Securities;

(b) all laws and requirements with respect to the form and execution by the Company of the supplemental indenture, if any, have been complied with; the execution and delivery of the supplemental indenture, if any, will not violate the terms of this Indenture; the supplemental indenture has been duly qualified under the Trust Indenture Act of 1939; the Company has corporate or company power to execute and deliver any such supplemental indenture and has

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taken all necessary corporate action for those purposes; and any such supplemental indenture has been executed and delivered and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect);

(c) the form and terms of such Debt Securities have been established in conformity with the provisions of this Indenture; and

(d) all laws and requirements with respect to the execution and delivery by the Company of such Debt Securities have been complied with; the authentication and delivery of the Debt Securities by the Trustee will not violate the terms of this Indenture; the Company has the corporate or company power to issue such Debt Securities; and such Debt Securities have been duly executed on behalf of the Company and, assuming due authentication and delivery by the Trustee, constitute legal, valid and binding obligations of the Company in accordance with their terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect) and are entitled to the benefits of this Indenture, equally and ratably with all other Outstanding Debt Securities, if any, of such series.

The Trustee shall not be required to authenticate such Debt Securities if the issue thereof will 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 or such action would expose the Trustee to personal liability to existing Holders.

Unless otherwise provided in the form of Debt Security for any series, all Debt Securities shall be dated the date of their authentication.

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 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.

SECTION 3.05. *Temporary Debt Securities.* Pending the preparation of definitive Debt Securities of any series, the Company may execute, and upon receipt of the documents required by Sections 2.02, 3.01 and 3.04, together with a Company Order, the Trustee shall authenticate and deliver, such temporary Debt Securities which may be printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denominations, substantially of the tenor of such definitive Debt Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such temporary Debt Securities may determine, as evidenced by their execution of such temporary Debt Securities.

If temporary Debt Securities of any series are issued, the Company will cause definitive Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Debt Securities of any series, the temporary Debt Securities of such series shall be

exchangeable for definitive Debt Securities of such series, upon surrender of the temporary Debt Securities of such series at any office or agency maintained by the Company for such purposes as provided in Section 5.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Debt Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefore a like principal amount of definitive Debt Securities of such series having the same interest rate and Stated Maturity and bearing interest from the same date of any authorized denominations. Until so exchanged the temporary Debt Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of such series.

SECTION 3.06. *Exchange and Registration of Transfer of Debt Securities*. Debt Securities may be exchanged for a like aggregate principal amount of Debt Securities of such series that are of other authorized denominations. Debt Securities to be exchanged shall be surrendered at any office or agency to be maintained for such purpose by the Company, as provided in Section 5.02, and the Company shall execute and the Trustee shall authenticate and deliver in exchange therefore the Debt Security or Debt Securities of authorized denominations which the Debt Security Holder making the exchange shall be entitled to receive. Each agent of the Company appointed pursuant to Section 5.02 as a person authorized to register and register transfer of Debt Securities is sometimes herein referred to as a "Debt Security Registrar."

The Company shall keep, at an office or agency of the Company maintained for such purpose, as provided in Section 5.02, a register for each series of Debt Securities hereunder (the registers of all Debt Security Registrars being herein sometimes 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 and shall register the transfer of Debt Securities as provided in this Article Three. For avoidance of doubt, there shall only be one Debt Security Register for each series of Debt Securities. At all reasonable times, such Debt Security Register shall be open for inspection by the Trustee and any Debt Security Registrar other than the Trustee. Upon due presentment for registration of transfer of any Debt Security at any such office or agency, the Company shall execute and cause to be registered and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Debt Security or Debt Securities of the same series of authorized denominations for an equal aggregate principal amount. Registration or registration of transfer of any Debt Security by any Debt Security Registrar in the registry books maintained by such Debt Security Registrar, and delivery of such Debt Security, duly authenticated, shall be deemed to complete the registration or registration of transfer of such Debt Security. The Trustee is hereby appointed as Debt Security Registrar for each series of Debt Securities.

No Person shall at any time be appointed as or act as a Debt Security Registrar unless such Person is at such time empowered under applicable law to act as such and duly registered to act as such under and to the extent required by applicable law and regulations.

All Debt Securities presented to a Debt Security Registrar for registration of transfer shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and such Debt Security Registrar duly executed by the registered Holder or such Holder's attorney duly authorized in writing.

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

The Company shall not be required to issue, exchange or register a transfer of (a) any Debt Securities of any series for a period of 15 days next preceding the mailing of a notice of redemption of Debt Securities of such series and ending at the close of business on the day of the mailing of a notice of redemption of Debt Securities of such series so selected for redemption, or (b) any Debt Securities selected, called or being called for redemption except, in the case of any Debt Security to be redeemed in part, the portion thereof not so to be redeemed.

All Debt Securities issued in exchange for or upon registration of transfer 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 for such exchange or registration of transfer.

None of the Trustee, any agent of the Trustee, any paying agent or the Company 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 Debt Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

SECTION 3.07. *Mutilated, Destroyed, Lost or Stolen Debt Securities*. In case any temporary or definitive Debt Security shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its request the Trustee shall authenticate and deliver, a new Debt Security, bearing a number, letter or other distinguishing mark not contemporaneously Outstanding, in exchange and substitution for the mutilated Debt Security, or in lieu of and in substitution for the Debt Security so destroyed, lost or stolen. In every case the applicant for a substituted Debt Security shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft, of such Debt Security and of the ownership thereof.

In the absence of notice to the Trustee or the Company that such Debt Security has been acquired by a bona fide purchaser, the Trustee shall authenticate any such substituted Debt Security and deliver the same upon any Company Request. Upon the issuance of any substituted Debt Security, the

Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Debt Security which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substituted Debt Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debt Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and to the Trustee of the destruction, loss or theft of such Debt Security and of the ownership thereof.

Every substituted Debt Security issued pursuant to the provisions of this Section 3.07 by virtue of the fact that any Debt Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Debt Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debt Securities duly issued hereunder. All Debt Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debt Securities and shall preclude (to the extent permitted by law) any and all other rights or remedies with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 3.08. *Payment of Interest; Interest Rights Preserved.* Interest which is payable, and is punctually paid or duly provided for, on any Interest Payment Date, on any Debt Security, shall unless otherwise provided in such Debt Security be paid to the Person in whose name the Debt Security (or one or more Predecessor Debt Securities) is registered at the close of business on the Regular Record Date for such interest.

Unless otherwise stated in the form of Debt Security of a series, interest on the Debt Securities of any series shall be computed on the basis of a 360 day year comprised of twelve 30 day months.

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

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names any such Debt Securities (or their respective Predecessor Debt Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Debt Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust for the benefit of the Persons entitled to such Defaulted Interest as in this clause provided. Thereupon the Trustee shall fix a Special Record Date for the payment of such Defaulted Interest which shall be not more than 15 days and not less than 10 days prior to the date of the proposed payment and not less than 10 days after the receipt by the Trustee of the notice of the proposed payment. The Trustee shall promptly notify the Company of such Special Record Date and, in the name and at the expense of the Company, shall cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore to be mailed, first-class postage prepaid, to each Holder of such Debt Securities, at such Holder's address 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 mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such

Debt Securities (or their respective Predecessor Debt Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Debt Securities of that series 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 payment shall be deemed practicable by the Trustee.

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

SECTION 3.09. *Persons Deemed Owners.* The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Debt Security is registered as the owner of such Debt Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 3.08) interest on, such Debt Security and for all other purposes whatsoever whether or not such Debt Security be overdue, and neither the Company, the Trustee, nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.10. *Cancellation of Debt Securities Paid, etc.* All Debt Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer or delivered in satisfaction in whole or in part of any sinking fund obligation shall, if surrendered to the Company or any agent of the Trustee or the Company under this Indenture, be delivered to the Trustee and promptly cancelled by it, or, if surrendered to the Trustee, shall be promptly cancelled by it, and no Debt Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Company may at any time deliver to the Trustee for cancellation any Debt Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Debt

Securities previously authenticated hereunder which the Company has not issued and sold, and all Debt Securities so delivered shall be promptly cancelled by the Trustee. The Trustee shall dispose of cancelled Debt Securities in accordance with its customary procedures unless directed by a Company Order.

SECTION 3.11. *Currency and Manner of Payments.* (a) With respect to Debt Securities denominated in Dollars or a Foreign Currency, the following payment provisions shall apply:

(1) Except as provided in subparagraph (a)(2) or in paragraph (c) of this Section 3.11, payment of principal of and premium, if any, on any Debt Securities will be made at the offices established pursuant to Section 5.02 by delivery of a check in the currency in which the Debt Security is denominated on the payment date against surrender of such Debt Security, and any interest on any Debt Security will be paid at such office by mailing a check in the currency in

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which the Debt Securities were issued to the Person entitled thereto at the address of such Person appearing on the Debt Security Register.

(2) Payment of the principal of and premium, if any, and interest on such Debt Security may also, subject to applicable laws and regulations and subject to surrender as aforesaid in the case of principal and premium, if any, be made at such other place or places as may be designated by the Company by any appropriate method.

(b) Not later than the fourth Business Day after the Regular Record Date for such Interest Payment Date, the paying agent will deliver to the Company a written notice specifying, in the currency in which each series of the Debt Securities are denominated, the respective aggregate amounts of principal of and premium, if any, and interest on the Debt Securities to be made on such payment date, specifying the amounts so payable in respect of the Debt Securities. The failure of the paying agent to deliver such notice shall not relieve the Company from its obligation to make all payments with respect to any Debt Security when due.

(c) If the Foreign Currency in which any of the Debt Securities are denominated ceases to be used both by the government of the country which issued such currency and for the settlement of transactions by public institutions of or within the international banking community, then with respect to each date for the payment of Foreign Currency occurring after the last date on which the Foreign Currency was so used (the "Conversion Date"), the Dollar shall be the currency of payment for use on each such Interest Payment Date. The Dollar amount to be paid by the Company to the Trustee and by the Trustee or any paying agent to the Holder of such Debt Securities with respect to such payment date shall be the Dollar Equivalent of the Foreign Currency as determined by the Currency Determination Agent in the manner provided in paragraph (d) below.

(d) The "Dollar Equivalent of the Foreign Currency" shall be determined by the Currency Determination Agent by converting the specified Foreign Currency into Dollars at the Market Exchange Rate as of the Conversion Date.

(e) The "Market Exchange Rate" shall mean, for any currency, the highest firm bid quotation for U.S. dollars received by the Currency Determination Agent at approximately 11:00 a.m., New York City time, on the second Business Day preceding the applicable payment date (or, if no such rate is quoted on such date, the last date on which such rate was quoted, or under the circumstances described in the foregoing paragraph (c), on the Conversion Date), from three recognized foreign exchange dealers in the City of New York selected by the Currency Determination Agent and approved by the Company (one of which may be the Currency Determination Agent) for the purchase by the quoting dealer, for settlement on such payment date, of the aggregate amount of such currency payable on such payment in respect of all Notes denominated in such currency.

(f) All decisions and determinations of the Currency Determination Agent regarding the Dollar Equivalent of the Foreign Currency and the Market Exchange Rate shall be in its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company and all Holders of the Debt

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Securities. In the event that the Foreign Currency ceases to be used both by the government of the country which issued such currency and for the settlement of transactions by public institutions of or within the international banking community, the Company, after learning thereof, will promptly give notice thereof to the Trustee (and the Trustee will promptly thereafter give notice in the manner provided in Section 15.03 to the Holders) specifying the Conversion Date.

(g) The Trustee shall be fully justified and protected in relying on and acting upon the information so received by it from the Company or the Currency Determination Agent and shall not otherwise have any duty or obligation to determine such information independently. If the principal of (and premium, if any) and interest on any Debt Securities is payable in a Foreign Currency and such Foreign Currency is not available for payment due to the imposition of exchange controls or other circumstances beyond the control of the Company, then the Company shall be entitled to satisfy its obligations to Holders under this Indenture by making such payment in Dollars on the basis of the Market Exchange Rate for such Foreign Currency on the latest date for which such rate was established on or before the date on which payment is due. Any payment made pursuant to this Section 3.11 in Dollars where the required payment is in a Foreign Currency shall not constitute a default or Event of Default under this Indenture.

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 changes in the “CUSIP” numbers.

ARTICLE 4.
REDEMPTION OF DEBT SECURITIES; SINKING FUNDS.

SECTION 4.01. *Applicability of Article.* The Company may reserve the right to redeem and pay before Stated Maturity all or any part of the Debt Securities of any series, either by optional redemption, sinking fund (mandatory or optional) or otherwise, by provision therefor in the form of Debt Security for such series on such terms as are specified in such form or the Board Resolution or Officers’ Certificate delivered pursuant to Section 3.01 or the indenture supplemental hereto as provided in Section 3.01 with respect to Debt Securities of such series. Redemption of Debt Securities of any series shall be made in accordance with the terms of such Debt Securities and, to the extent that this Article does not conflict with such terms, in accordance with this Article.

SECTION 4.02. *Notice of Redemption; Selection of Debt Securities.* In case the Company shall desire to exercise the right to redeem all, or, as the case may be, any part of a series of Debt Securities pursuant to Section 4.01, the Company shall fix a date for redemption and the Company, or, at the Company’s request, the Trustee in the name of and at the expense of the Company, shall mail a notice of such redemption at least 30 and not more than 60 days prior

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to the date fixed for redemption to the Holders of Debt Securities so to be redeemed as a whole or in part at their last addresses as the same appear on the Debt Security Register. *provided, however*, that the Company shall have delivered to the Trustee, at least 45 days prior to the Redemption Date (or such shorter period as may be acceptable to the Trustee), an Officers’ Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the next succeeding paragraph. Such mailing shall be by first class mail; provided, however, that so long as the Debt Securities of such series are represented by one or more Global Debt Securities, such notice shall be given in accordance with the procedures of the Depository therefor. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Debt Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debt Security.

Notice of redemption shall be given in the name of the Company and shall specify the date fixed for redemption, the Redemption Price at which Debt Securities of any series are to be redeemed, or if not then ascertainable, the manner of calculation thereof, the place of payment (which shall be at the offices or agencies to be maintained by the Company pursuant to Section 5.02), that payment of the Redemption Price will be made upon presentation and surrender of such Debt Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue, and the Section of this Indenture or the paragraph or section of the Debt Securities pursuant to which Debt Securities will be redeemed. In case less than all Debt Securities of any series are to be redeemed, the notice of redemption shall also identify the particular Debt Securities to be redeemed as a whole or in part and shall state that the redemption is for the sinking fund, if such is the case. In case any Debt Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such Debt Security, a new Debt Security or Debt Securities of such series in aggregate principal amount equal to the unredeemed portion thereof will be issued without charge to the Holder.

If Debt Securities of any series are to be redeemed, the Company shall give the Trustee notice, at least 45 days (or such shorter period acceptable to the Trustee) in advance of the date fixed for redemption, as to the aggregate principal amount of Debt Securities to be redeemed and as to the date fixed for redemption. Debt Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Debt Securities of such series or any multiple thereof. Thereupon the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Debt Securities or portions thereof to be redeemed, and shall as promptly as practicable notify the Company of the Debt Securities or portions thereof so selected; provided, however, if the Debt Securities of such series are represented by one or more Global Debt Securities, interests in such Debt Securities shall be selected for redemption by the Depository therefor in accordance with its customary procedures and the Trustee shall have no responsibilities with respect to such selection. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Debt Securities of any series shall relate, in the case of any Debt Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Debt Security which has been or is to be redeemed. In the case of any redemption of Debt Securities (a) prior to the expiration of any restriction on

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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 or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers’ Certificate evidencing compliance with such restriction or condition.

On or prior to the date fixed for redemption specified in the notice of redemption given as provided in this Section 4.02, the Company will deposit with the Trustee or with the paying agent an amount of money in the currency in which the Debt Securities of such series are payable sufficient to redeem on the date fixed for redemption all the Debt Securities so called for redemption at the appropriate Redemption Price, together with accrued interest to the date fixed for redemption.

The Trustee shall not mail any notice of redemption of any series of Debt Securities during the continuation of any default in payment of interest on any series of Debt Securities when due or of any Event of Default, except that where notice of redemption with respect to any series of Debt Securities shall

have been mailed prior to the occurrence of such default or Event of Default, the Trustee shall redeem such Debt Securities provided funds are deposited with it for such purpose.

SECTION 4.03. *Payment of Debt Securities Called for Redemption*. If notice of redemption has been given as herein provided, the Debt Securities or portions of Debt Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable Redemption Price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Debt Securities or portions thereof at the Redemption Price, together with interest accrued to said date) interest on the Debt Securities or portions of Debt Securities so called for redemption shall cease to accrue, and such Debt Securities and portions of Debt Securities shall be deemed not to be Outstanding hereunder and shall not be entitled to any benefit under this Indenture except to receive payment of the Redemption Price, together with accrued interest to the date fixed for redemption. On presentation and surrender of such Debt Securities at the place of payment in said notice specified, the said Debt Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with interest accrued thereon to the date fixed for redemption; provided, however, that any installments of interest becoming due on or prior to the date fixed for redemption shall be payable to the Holders of such Debt Securities, or one or more previous Debt Securities evidencing all or a portion of the same debt as that evidenced by such particular Debt Securities, registered as such on the relevant record dates according to their terms and the provisions of Section 3.08.

Upon presentation and surrender of any Debt Security redeemed in part only, 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 such Holder's attorney duly authorized in writing, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Debt Security or Debt Securities of the same series having the same interest rate and Stated Maturity and bearing interest from the same date, of any authorized denominations as requested by such

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Holder, in aggregate principal amount equal to the unredeemed portion of the Debt Security so presented and surrendered.

SECTION 4.04. *Exclusion of Certain Debt Securities from Eligibility for Selection for Redemption*. Debt Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by a Responsible Officer of the Company and delivered to the Trustee at least 45 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

SECTION 4.05. *Provisions with Respect to any Sinking Funds*. Unless the form or terms of any series of Debt Securities shall provide otherwise, in lieu of making all or any part of any mandatory sinking fund payment with respect to such series of Debt Securities in cash, the Company may at its option (a) deliver to the Trustee for cancellation any Debt Securities of such series theretofore acquired by the Company, or (b) receive credit for any Debt Securities of such series (not previously so credited) acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed pursuant to provisions for an optional redemption or optional sinking fund redemption, then Debt Securities so delivered or credited shall be credited at the applicable sinking fund Redemption Price with respect to the Debt Securities of such series.

On or before the 45th day next preceding each sinking fund Redemption Date, the Company will deliver to the Trustee a certificate signed by the Chief Financial Officer, any Vice President, the Treasurer or any Assistant Treasurer of the Company specifying (i) the portion of the mandatory sinking fund payment to be satisfied by deposit of cash in the currency in which the Debt Securities of such series are payable, by delivery of Debt Securities theretofore purchased or otherwise acquired by the Company (which Debt Securities shall accompany such certificate) and by credit for Debt Securities acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed by the Company pursuant to provisions for optional redemption or optional sinking fund redemption and stating that the credit to be applied has not theretofore been so applied and the basis for such credit and (ii) whether the Company intends to exercise its right, if any, to make an optional sinking fund payment, and, if so, the amount thereof. Such certificate shall also state that no Event of Default has occurred and is continuing. Such certificate shall be irrevocable and upon its delivery the Company shall be obligated to make the payment or payments therein referred to, if any, on or before the next succeeding sinking fund payment date. In case of the failure of the Company on or before the 45th day next preceding each sinking fund Redemption Date to deliver such certificate (or to deliver the Debt Securities specified in this paragraph), the sinking fund payment due on the next succeeding sinking fund payment date shall be paid entirely in cash (in the currency described above) and shall be sufficient to redeem the principal amount of Debt Securities as a mandatory sinking fund payment, without the option to deliver or credit Debt Securities as provided in the first paragraph of this Section 4.05 and without the right to make an optional sinking fund payment as provided herein.

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If the sinking fund payment or payments (mandatory or optional) with respect to any series of Debt Securities made in cash (in the currency described above) shall exceed the minimum authorized denomination set forth in an Officers' Certificate pursuant to Section 3.01 or the equivalent in the currency in which the Debt Securities of such series are payable (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Debt Securities, said cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Debt Securities of such series at the applicable sinking fund Redemption Price with respect to Debt Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 4.03. The Trustee shall select, in the manner provided in Section 4.02, for redemption on such sinking fund Redemption Date a sufficient principal amount of Debt Securities of such series to utilize said cash and shall thereupon cause notice of redemption of the Debt Securities of such series for the sinking fund to be given in the manner provided in Section 4.02 (and with the effect provided in Section 4.03) for the redemption of Debt Securities in part at the option of the Company. Debt Securities of any series which are identified by registration and certificate number in an Officers' Certificate at least 45 days prior to the sinking fund Redemption Date as being beneficially owned by, and not pledged or hypothecated by, the

Company or an entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be excluded from Debt Securities of such series eligible for selection for redemption. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Debt Securities of such series shall be added to the next cash sinking fund payment with respect to Debt Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 4.05. Any and all sinking fund moneys with respect to Debt Securities of any series held by the Trustee at the maturity of Debt Securities of such series, and not held for the payment or redemption of particular Debt Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Debt Securities of such series at maturity.

The Trustee shall not convert any currency in which the Debt Securities of such series are payable for the purposes of such sinking fund application unless a Company Request is made, and any such conversion agreed to by the Trustee in response to such request shall be for the account and at the expense of the Company and shall not affect the Company's obligation to pay the Holders in the currency to which such Holder is entitled.

On or before each sinking fund Redemption Date provided with respect to Debt Securities of any series, the Company shall pay to the Trustee in cash in the currency described above a sum equal to all accrued interest, if any, to the date fixed for redemption on Debt Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 4.05.

ARTICLE 5. PARTICULAR COVENANTS OF THE COMPANY.

SECTION 5.01. *Payment of Principal, Premium and Interest.* The Company will duly and punctually pay or cause to be paid (in the currency in which the Debt Securities of such series are payable) the principal of and premium, if any, and interest on each of the Debt

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Securities at the place (subject to Section 3.03), at the respective times and in the manner provided in each series of Debt Securities and in this Indenture.

SECTION 5.02. *Offices for Notices and Payments, etc.* (a) So long as the Debt Securities of any series remain Outstanding, the Company will maintain at the Place of Payment, an office or agency where the Debt Securities may be presented for payment, an office or agency where the Debt Securities may be presented for registration of transfer and for exchange as provided in this Indenture, and an office or agency where notices and demands to or upon the Company in respect of the Debt Securities or of this Indenture may be served and shall give the Trustee written notice thereof and any changes in the location thereof. In case the Company shall at any time fail to maintain any such office or agency, or shall fail to give notice to the Trustee of any change in the location thereof, presentation and demand may be made and notice may be served in respect of the Debt Securities or of this Indenture at said office of the Trustee. The Company hereby appoints the Trustee as its agent for all of the foregoing purposes with respect to the Debt Securities of each series.

(b) In addition to the office or agency maintained by the Company pursuant to Section 5.02(a), the Company may from time to time designate one or more other offices or agencies where the Debt Securities may be presented for payment and presented for registration of transfer and for exchange in the manner provided in this Indenture, and the Company may from time to time rescind such designations, as the Company may deem desirable or expedient; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain such office and agency at the Place of Payment, for the purposes abovementioned. The Company will give to the Trustee prompt written notice of (i) any such designation or rescission thereof, and (ii) the location of any such office or agency outside the Place of Payment and of any change of location thereof.

SECTION 5.03. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 5.04. *Provisions as to Paying Agent.* (a) (1) Whenever the Company shall have one or more paying agents for any series of Debt Securities other than the Trustee, it will, on or before each due date of the principal of (and premium, if any) or interest on any Debt Securities of such series, deposit with a paying agent a sum sufficient to pay such amount becoming due, such sum to be held as provided by the Trust Indenture Act of 1939, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(2) The Company will cause each paying agent other than the Trustee to execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee, subject to the provisions of this Section, that such paying agent will: (i) comply with the provisions of the Trust Indenture Act of 1939 applicable to it as a paying agent and (ii) during the continuance of any default by the Company (or any other obligor upon any series of Debt Securities) in the making of any payment in respect of the Debt Securities of such series, upon

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the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such paying agent as such.

(b) If the Company shall act as its own paying agent, it will, on or prior to each due date of the principal of and premium, if any, or interest on Debt Securities of any series, set aside, segregate and hold in trust for the benefit of the Holders of such Debt Securities a sum sufficient to pay such principal and premium, if any, or interest so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Company (or by any other obligor on such series of Debt Securities) to make any payment of the principal of and premium, if any, or interest on the Debt Securities when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture with respect to any or all series of Debt Securities then Outstanding, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company, or any paying agent hereunder, as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained.

(d) Anything in this Section 5.04 to the contrary notwithstanding, the agreement to hold sums in trust provided in this Section 5.04 is subject to Section 13.04.

SECTION 5.05. *Certificate to Trustee.* So long as the Debt Securities of any series remain Outstanding, the Company will deliver to the Trustee on or before 120 days after the end of each fiscal year an Officers' Certificate stating that such officer has reviewed the covenants of the Indenture with respect to each outstanding series of Debt Securities and, in the course of the performance by the signers of their duties as officers of the Company, they would normally have knowledge of any default by the Company in the performance or fulfillment or observance of any covenants or agreements contained herein during the preceding fiscal year, stating whether or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof. The Officers' Certificate need not comply with Section 15.05. One of the signatories to this Officers' Certificate shall be the Company's principal executive officer, principal financial officer or principal accounting officer.

SECTION 5.06. *Waivers of Covenants.* Anything in this Indenture to the contrary notwithstanding, the Company may fail or omit, in respect of any series of Debt Securities, and in any particular instance, to comply with a covenant, agreement or condition contained in Section 5.05 (unless required to be complied with pursuant to Section 314(a)(4) of the Trust Indenture Act of 1939), or with any additional covenant, agreement or condition contained in a Board Resolution or Officers' Certificate establishing such series of Debt Securities, any indenture supplemental hereto applicable to such series or any Debt Security of such series (unless such Board Resolution, Officers' Certificate, or supplemental indenture provides otherwise) if the Company shall have obtained and filed with the Trustee before or after the time for such compliance the consent in writing of the Holders of more than 50% in aggregate principal amount of the Debt Securities of the series affected by such waiver at the time Outstanding, either waiving such compliance in such instance or generally waiving compliance with such covenant or condition, but no such waiver shall extend to or affect any obligation not

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expressly waived nor impair any right consequent thereon and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

ARTICLE 6. HOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE.

SECTION 6.01. *Holders' Lists.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, not more than 15 days after each Regular Record Date with respect to the Debt Securities of any series, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of Debt Securities of such series as of a date not more than 15 days prior to the time such information is furnished; *provided, however*, that no such list with respect to any particular series of Debt Securities need be furnished at any such time if the Trustee is in possession thereof by reason of its acting as the Debt Security Registrar for such series designated under Section 3.06 or otherwise.

SECTION 6.02. *Preservation and Disclosure of Lists.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of Debt Securities contained in the most recent list furnished to it as provided in Section 6.01 or received by the Trustee in the capacity of the Debt Security Registrar (if so acting) under Section 3.06. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Debt Securities of any series or of all Debt Securities, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act of 1939.

(c) 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 any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act of 1939.

SECTION 6.03. *Reports by the Company* The Company agrees to file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant to such Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission; *provided further* that any such information, documents or reports filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall be deemed to be filed with the Trustee. Delivery of such reports, information and

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

SECTION 6.04. *Reports by the Trustee.* (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant thereto. The interval between transmissions of reports to be transmitted at intervals shall be twelve months or such shorter time required by the Trust Indenture Act of 1939. If the Trust Indenture Act of 1939 does not specify the date on which a report is due, the such report shall be due on July 15 of each year following the first issuance of Debt Securities and shall be as of a date not more than sixty (60) days prior thereto.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which Debt Securities of any series are listed, with the Commission and with the Company. The Company will notify the Trustee when the Debt Securities of any series are listed on any stock exchange and of any delisting thereof.

ARTICLE 7. REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT.

SECTION 7.01. *Events of Default.* "Event of Default", with respect to any series of Debt Securities, wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to such series or it is specifically deleted or modified in the Board Resolution, Officers' Certificate or supplemental indenture under which such series of Debt Securities is issued or in the form of Debt Security for such series:

(a) default in the payment of any installment of interest upon any Debt Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days;

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

(c) default in the payment or satisfaction of any sinking fund payment or analogous obligation, if any, with respect to the Debt Securities of such series as and when the same shall become due and payable by the terms of the Debt Securities of such series, and continuance of such default for a period of 30 days;

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(d) failure on the part of the Company duly to observe or perform any of the covenants, warranties or agreements on the part of the Company in respect of the Debt Securities of such series in this Indenture (other than a covenant, warranty or agreement a default in whose performance or whose breach is specifically dealt with elsewhere in this Section) continued for a period of 60 days after the date on which written notice of such failure, specifying such failure and requiring the same to be remedied, shall have been given to the Company by the Trustee, by registered mail, or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Debt Securities of such series;

(e) if any event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Company, whether such indebtedness now exists or is hereafter created or incurred, happens and consists of default in the payment of more than \$25,000,000 in principal amount of such indebtedness at the maturity thereof, after giving effect to any applicable grace period, or results in such Indebtedness in principal amount in excess of \$25,000,000 becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such default is not cured or such acceleration is not rescinded or annulled within a period of 30 days after the date on which written notice of such failure, specifying such failure and requiring the same to be remedied, shall have been given to the Company by the Trustee, by registered mail, or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Debt Securities of such series;

(f) the failure by the Company within 60 days to pay, bond or otherwise discharge any uninsured judgment or court order for the payment of money in excess of \$25,000,000, which is not stayed on appeal or is not otherwise being appropriately contested in good faith;

(g) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of the Company under the Federal bankruptcy laws or any other similar applicable Federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of 60 days; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee or other similar official in bankruptcy or insolvency of the Company or of all or substantially all of its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have continued undischarged and unstayed for a period of 60 days;

(h) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking an arrangement or a reorganization under the Federal bankruptcy laws or any other similar applicable Federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or

liquidator or trustee or assignee or other similar official in bankruptcy or insolvency of it or of all or substantially all of its property, or shall make an assignment for the benefit of

creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(i) any other Event of Default provided in the Board Resolution, Officers' Certificate or the supplemental indenture under which such series of Debt Securities is issued or in the form of Debt Security for such series;

then and in each and every such case, so long as such Event of Default with respect to any series of Debt Securities for which there are Debt Securities Outstanding occurs and is continuing (other than an Event of Default specified in clause (g) or (h) of this Section 7.01) and shall not have been remedied or waived to the extent permitted by the terms of this Indenture, unless the principal of all of the Debt Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of such series, by notice in writing to the Company (and to the Trustee if given by Holders), may declare the principal (or, if the Debt Securities of that series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Debt Securities of such series and the interest accrued thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Debt Securities of such series contained to the contrary notwithstanding. If an Event of Default specified in clause (g) or (h) of this Section 7.01 occurs and is continuing, then the principal amount of (or, if the Debt Securities of that series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms thereof as due and payable upon acceleration) and any accrued and unpaid interest on that series shall immediately become due and payable without any declaration or other act on the part of the Trustee or any Holder. This provision, however, is subject to the condition that if, at any time after the principal of the Debt Securities of such series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to pay in the currency in which the Debt Securities of such series are payable all matured installments of interest upon all of the Debt Securities and the principal of and premium, if any, on any and all Debt Securities of such series which shall have become due otherwise than by such declaration (with interest on overdue installments of interest to the extent that payment of such interest is enforceable under applicable law and on such principal and premium, if any, at the rate borne by the Debt Securities of such series or as otherwise provided in the form of Debt Security for such series, to the date of such payment or deposit) and all amounts due to the Trustee under Section 8.06, or provision deemed by the Trustee to be adequate shall have been made therefor, and any and all defaults under this Indenture, other than the nonpayment of principal of and accrued interest on Debt Securities of such series which shall have become due by such declaration, shall have been cured or shall have been waived in accordance with Section 7.07 — then and in every such case the Holders of at least a majority in aggregate principal amount of the Debt Securities of such series then Outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

SECTION 7.02. *Payment of Debt Securities Upon Default; Suit Therefor.* The Company covenants that (a) in case default shall be made in the payment of any installment of interest upon any Debt Security of any series as and when the same shall become due and payable, and such default shall have continued for a period of 30 days, or (b) in case default shall be made in the payment of the principal of and premium, if any, on any Debt Security of any series as and when the same shall have become due and payable, whether at maturity of the Debt Security or upon redemption or by declaration or otherwise or (c) in case default shall be made in the making or satisfaction of any sinking fund payment or analogous obligation with respect to the Debt Securities of any series when the same becomes due by the terms of the Debt Securities of any series, and such default shall have continued for a period of 30 days—then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the Holders of any such series, the whole amount that then shall have become due and payable on any such Debt Securities for principal and premium, if any, or interest, or both, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest at the rate borne by the Debt Securities of such series or as otherwise provided in the form of Debt Security of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred and advances made by the Trustee, except compensation or advances arising, or expenses or liabilities incurred, as a result of the Trustee's gross negligence or bad faith.

Until such demand is made by the Trustee, the Company may pay the principal of and premium, if any, and interest on the Debt Securities of any series to the Persons entitled thereto, whether or not the principal of and premium, if any, and interest on the Debt Securities of such series are overdue.

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

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.

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Debt Securities of any series under the Federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in the case of any other similar judicial proceedings relative to the Company or other obligor upon the Debt Securities of any series, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Debt Securities of such series 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 pursuant to the provisions of this Section 7.02, shall be entitled and empowered by intervention in such proceedings or otherwise, (a) to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Debt Securities of such series, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Holders of the Debt Securities of such series allowed in such judicial proceedings relative to the Company or any other obligor on such Debt Securities, its or their creditors, or its or their property, (b) unless prohibited by applicable law and regulations, to vote on behalf of the Holders of any Debt Securities of any series in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings, and (c) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Holders of the Debt Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Holders, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred and advances made by the Trustee except compensation or advances arising, or expenses or liabilities incurred, as a result of the Trustee's gross negligence or bad faith.

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 or 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 (except, as aforesaid, for the election of a trustee in bankruptcy or other Person performing similar functions) in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Debt Securities of any series, may be enforced by the Trustee without the possession of any of such Debt Securities, or the production thereof on any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders of the Debt Securities of such series in respect of which such judgment has been recovered.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Debt Securities in respect to which such action was taken, and it shall not be necessary to make any Holders of such Debt Securities parties to any such proceedings.

SECTION 7.03. *Application of Moneys Collected by Trustee.* Any moneys collected by the Trustee pursuant to Section 7.02 and any other money or property distributed in respect of the Company's obligations under this Indenture after an Event of Default shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the Debt Securities of such series, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of costs and expenses of collection and reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all other expenses and liabilities incurred, and all advances made, by the Trustee except compensation or advances arising, or expenses or liabilities incurred, as a result of its gross negligence or bad faith, and any other amounts owing the Trustee under Section 8.06;

SECOND: In case the principal of the Debt Securities of such series shall not have become due and be unpaid, to the payment of interest on such Debt Securities, in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by such Debt Securities, such payments to be made ratable to the Persons entitled thereto;

THIRD: In case the principal of the Debt Securities of such series shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such Debt Securities for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by such Debt Securities; and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon such Debt Securities, then, to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Debt Security of such series over any other such Debt Security, ratable to the aggregate of such principal and premium, if any, and accrued and unpaid interest;

FOURTH: To the payment of any surplus then remaining to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SECTION 7.04. *Proceedings by Holders.* No Holder of any Debt Security of any series shall have any right by virtue of or by availing of

any provision of this Indenture to institute any suit, action or proceeding in equity or at law or in bankruptcy or otherwise upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the Holders of not less than 25% in aggregate principal amount of the Debt Securities of such series

then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding (and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 7.07), it being understood and intended, and being expressly covenanted by the taker and Holder of every Debt Security of every series with every other taker and Holder and the Trustee, that no one or more Holders of Debt Securities 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 Holder of such Debt Securities, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Debt Securities.

SECTION 7.05. *Proceedings by Trustee.* In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

SECTION 7.06. *Remedies Cumulative and Continuing.* All powers and remedies given by this Article Seven to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon any default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 7.04, every power and remedy given by this Article Seven or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

SECTION 7.07. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of any 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 by this Indenture; provided, however, that (subject to the provisions of Section 8.01) the Trustee shall have the right to decline to follow any such direction if the Trustee shall determine upon advice of counsel that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees and/or Responsible Officers shall determine that the action or proceeding so directed would involve the Trustee in personal liability or if the Trustee in good faith shall so determine

that the actions or forbearances specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Debt Securities of all series not joining in the giving of said directions, it being understood that (subject to Section 8.01) the Trustee shall have no duty to ascertain whether or not such actions or forbearances are duly prejudicial to such Holders. The Trustee may take any other action deemed proper by the Trustee not inconsistent with such direction. Subject to Section 7.01, the Holders of a majority in aggregate 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 or Event of Default hereunder and its consequences except a default in the payment of principal of or premium, if any, or interest on such Debt Securities, or a default in the making of any sinking fund payment with respect to such Debt Securities. Upon any such waiver the Company, the Trustee and the Holders of such Debt Securities shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default shall have been waived as permitted by this Section 7.07, said default or Event of Default shall for all purposes of the Debt Securities and this Indenture be deemed to have been cured and to be not continuing.

This Section 7.07 shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act of 1939 and such Sections 316(a)(1)(A) and Section 316(a)(1)(B) are hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act of 1939.

SECTION 7.08. *Notice of Defaults.* Within 90 days after the occurrence of any default hereunder with respect to the Debt Securities of any series, the Trustee shall transmit by first-class by mail, postage prepaid, to all Holders of Debt Securities of such series, as their names and addresses appear in the Debt Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Debt Security of such series or in the payment of any sinking fund installment with respect to Debt Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Debt Securities of such series; and provided, further, that in the case of any default of the character specified in Section 7.01(d) with respect to Debt Securities of such series, 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 with

respect to Debt Securities of such series.

SECTION 7.09. *Undertaking to Pay Costs.* In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act of 1939; provided that neither this Section nor the Trust Indenture Act of 1939 shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or the Trustee, and any provision of the Trust Indenture Act of 1939 to such effect is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act of 1939.

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SECTION 7.10. *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 rights, which are absolute and unconditional, to receive payment of the principal of, premium, if any, and (subject to Section 3.08) interest on such Debt Security on the respective Stated Maturities expressed in such Debt Security (or in the case of redemption or repayment, on the date for redemption or repayment, as the case may be) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

ARTICLE 8. CONCERNING THE TRUSTEE.

SECTION 8.01. *Duties and Responsibilities of Trustee.*

(a) Except during the continuance of an Event of Default, (1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee and (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

(1) this Subsection (c) shall not be construed to limit the effect of Subsection (a) of this Section 8.01;

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

(3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series relating to the time, method and place of conducting any proceeding for any remedy available to the

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Trustee, or exercising any trust or power conferred upon the Trustee, under this Indenture with respect to the Debt Securities of such series; and

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

(d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 8.01.

SECTION 8.02. *Reliance on Documents, Opinions, etc.* Subject to the provisions of Section 8.01,

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

(b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by Company Request

or Company Order (unless otherwise evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;

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

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

(e) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;

(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, consent, order, approval, bond, debenture, note, or other paper or document, unless requested in writing to do so by the Holders of not less than a majority in principal amount of such Debt Securities then Outstanding; *provided, however*, that the reasonable expenses of every such investigation shall be paid by the Company or, if paid by the

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Trustee, shall be repaid by the Company upon demand; and *provided, further*, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to so proceeding;

(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 liable or responsible for any misconduct, bad faith or negligence on the part of any agent or attorney appointed with due care by it hereunder;

(h) the Trustee shall not be deemed to have notice or be charged with knowledge of any default or Event of Default unless written notice of such default or Event of Default from the Company or any Holder is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Debt Securities and this Indenture;

(i) the rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;

(j) the permissive rights of the Trustee enumerated herein shall not be construed as duties;

(k) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(l) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(m) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

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SECTION 8.03. *No Responsibility for Recitals, etc.* The recitals contained herein and in the Debt Securities (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities of any series. The Trustee represents that it is duly authorized to execute and deliver this Indenture. Neither the Trustee nor the Authenticating Agent shall be accountable for the use or application by the Company or any Debt Securities or the proceeds of any Debt Securities authenticated and delivered by the Trustee hereunder.

SECTION 8.04. *Trustee and Agents May Own Debt Securities.* The Trustee, any paying agent, or any agent of the Trustee or the

Company under this Indenture, in its individual or any other capacity, may become the owner or pledgee of Debt Securities of any series with the same rights it would have if it were not Trustee or such agent and, subject to Sections 8.08 and 8.13, if operative, may otherwise deal with the Company and receive, collect, hold, and retain collections from the Company with the same rights it would have if it were not the Trustee or such agent.

SECTION 8.05. *Moneys to be Held in Trust.* Subject to the provisions of Section 13.04, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on, or to invest, any moneys received by it hereunder except such as it may agree with the Company to pay thereon. So long as no Event of Default with respect to the Debt Securities of any series shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the receipt of a Company Order.

SECTION 8.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and all persons not regularly in its employ and any amounts paid by the Trustee to any Authenticating Agent pursuant to Section 8.14) except any such expense, disbursement or advance as may arise from its gross negligence or bad faith. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any loss, damage, claims, liability or expense incurred without gross negligence or bad faith on the part of the Trustee and arising out of or in connection with this Indenture, including the acceptance or administration of this trust, or the performance of its duties hereunder, including the current payment of all costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section 8.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Debt Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Debt Securities. In addition to, but without prejudice to its other rights under this indenture or available to the Trustee under applicable law, when the Trustee incurs

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expenses or renders services in connection with an Event of Default specified in Section 7.01(g) or Section 7.01(h), 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.

“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.

The provisions of this Section shall survive the termination of this Indenture, the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

SECTION 8.07. *Officers' Certificate as Evidence.* Subject to the provisions of Section 8.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate conforming to the requirements of this Indenture delivered to the Trustee, and such Certificate, in the absence of gross negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

SECTION 8.08. *Conflicting Interest of Trustee.* If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust Indenture Act of 1939, the Trustee shall either eliminate such conflicting interest or resign in the manner provided by, and subject to the provisions of, the Trust Indenture Act of 1939 and this Indenture.

SECTION 8.09. *Eligibility of Trustee.* There shall at all times be a Trustee with respect to each series of Debt Securities hereunder which shall be a Person organized and doing business under the laws of the United States or any state or territory thereof or of the District of Columbia authorized under such laws to exercise trust powers, having a combined capital and surplus of at least \$50,000,000, subject to supervision or examination by Federal, state, territorial, or District of Columbia authority and willing to act as Trustee hereunder. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.09, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee with respect to any series of Debt Securities shall cease to be eligible in accordance with the provisions of this Section 8.09, such Trustee shall resign immediately in the manner and with the effect specified in Section 8.10.

SECTION 8.10. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign with respect to any series of Debt Securities by giving written notice by first class mail of such resignation to the Company and to the Holders of such series of Debt Securities at their addresses as they shall appear on the Debt Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of

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which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee with respect to such series shall have

been so appointed and have accepted appointment within 45 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder of such series of Debt Securities who has been a bona fide Holder of a Debt Security or Debt Securities of such series for at least six months may, subject to the provisions of Section 7.09, on behalf of such Holder and all others similarly situated, petition any such court for the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint such successor trustee.

(b) In case at any time any of the following shall occur—

(1) the Trustee shall fail to comply with the provisions of Section 8.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Debt Security or Debt Securities of such series for at least six months, unless the Trustee's duty to resign is stayed in accordance with the provisions of Section 310(b) of the Trust Indenture Act of 1939,

(2) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 and shall fail to resign after written request therefor by the Company or by any such Holder of a Debt Security of such series, or

(3) the Trustee shall become incapable of acting with respect to any series of Debt Securities, 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, the Company may remove the Trustee with respect to such series and appoint a successor trustee for such series by Company Order, one copy of which Company Order shall be delivered to the Trustee so removed and one copy to the successor trustee, or, subject to the provisions of Section 7.09, any Holder who has been a bona fide Holder of a Debt Security or Debt Securities of such series for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove such Trustee and appoint such successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of any series may at any time remove the Trustee with respect to such series by delivering to the Trustee so removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 9.01 of the action in that regard taken by the Holders, and nominate a successor Trustee which shall be deemed appointed as successor Trustee unless within ten days after such nomination the Company objects thereto, in which case the Trustee so removed or any Holder of a Debt Security or Debt Securities of such series, upon the terms and conditions and otherwise as in

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subsection (a) of this Section 8.10 provided, may petition any court of competent jurisdiction for an appointment of a successor Trustee with respect to such series.

(d) Any resignation or removal of the Trustee with respect to all or any series of Debt Securities and any appointment of a successor Trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 8.11.

SECTION 8.11. *Acceptance by Successor Trustee.* Any successor Trustee appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective with respect to all or any series as to which it is resigning as Trustee, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder with respect to all or any such series, with like effect as if originally named as Trustee herein with respect to all or any such series; nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor Trustee all the rights and powers of the Trustee with respect to all or any such series so ceasing to act. Upon request of any such successor Trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee with respect to all or any series as to which it is ceasing to act as Trustee, to secure any amounts, including indemnities, then due it pursuant to the provisions of Section 8.06.

No successor Trustee shall accept appointment as provided in this Section 8.11 unless at the time of such acceptance such successor Trustee shall be qualified under the provisions of Section 8.08 and eligible under the provisions of Section 8.09.

Upon acceptance of appointment by a successor Trustee with respect to all or any series of Debt Securities as provided in this Section 8.11, the Company shall mail notice of the succession of such Trustee hereunder to the Holders of Debt Securities of such series at their addresses as they shall appear on the Debt Security Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

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 any applicable series shall execute and deliver an indenture supplemental hereto which shall contain such provisions as shall be deemed necessary or desirable to confirm that all the rights, powers, trusts and duties of the retiring Trustee with respect to the Debt Securities of any series as to which the retiring Trustee is not retiring shall continue to be vested in the retiring Trustee, and shall add to or change any of the provisions of this Indenture as shall be necessary to provide for or facilitate the administration of the trusts hereunder by more than one Trustee, it being understood that nothing herein or in such

supplemental indenture shall constitute such Trustees co-trustees of the same trust and that each such Trustee shall be Trustee of a trust or trusts hereunder separate and apart from any trust or trusts hereunder administered by any other such Trustee.

SECTION 8.12. *Succession by Merger, etc.* Subject to Sections 8.08 and 8.09, any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

In case at the time any successor to the Trustee by merger, conversion or consolidation shall succeed to the trusts created by this Indenture any of the Debt Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any such successor to the Trustee may authenticate such Debt Securities either in the name of the predecessor Trustee or such successor Trustee; and in all such cases such certificate shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 8.13. *Limitation on Rights of Trustee as a Creditor.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Debt Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act of 1939 regarding the collection of claims against the Company (or any such other obligor).

SECTION 8.14. *Authenticating Agents.* There may be an Authenticating Agent or Authenticating Agents appointed by the Trustee from time to time with power to act on its behalf and subject to its direction in the authentication and delivery of any series of Debt Securities issued upon original issuance, exchange, transfer or redemption thereof as fully to all intents and purposes as though such Authenticating Agent (or Authenticating Agents) had been expressly authorized to authenticate and deliver such Debt Securities, and Debt Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as though authenticated by the Trustee hereunder. For all purposes of this Indenture, the authentication and delivery of Debt Securities by any Authenticating Agent pursuant to this Section 8.14 shall be deemed to be the authentication and delivery of such Debt Securities "by the Trustee", and whenever this Indenture provides that "the Trustee shall authenticate and deliver" Debt Securities or that Debt Securities "shall have been authenticated and delivered by the Trustee", such authentication and delivery by any Authenticating Agent shall be deemed to be authentication and delivery by the Trustee. Any such Authenticating Agent shall at all times be a Person organized and doing business under the laws of the United States of America or of any state or territory thereof or the District of Columbia, with a combined capital and surplus of at least \$50,000,000 and authorized under such laws to act as an authenticating agent, duly registered to act as such, if and to the extent required by applicable law and subject to supervision or examination by Federal or state authority. If such Person publishes reports of its condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this Section 8.14 the combined capital and surplus of such Person shall be deemed to

be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 8.14, or to be duly registered if and to the extent required by applicable law and regulations, it shall resign immediately in the manner and with the effect herein specified in this Section 8.14.

Whenever reference is made in this Indenture to the authentication and delivery of Debt Securities of any series 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 its Authenticating Agent appointed with respect to the Debt Securities of such series and a certificate of authentication executed on behalf of the Trustee by its Authenticating Agent appointed with respect to the Debt Securities of such series.

Any Person into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any Person succeeding to the authenticating agency business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor Person is otherwise eligible under this Section 8.14, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent or such successor Person.

In case at the time such successor to any such agency shall succeed to such agency any of the Debt Securities shall have been authenticated but not delivered, any such successor to such Authenticating Agent may adopt the certificate of authentication of any predecessor Authenticating Agent and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any successor to any Authenticating Agent may authenticate such Debt Securities either in the name of any predecessor hereunder or in the name of the successor Authenticating Agent; and in all cases such certificate shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of the predecessor Authenticating Agent shall have such force; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Authenticating Agent or to authenticate Debt Securities in the name of any predecessor Authenticating Agent shall apply only to its successor or successors by merger, conversion or consolidation.

Any Authenticating Agent may at any time resign as Authenticating Agent with respect to any series of Debt Securities by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent with respect to any series of

Debt Securities by giving written notice of termination 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 under this Section 8.14, the Trustee may, and shall, upon request of the Company, promptly use its best efforts to appoint a successor Authenticating Agent.

Upon the appointment, at any time after the original issuance of any of the Debt Securities, of any successor, additional or new Authenticating Agent, the Trustee shall give written notice of such appointment to the Company and shall at the expense of the Company

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mail notice of such appointment to all Holders of Debt Securities of such series as the names and addresses of such Holders appear on the Debt Security Register.

Any successor Authenticating Agent with respect to any series of Debt Securities upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as though originally named as an Authenticating Agent herein with respect to such series. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 8.14 and duly registered if and to the extent required under applicable law and regulations.

Any Authenticating Agent by the acceptance of its appointment with respect to any series of Debt Securities shall be deemed to have agreed with the Trustee that: (a) it will perform and carry out the duties of an Authenticating Agent as herein set forth with respect to such series, including the duties to authenticate and deliver Debt Securities when presented to it in connection with exchanges, registrations of transfer or redemptions thereof; (b) it will keep and maintain, and furnish to the Trustee from time to time as requested by the Trustee appropriate records of all transactions carried out by it as Authenticating Agent and will furnish the Trustee such other information and reports as the Trustee may reasonably require; (c) it is eligible for appointment as Authenticating Agent under this Section 8.14 and will notify the Trustee promptly if it shall cease to be so qualified; and (d) it will indemnify the Trustee against any loss, liability or expense incurred by the Trustee and will defend any claim asserted against the Trustee by reason of any acts or failures to act of the Authenticating Agent with respect to such series but it shall have no liability for any action taken by it at the specific written direction of the Trustee.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation and expenses for its services, and the Trustee shall have no liability for such payments.

The provisions of Sections 8.02(a), (b), (c), (e) and (f), 8.03, 8.04, 8.06 (insofar as it pertains to indemnification), 3.09, 9.01 and 9.02 shall bind and inure to the benefit of each Authenticating Agent to the same extent that they bind and inure to the benefit of the Trustee.

If an appointment with respect to one or more series is made pursuant to this Section 8.14, the Debt Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Debt Securities of the series designated therein issued under the within-mentioned Indenture.

[•],
As Trustee

By: _____,
as Authenticating Agent

By: _____
Authorized Officer

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SECTION 8.15. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 9. CONCERNING THE HOLDERS.

SECTION 9.01. *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Debt Securities of any series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the Holders of such specified percentage of such series have

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

SECTION 9.02. *Proof of Execution by Holders.* Subject to the provisions of Sections 8.01, 8.02 and 10.05, proof of the execution of any instrument by a Holder or such Holder's agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The ownership of Debt Securities shall be provided by the Debt Security Register or by a certificate of the Debt Security Registrar with respect to a series of Debt Securities.

The record of any Holders' meeting shall be proved in the manner provided in Section 10.06.

SECTION 9.03. *Company-Owned Debt Securities Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Debt Securities of any series have given any request, demand, authorization, direction, notice, consent, or waiver under this Indenture, Debt Securities of such series which are owned by the Company or any other obligor

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upon such Debt Securities or any Affiliate of the Company or such other obligor (except in the case in which the Company or such other obligor or Affiliate owns all Debt Securities Outstanding under the Indenture, or all Outstanding Debt Securities of each such series, as the case may be, without regard to this proviso) shall be disregarded and deemed not to be Outstanding for the purpose of any such determinations; *provided, however*, that for the purposes of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent, or waiver only such Debt Securities which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Debt Securities so owned which have been pledged in good faith may be regarded as Outstanding notwithstanding this Section 9.03 if the pledgee shall establish to the satisfaction of the Trustee the right of the pledgee to act with respect to such Debt Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Debt Securities of a series, if any, known by the Company to be owned or held by or for the account of the Company or any other obligor on such Debt Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on such Debt Securities; and, subject to the provisions of Section 8.01, the Trustee shall be entitled to accept such Officers' Certificates as conclusive evidence of the facts therein set forth and of the fact that all such Debt Securities not listed therein are Outstanding for the purpose of any such determination.

SECTION 9.04. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Debt Securities of any series specified in this Indenture in connection with such action, any Holder of a Debt Security which is shown by the evidence to be included in the Debt Securities the Holders of which have consented to or are bound by consents to such action, may, by filing written notice with the Trustee at the Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Debt Security. Except as aforesaid any such action taken by the Holder of any Debt Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Debt Security and of any Debt Security issued on registration of transfer thereof or in exchange or substitution therefor, irrespective of whether or not any notation in regard thereto is made upon any such Debt Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Debt Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the Holders of all of the Debt Securities affected by such action.

ARTICLE 10. HOLDERS' MEETINGS.

SECTION 10.01. *Purposes of Meetings.* A meeting of Holders of the Debt Securities of all or any series may be called at any time and from time to time pursuant to the provisions of this Article Ten for any of the following purposes:

(a) to give any notice to the Company or to the Trustee with respect to such series, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its

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consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article Seven;

(b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article Eight;

(c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02; or

(d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Debt Securities of all or any series, as the case may be, under any other provision of this Indenture or under applicable law.

SECTION 10.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders of Debt Securities of all or any series to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders of Debt Securities of all or any series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by the Trustee to Holders of Debt Securities of each series that may be affected by the action proposed to be taken at such meeting at their addresses as they shall appear on the Debt Security Register. Such notice shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

SECTION 10.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a resolution by the Board of Directors, or the Holders of at least 10% in aggregate principal amount of the Debt Securities then Outstanding of each series that may be affected by the action proposed to be taken shall have requested the Trustee to call a meeting of such Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

SECTION 10.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders of Debt Securities a person shall (a) be a Holder of one or more Debt Securities of a series affected by the action proposed to be taken or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more such Debt Securities. The rights of Holders of Debt Securities to have their votes counted shall be subject to the provision in the definition of "Outstanding" in Section 1.01. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Debt Securities 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 10.05. *Regulations.* 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 Debt Securities and of the appointment of proxies, and in regard to the appointment and duties of inspectors of votes,

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the submission and examination of proxies, certificates and other evidence of the right to vote, and such other matters concerning the conduct of the meeting as it shall think fit. Except as otherwise permitted or required by any such regulation, the holding of Debt Securities shall be proved in the manner specified in Section 9.02 and the appointment of any proxy shall be proved in the manner specified in said Section 9.02 or by having the signature of the Person executing the proxy witnessed or guaranteed by any bank, broker or trust company.

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 of Debt Securities as provided in Section 10.03, in which case the Company or the Holders of Debt Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Debt Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 9.03, at any meeting each Holder of a Debt Security of a series entitled to vote at such meeting or proxy shall be entitled to one vote for each \$1,000 principal amount of Debt Securities of such series held or represented by such Holder; *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 Debt Securities of such series or proxy therefor. Any meeting of Holders of Debt Securities duly called pursuant to the provisions of Section 10.02 or 10.03 may be adjourned from time to time and the meeting may be held as so adjourned without further notice.

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

SECTION 10.06. *Voting.* The vote upon any resolution submitted to any meeting of Holders of Debt Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Debt Securities entitled to vote at such meeting or of their representatives by proxy, and the letter or letters, serial number or numbers or other distinguishing marks of the Debt Securities held or represented by each such Holder. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders of Debt Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall

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be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

SECTION 10.07. *No Delay of Rights by Meeting.* Nothing in this Article Ten contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders of Debt Securities of any or all series or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders of Debt Securities under any of the provisions of this Indenture or of the Debt Securities.

**ARTICLE 11.
SUPPLEMENTAL INDENTURES.**

SECTION 11.01. *Supplemental Indentures without Consent of Holders.* The Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act of 1939 as in force at the date of the execution thereof) for one or more of the following purposes:

- (a) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Articles Five and Twelve hereof;
- (b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders of Debt Securities of any or all series, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default with respect to such series permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided, however,* that in respect of any such additional covenant, restriction or condition, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;
- (c) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture or to make any changes hereto that are required by law;
- (d) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee;

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- (e) to make such other provisions in regard to matters or questions arising under this Indenture as shall not adversely affect the interests of the Holders of the Debt Securities and to make any change that would provide additional rights or benefits to the Holders of Debt Securities of any or all series or that does not adversely affect the legal rights under this Indenture of any such Holder of Debt Securities;
- (f) to evidence and provide for the acceptance of appointment by another Person as a successor Trustee hereunder with respect to one or more series of Debt Securities 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 Section 8.11;
- (g) to modify, amend or supplement this Indenture in such a manner as to permit the qualification of any indenture supplemental hereto under the Trust Indenture Act of 1939 as then in effect, except that nothing herein contained shall permit or authorize the inclusion in any indenture supplemental hereto of the provisions referred to in Section 316(a)(2) of the Trust Indenture Act of 1939;
- (h) to provide for the issuance under this Indenture of Debt Securities in coupon form (including Debt Securities registrable as to principal only) and to provide for exchangeability of such Debt Securities with Debt Securities of the same series issued hereunder in fully registered form and to make all appropriate changes for such purpose;
- (i) to change or eliminate any of the provisions of this Indenture, *provided, however,* that any such change or elimination shall become effective only when there is no Debt Security Outstanding of any series created prior to the execution of such supplemental indenture which is entitled to the benefit of such provision; or
- (j) to establish the form of the Debt Securities of a series and to provide for the issuance of Debt Securities of a series, as permitted by Section 3.01, and to set forth the terms thereof.

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

Any supplemental indenture authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Debt Securities at the time Outstanding, notwithstanding any of the provisions of Section 11.02.

SECTION 11.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Section 9.01) of the Holders of greater than 50% in aggregate principal amount of the Outstanding Debt Securities of each series affected by such supplemental indenture (each such series voting as a single and separate 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 from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Debt Securities of each series under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holders of all of the Outstanding Debt Securities of each series affected, (a) change the Stated Maturity of the principal of, or any premium or installment of interest on, any Debt Security of such series or make the principal thereof or interest or premium thereon payable in any coin or currency other than that provided in the Debt Securities of such series; (b) reduce the principal amount of, or the rate, or modify the calculation of such rate, of interest on, or any premium payable upon the redemption of, any Debt Security of such series; (c) reduce the amount of the principal of any Original Issue Discount Debt Security that would be due and payable upon a declaration of acceleration of the maturity thereof or the amount thereof provable in bankruptcy; (d) change the redemption provisions of any Debt Security in a manner adverse to the rights of the Holders thereof or adversely affect the right of repayment at the option of any Holder of any Debt Security of such series; (e) change the coin or currency in which the principal of, any premium or interest on any Debt Security of such series is payable; (f) impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity of any Debt Security of such series or, in the case of redemption, on or after the Redemption Date or, in the case of repayment at the option of any Holder, on or after the repayment date; (g) make any change that adversely affects the right to convert or exchange any Debt Security into or for shares of common stock or preferred stock or other securities, cash or property in accordance with its terms, (h) amend Sections 5.02, 5.03 and 5.04 in any manner that is materially adverse to the rights of Holders of any series of Debt Securities or (i) reduce the percentage of Debt Securities of such series, the Holders of which are required to: (i) consent to any supplemental indenture, (ii) rescind and annul a declaration that the Debt Securities of such series are due and payable as a result of the occurrence of an Event of Default, (iii) waive any past Event of Default and its consequences, or (iv) waive compliance with the provisions of this Indenture or with any additional covenant, agreement or condition contained in a Board Resolution or Officers' Certificate establishing such series of Debt Securities, any indenture supplemental hereto applicable to such series or any Debt Security of such series.

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

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Debt Securities, or which modifies the rights of the Holders of Debt Securities of such series 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.

It shall not be necessary for the consent of the Holders of Debt Securities under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 11.03. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article Eleven, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Debt Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 11.04. *Notation on Debt Securities.* Debt Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article Eleven may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Debt Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company, authenticated by the Trustee and delivered in exchange for the Outstanding Debt Securities of such series.

SECTION 11.05. *Evidence of Compliance of Supplemental Indenture to be Furnished Trustee.* The Trustee, subject to the provisions of Sections 8.01 and 8.02, shall receive, and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article Eleven and is authorized and permitted by this Indenture.

ARTICLE 12. CONSOLIDATION, MERGER, SALE AND CONVEYANCE.

SECTION 12.01. *Company May Consolidate, etc., on Certain Terms.* Nothing contained in this Indenture or in any of the Debt Securities shall prevent any consolidation or merger of the Company with or into any other Person (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all of the property of the Company to any other Person (whether or not affiliated with the Company) authorized to acquire and operate the same; provided, however, and the Company hereby covenants and agrees, that any such consolidation, merger, sale, conveyance or lease shall be upon the condition that (a) immediately after such consolidation, merger, sale, conveyance or lease the Person (whether the Company or such other Person) formed by or surviving any such consolidation or merger, or to which such sale, conveyance or lease shall have been made, shall not be in default in the performance or

observance of any of the terms, covenants and conditions of this Indenture to be kept or performed by the Company; (b) the Person (if other than the Company) formed by or surviving any such consolidation or merger or to which such sale, conveyance or lease shall have been made, shall be a Person organized under

the laws of the United States of America or any state thereof; and (c) the due and punctual payment of the principal of and premium, if any, and interest on all of the Debt Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company, shall be expressly assumed, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee by the Person (if other than the Company) formed by such consolidation, or into which the Company shall have been merged, or by the Person which shall have acquired or leased such property.

SECTION 12.02. *Successor Entity to be Substituted.* In case of any such consolidation, merger, sale, conveyance or lease and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Debt Securities and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and (except in the event of a conveyance by way of lease) the predecessor Person shall be relieved of any further obligation under this Indenture and the Debt Securities.

In case of any such consolidation, merger, sale, conveyance or lease such changes in phraseology and form (but not in substance) may be made in the Debt Securities thereafter to be issued as may be appropriate.

SECTION 12.03. *Opinion of Counsel to Be Given Trustee.* The Trustee, subject to Sections 8.01 and 8.02, shall receive an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale conveyance or lease and any such assumption complies with the provisions of this Article Twelve and that all conditions precedent herein provided relating to such transactions have been complied with.

ARTICLE 13. SATISFACTION, DISCHARGE AND DEFEASANCE OF INDENTURE.

SECTION 13.01. *Satisfaction, Discharge and Legal Defeasance of Debt Securities of any Series.* The Company shall be deemed to have paid and discharged the entire indebtedness on all the Debt Securities of a series, the provisions of this Indenture (except as to (x) the rights of Holders of Debt Securities of such series to receive, from the money, in the currency required, and Government Obligations deposited with the Trustee pursuant to Section 13.02(a) or the interest and principal received by the Trustee in respect of such Government Obligations, payment of the principal of (and premium, if any) and any installment of principal of (and premium, if any) or interest on such Debt Securities on the Stated Maturities thereof or upon the Redemption Dates for Debt Securities required to be redeemed pursuant to any mandatory sinking fund or analogous provisions relating to Debt Securities of that series or pursuant to any call for redemption relating to Debt Securities of that series, (y) the Company's rights and obligations with respect to such Debt Securities under Sections 3.06, 3.07, 13.03 and 13.04, 5.01, 5.02, 5.03, 5.04, 8.06, 8.10 and 8.11, and (z) the rights, powers, trusts, duties and immunities of the Trustee with respect to the Debt Securities of such series) as it relates to such

Debt Securities shall no longer be in effect, and the Trustee, at the expense of the Company, shall, upon Company Request, execute proper instruments acknowledging the same if:

- (a) (1) all Debt Securities of such series therefore authenticated and delivered (other than (A) Debt Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.07 and (B) Debt Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Sections 13.03 and 13.04) have been delivered to the Trustee for cancellation;
 - (2) the Company has paid or caused to be paid in the currency required all other sums payable under this Indenture in respect of the Debt Securities of such series, including all amounts owing to the Trustee under Section 8.06; and
 - (3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction of the entire indebtedness of all Debt Securities of any such series and the discharge of the Indenture as it relates to such Debt Securities have been complied with; or
- (b) (1) all such Debt Securities of such series not theretofore delivered to the Trustee for cancellation (A) have become due and payable, or (B) will become due and payable at their Stated Maturity within one year, or (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense of the Company;
 - (2) the condition described in paragraph (a) of Section 13.02 has been satisfied; and
 - (3) the conditions described in paragraphs (a)(2) and (a)(3) of this Section 13.01 have been satisfied; or

(c) (1) the conditions referred to in Section 13.02 and paragraph (a)(2) of this Section 13.01 have been satisfied; and

(2) the Company has delivered to the Trustee an opinion of a nationally-recognized independent tax counsel confirming that the Company shall have received from, or there shall have been published by, the United States Internal Revenue Service a ruling or since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case, to the effect that, and based thereon such opinion of counsel will confirm that, Holders of the Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and the defeasance contemplated by this paragraph (c) of this Section 13.01 and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred.

SECTION 13.02. *Covenant Defeasance of Debt Securities of any Series*. The provisions of this Indenture (except as to (x) the rights of Holders of Debt Securities of any series to receive, from the money, in the currency required, and Government Obligations deposited with the Trustee pursuant to paragraph (a) below or the interest and principal received

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by the Trustee in respect of such Government Obligations, payment of the principal of (and premium, if any) and any installment of principal of (and premium, if any) or interest on such Debt Securities on the Stated Maturities thereof or upon the Redemption Dates for Debt Securities required to be redeemed pursuant to any mandatory sinking or analogous provisions relating to Debt Securities of that series or pursuant to any call for redemption relating to Debt Securities of that series, (y) the Company's rights and obligations with respect to such Debt Securities under Sections 3.06, 3.07, 13.03, 13.04, Article Seven (other than subsection (d) of Section 7.01, to the extent relating to the covenants defeased hereby), Sections 5.01, 5.02, 5.03, 5.04, 6.01, 8.06, 8.10 and 8.11 and (z) the rights, powers, trusts, duties and immunities of the Trustee with respect to the Debt Securities of such series) as it relates to Debt Securities of any series shall no longer be in effect, and the Trustee, at the expense of the Company shall, upon Company Request, execute proper instruments acknowledging the same if:

(a) the Company has irrevocably (subject to Section 13.04) deposited or caused to be deposited with the Trustee as trust funds in trust and specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Debt Securities of such series (1) Dollars or Foreign Currency, as applicable, in an amount, or (2) Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide on or before the due date of any payment in respect of such series of Debt Securities funds in an amount, or (3) a combination thereof, sufficient, after payment of all Federal, state and local taxes in respect thereof payable by the Trustee, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, which opinion need only be provided if Government Obligations shall have been deposited, to pay and discharge the principal of (and premium, if any) and each installment of principal (and premium, if any) and interest on the Outstanding Debt Securities of that series to the Stated Maturity of such principal or installment of principal or interest or to the Redemption Dates for Debt Securities required to be redeemed pursuant to any mandatory sinking fund or analogous provisions relating to Debt Securities of that series or pursuant to any call for redemption relating to Debt Securities of that series on each day on which such payments are due and payable in accordance with the terms of the Indenture and such Debt Securities;

(b) no Event of Default or event which with notice or lapse of time would become an Event of Default shall have occurred and be continuing on the date of the deposit referred to in paragraph (a) of this Section 13.02 or, insofar as an Event of Default described in paragraph (g) or (h) of Section 7.01 are concerned, at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration date of the longest preference period applicable to the Company in respect of the deposit (and this condition will not be deemed satisfied until the expiration of such period; *provided, however*, that should this condition fail to be satisfied on or before such ninety-first day, the Trustee shall promptly, upon satisfactory receipt of evidence of such failure, return such deposit to the Company);

(c) the interest of the Holders in such deposit shall have been duly perfected under the applicable provisions of the Uniform Commercial Code;

(d) such defeasance shall not (A) cause the Trustee to have a conflicting interest as defined in Section 8.08 or for purposes of the Trust Indenture Act of 1939 with respect to any securities of the Company or (B) result in the trust arising from such deposit to constitute, unless

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it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

(e) such defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(f) the Company has delivered to the Trustee an opinion of counsel of a nationally-recognized independent tax counsel confirming that the Holders of the Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and the defeasance contemplated by this Section 13.02 and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(g) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated by this Section have been complied with.

SECTION 13.03. *Application of Trust Funds; Indemnification.* (a) Subject to the provisions of Section 13.04, all money and Government Obligations deposited with the Trustee pursuant to Section 13.01 or 13.02 and all money received by the Trustee in respect of Government Obligations deposited with the Trustee, shall be held in trust and applied by it, in accordance with the provisions of the Debt Securities and this Indenture, to the payment, either directly or through any paying agent (including the Company acting as its own paying agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money and Government Obligations have been deposited with or received by the Trustee as contemplated by Section 13.01 or 13.02.

(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against Government Obligations deposited pursuant to Section 13.01 or 13.02 or the interest and principal received in respect of such obligations, other than any such tax, fee or other charge payable by or on behalf of Holders. The Company shall be entitled to prompt notice of an assessment or the commencement of any proceeding for which indemnification may be sought hereunder and, at its election, to contest such assessment or to participate in, assume the defense of, or settle such proceeding.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any Government Obligations or money held by it as provided in Section 13.01 or 13.02 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, which opinion need only be provided if Government Obligations shall have been deposited, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such obligations or money were deposited or received.

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SECTION 13.04. *Return of Unclaimed Moneys.* Any moneys deposited with or paid to the Trustee or any paying agent for payment of the principal of and premium, if any, or interest on Debt Securities and not applied but remaining unclaimed by the Holders of Debt Securities for two years after the date upon which the principal of and premium, if any, or interest on such Debt Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on Company Request; and the Holder of any of the Debt Securities entitled to receive such payment shall thereafter look only to the Company for any payment thereof and all liability of the Trustee or such paying agent with respect to such moneys shall thereupon cease.

SECTION 13.05. *Reinstatement.* If the Trustee is unable to apply any money or Government Obligations in accordance with Sections 13.01 or 13.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Debt Securities shall be revived and reinstated as though no deposit had occurred pursuant to Sections 13.01 or 13.02 until such time as the Trustee is permitted to apply all such money or Government Obligations in accordance with Sections 13.01 or 13.02; provided that, if the Company has made any payment of principal of or interest on the Debt Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Debt Securities to receive such payment from the money or Government Obligations held by the Trustee.

ARTICLE 14. IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS.

SECTION 14.01. *Indenture and Debt Securities Solely Obligations of the Company.* No recourse under or upon any obligation, covenant or agreement of this Indenture, any supplemental indenture, or of any Debt Security, or for any claim based thereon or otherwise in respect thereof, shall be had against any incorporator, organizer, stockholder, member, owner, officer, director, manager or employee, as such, past, present or future, of the Company or any Subsidiary or of any predecessor or successor Person, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely obligations of the Company, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, organizer, stockholder, member, owner, officer, director, manager or employee, as such, of the Company or of any predecessor or successor Person, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture, or in any of the Debt Securities or implied thereby; and that any and all such personal liability, either at common law or in equity or by constitution or statute of, and any and all such rights and claims against, every such incorporator, organizer, stockholder, member, owner, officer, director, manager or employee, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debt Securities or implied

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thereby, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of such Debt Securities.

ARTICLE 15. MISCELLANEOUS PROVISIONS.

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

SECTION 15.02. *Indenture for Sole Benefit of Parties and Holders of Debt Securities*. Nothing in this Indenture or in the Debt Securities, expressed or implied, shall give or be construed to give to any Person, firm or corporation, other than the parties hereto, any agent of the Trustee or the Company under this Indenture and the Holders of the Debt Securities, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being, subject to the provisions of Articles Twelve and Fourteen, for the sole benefit of the parties hereto, any agent of the Trustee or the Company under this Indenture and the Holders of the Debt Securities.

SECTION 15.03. *Addresses for Notices, etc.* Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Debt Securities on the Company may be given or served by being deposited, registered or certified mail postage prepaid, in a post office letter box in the United States addressed (until another address is filed by the Company with the Trustee) to the Company, Bonanza Creek Energy, Inc., 410 17th Street, Suite 1400, Denver, Colorado 80202, Telex No.: _____, Attention: _____, with a copy to Bonanza Creek Energy, Inc., 410 17th Street, Suite 1400, Denver, Colorado 80202 Telex No.: _____, Attention: General Counsel. Any notice, direction, request or demand by any Holder of a Debt Security or the Company to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the Trustee, addressed to the attention of its Corporate Trust Department. Any notice, report or other instrument required by any of the provisions of this Indenture to be given by the Trustee to the Holders of Debt Securities of any or all series shall be deemed to have been sufficiently given, for all purposes, when mailed by first class mail.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such electronic instructions or directions, subsequent to the transmission thereof, shall provide the originally executed instructions or directions to the Trustee in a timely manner and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions or directions notwithstanding such instructions or directions conflict or are inconsistent with a subsequent written instruction or direction or if the subsequent written instruction or direction is never received. The party providing instructions or directions by

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unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, as aforesaid, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

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

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

SECTION 15.04. *New York Contract; Waiver of Trial by Jury*. This Indenture and the Debt Securities shall for all purposes be construed in accordance with and governed by the laws of the State of New York. EACH OF THE COMPANY, THE TRUSTEE, AND THE HOLDERS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE DEBT SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

SECTION 15.05. *Evidence of Compliance with Conditions Precedent*. Upon any request to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any (including any covenant, compliance with which constitutes a condition precedent) provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by any provision of this Indenture relating to such particular application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition; (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

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statement that, in the opinion of such Person, he or she 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 or not, in the opinion of such Person, such condition or covenant has been complied with.

SECTION 15.06. *Legal Holidays.* In any case where the date of maturity of interest on or principal of or premium, if any, on any series of Debt Securities or the date fixed for redemption or repayment of any Debt Security or Debt Securities will be a legal holiday or a day on which banking institutions are legally authorized or obligated to close in New York, New York or any other location where a paying agent appointed pursuant to Section 5.02 is located, then payment of such interest on or principal of and premium, if any, on such Debt Securities need not be made by such paying agent on such date but may be made by such paying agent on the next succeeding day that is not a day in such location that is either a legal holiday nor a day on which banking institutions are legally authorized or obligated to close, with the same force and effect as if made on such date of maturity or the date fixed for redemption or repayment and no interest shall accrue for the period from and after such prior date.

SECTION 15.07. *Trust Indenture Act of 1939 to Control.* If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 through 317 of the Trust Indenture Act of 1939, by the operation of Section 318(c) thereof, such imposed duties shall control, except as, and to the extent, expressly excluded from this Indenture, as permitted by the Trust Indenture Act of 1939. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act of 1939 that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

SECTION 15.08. *Table of Contents, Headings, etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

SECTION 15.09. *Determination of Principal Amount.* In determining whether the Holders of the requisite principal amount of Outstanding Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, or whether sufficient funds are available for redemption or for any other purpose, (a) the principal amount of an Original Issue 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 7.01, (b) the principal amount of any Debt Securities denominated in a Foreign Currency that shall be deemed to be Outstanding for such purposes shall be determined by converting the Foreign Currency into Dollars at the Market Exchange Rate as of the date of such determination and (c) the principal amount of any Indexed Debt Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal face amount of such Indexed Debt Security at original issuance, unless otherwise provided in or pursuant to this Indenture.

SECTION 15.10. *Execution in Counterparts.* This Indenture may be executed in any number of counterparts, each of which shall be an original and such counterparts shall together

constitute but one and the same instrument. [•] hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

IN WITNESS WHEREOF, BONANZA CREEK ENERGY, INC. has caused this Indenture to be executed by its _____, and [•]
has caused this Indenture to be executed by one of its officers, as of the day and year first written above.

BONANZA CREEK ENERGY, INC.

By _____
Title _____

[•], as Trustee

By _____
Title _____

BONANZA CREEK ENERGY, INC.

to

[•],

Trustee**INDENTURE***Dated as of***Subordinated Debt Securities****TABLE OF CONTENTS***

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CROSS REFERENCE SHEET

Between

Provisions of Sections 310 through 318(a) inclusive of Trust Indenture Act of 1939 and the Indenture dated as of _____, between
Bonanza Creek Energy, Inc. and _____, a national banking association, as trustee.

Section of Act	Section of Indenture
310(a)(1) and (2)	8.09
310(a)(3) and (4)	*
310(b)	8.08 and 8.10
310(c)	*
311(a)	8.13
311(b)	8.13
311(c)	*
312(a)	6.01 and 6.02(a)
312(b)	6.02(b)
312(c)	6.02(c)
313(a)(1), (2), (3), (4), (6) and (7)	6.04(a)
313(a)(5)	*

313(b)(1)	*
313(b)(2)	6.04
313(c)	6.04
313(d)	6.04
314(a)(1)	6.03
314(a)(2)	6.03
314(a)(3)	6.03
314(b)	*
314(c)(1)	5.05
314(c)(2)	15.05
314(c)(3)	*
314(d)	*
314(e)	15.05
314(f)	*
315(a), (c) and (d)	8.01
315(b)	7.08
315(e)	7.09
316(a)(1)	7.07
316(a)(2)	*
316(a) last para.	9.03
316(b)	7.10
317(a)	7.02
317(b)	5.04
318(a)	15.07

* Not Applicable.

This cross reference sheet shall not, for any purpose, be considered part of the Indenture.

THIS INDENTURE, dated as of _____, between Bonanza Creek Energy, Inc., a Delaware corporation (the “Company”), and [•], a national banking association, as trustee (the “Trustee”).

RECITALS OF THE COMPANY

The Company has duly authorized the execution and delivery of this Indenture to provide for the issue from time to time of its unsecured subordinated debentures, notes, bonds or other evidences of indebtedness to be issued in one or more series as in this Indenture provided, up to such principal amount or amounts as may from time to time be authorized in or pursuant to one or more resolutions of the Board of Directors.

All things necessary to make this Indenture a valid agreement of the Company, in accordance with its terms, have been done.

NOW, THEREFORE, THIS INDENTURE WITNESSETH:

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

**ARTICLE 1.
DEFINITIONS**

SECTION 1.01. Definitions. The terms defined in this Section 1.01 (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of this Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01. All other terms used in this Indenture which are defined in the Trust Indenture Act of 1939 or which are by reference therein defined in the Securities Act of 1933, as amended, shall have (except as herein otherwise expressly provided or unless the context otherwise requires) the meanings assigned to such terms in said Trust Indenture Act of 1939 and in said Securities Act as in force at the date of the execution of this Indenture. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles and, except as otherwise herein expressly provided, the term “generally accepted accounting principles” with respect to any computation required or permitted hereunder shall mean such accounting principles as are generally accepted in the United States for domestic companies at the date of such computation. All references to such terms herein shall be both to the singular or the plural, as the context so requires. Unless the context otherwise requires, any reference to an “Article” or a “Section” refers to an Article or Section, as the case may be, of this Indenture. 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. The words “including,” “includes” and “include” shall be deemed to be followed by the words “without limitation.”

Affiliate:

The term “Affiliate”, when used with respect to 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:

The term “Authenticating Agent” means the agent of the Trustee, if any, which at the time shall be appointed and acting pursuant to Section 8.14.

Board of Directors:

The term “Board of Directors” means the Board of Directors of the Company or any authorized committee of such Board designated by the Board of Directors or the by-laws or the articles of incorporation of the Company to act for such Board for purposes of this Indenture.

Board Resolution:

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

Business Day:

The term “Business Day”, when used with respect to any Place of Payment or any other particular location, means each Monday, Tuesday, Wednesday, Thursday and Friday which is not a day on which banking institutions or trust companies in that Place of Payment or other location are authorized or obligated by law, regulation or executive order to close.

Commission:

The term “Commission” means the U.S. Securities and Exchange Commission.

Company:

“Company” means the party named as the “Company” in the first paragraph of this Indenture until a successor replaces it pursuant to the applicable provisions of this Indenture and, thereafter, shall mean such successor. The forgoing sentence shall likewise apply to any subsequent such successor or successors.

Company Request and Company Order:

The terms “Company Request” and “Company Order” mean, respectively, a written request or order signed in the name of the Company by its Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer or a Vice President, and by its Treasurer, Secretary, Assistant Secretary or Assistant Treasurer, and delivered to the Trustee.

Conversion Date:

The term “Conversion Date” has the meaning set forth in Section 3.11.

Corporate Trust Office:

The term “Corporate Trust Office” means the designated office of the Trustee at which, at any particular time, its corporate trust business shall be administered, which office at the date hereof is located at Attention: Corporate Trust Administration unit, or such other address as the Trustee may designate from time to time by notice to the Company, or the principal corporate trust office of any successor Trustee (or such other address as such successor Trustee may designate from time to time by notice to the Company).

Currency Determination Agent:

The term “Currency Determination Agent” means the financial institution, if any, from time to time selected by the Company for purposes of Section 3.11.

Debt Security or Debt Securities:

The terms “Debt Security” or “Debt Securities” means any notes, debentures or other indebtedness of any series, as the case may be, issued by the Company from time to time, and authenticated and delivered under this Indenture.

Debt Security Register:

The term “Debt Security Register” has the meaning set forth in Section 3.06.

Debt Security Registrar:

The term “Debt Security Registrar” has the meaning set forth in Section 3.06.

Depository:

The term “Depository” means, unless otherwise specified by the Company pursuant to Section 3.01, with respect to Debt Securities of any series issuable or issued as a Global Debt Security, The Depository Trust Company, New York, New York, or any successor thereto registered as a clearing agency pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation.

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Dollar:

The term “Dollar” means the coin or currency of the United States of America which as of the time of payment is legal tender for the payment of public and private debts.

Dollar Equivalent of the Foreign Currency:

The term “Dollar Equivalent of the Foreign Currency” shall have the meaning set forth in Section 3.11.

Event of Default:

The term “Event of Default” has the meaning specified in Section 7.01.

Foreign Currency:

The term “Foreign Currency” means a currency issued by the government of any country other than the United States of America.

Global Debt Security:

The term “Global Debt Security” means a Debt Security issued in global form pursuant to Section 2.04 hereof to evidence all or part of a series of Debt Securities.

Government Obligations:

The term “Government Obligations” means securities which are (i) direct obligations of the government which issued the currency in which the Debt Securities of a series are denominated or (ii) obligations of a person controlled or supervised by and acting as an agency or instrumentality of the government which issued the currency in which the Debt Securities of such series are denominated, the payment of which obligations is unconditionally guaranteed by such government, and which, in either case, are full faith and credit obligations of such government, are denominated in the currency in which the Debt Securities of such series are denominated and which are not callable or redeemable at the option of the issuer thereof.

Holder:

The term “Holder” means any Person in whose name a Debt Security of any series is registered in the Debt Security Register applicable to Debt Securities of such series.

Indenture:

The term “Indenture” means this instrument as originally executed and delivered or, if amended or supplemented as herein provided pursuant to the applicable provisions hereof, as so amended or supplemented.

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Indexed Debt Security:

The term “Indexed Debt Security” means a Debt Security the terms of which provide that the principal amount thereof payable at Stated Maturity may be more or less than the principal face amount thereof at original issuance.

Interest:

The term “interest”, when used with respect to an Original Issue Discount Debt Security which by its terms bears interest only after maturity, means interest payable after maturity.

Interest Payment Date:

The term “Interest Payment Date”, when used with respect to any series of Debt Securities, means the Stated Maturity of an installment of interest on such Debt Securities.

Market Exchange Rate:

The term “Market Exchange Rate” shall have the meaning set forth in Section 3.11.

Officers’ Certificate:

The term “Officers’ Certificate”, when used with respect to the Company, means a certificate signed by its Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer or a Vice President and by its Treasurer, Secretary, Assistant Secretary or Assistant Treasurer and delivered to the Trustee. Each such certificate shall include the statements provided for in Section 15.05 to the extent required by the provisions of such Section.

Opinion of Counsel:

The term “Opinion of Counsel” means an opinion in writing signed by legal counsel who may be an employee of or counsel to the Company and who shall be reasonably acceptable to the Trustee. Each such opinion shall include the statements provided for in Sections 2.02, 3.04, 11.05, 12.03, 13.01, 13.02 and 15.05 to the extent required by the provisions of such Sections.

Original Issue Discount Debt Security:

The term “Original Issue 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 7.01.

Outstanding:

The term “Outstanding”, when used with respect to Debt Securities or Debt Securities of any series, means, as of the date of determination, all such Debt Securities theretofore authenticated and delivered under this Indenture, except:

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(i) such Debt Securities theretofore cancelled by the Trustee or delivered to the Trustee for cancellation;

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

(iii) such Debt Securities that have been paid pursuant to Section 3.07 or such Debt Securities in exchange for or in lieu of which other such Debt Securities have been authenticated and delivered pursuant to this Indenture, unless proof satisfactory to the Trustee is presented that any such Debt Securities are held by Persons in whose hands any of such Debt Securities are a legal, valid and binding obligation of the Company, and

(iv) such Debt Securities the indebtedness in respect to which has been discharged in accordance with Section 13.01.

provided, however, that in determining whether the Holders of the requisite principal amount of such Outstanding Debt Securities have given any request, demand, authorization, direction, notice, consent or waiver hereunder, such Debt Securities owned by the Company or any other obligor upon such Debt Securities or any Affiliate of the Company or such other obligor (except in the case in which the Company or such other obligor or Affiliate owns all Debt Securities Outstanding under the Indenture, or all Outstanding Debt Securities of each such series, as the case may be, without regard to this proviso) shall be disregarded and deemed not to be Outstanding in the manner set forth in Section 9.03.

Person:

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

Place of Payment:

The term “Place of Payment”, when used with respect to the Debt Securities of any series, means the place or places where the principal of (premium, if any) and interest on the Debt Securities of that series are payable as specified in accordance with Section 3.01.

Predecessor Debt Security:

The term “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 3.07 in lieu of a mutilated, lost, destroyed or stolen Debt Security

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shall be deemed to evidence the same debt as the mutilated, lost, destroyed or stolen Debt Security.

Redemption Date:

The term “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:

The term “Redemption Price”, when used with respect to any Debt Security to be redeemed, means the price specified in such Debt Security at which it is to be redeemed pursuant to this Indenture.

Regular Record Date:

The term “Regular Record Date” for the interest payable on any Debt Security on any Interest Payment Date means the date specified in such Debt Security as the “Regular Record Date” as contemplated by Section 3.01.

Responsible Officer:

The term “Responsible Officer”, when used with respect to the Trustee, means any officer of the Trustee assigned to the Corporate Trust Administration unit (or any successor division or unit) of the Trustee located at the Corporate Trust Office of the Trustee, who shall have direct responsibility for the administration of this Indenture and, for the purposes of Section 7.07, Section 7.08 and Section 8.01(c)(2), shall also include any other officer of the Trustee to whom any corporate trust matter is referred because of such officer’s knowledge of and familiarity with the particular subject.

The term “Responsible Officer”, when used with respect to the Company, means the Chairman of the Board, Vice Chairman of the Board, Chief Executive Officer, President, Chief Operating Officer, Chief Financial Officer, Treasurer or Secretary, or any Vice President, Assistant Secretary or Assistant Treasurer, in each case, of the Company.

Senior Indebtedness:

The term “Senior Indebtedness” means (i) the principal of and premium, if any, and unpaid interest on indebtedness for money borrowed, (ii) purchase money and similar obligations, (iii) obligations under capital leases, (iv) guarantees, assumptions or purchase commitments relating to, or other transactions as a result of which the Company is responsible for the payment of, such indebtedness of others, (v) renewals, extensions and refunding of any such indebtedness, (vi) interest or obligations in respect of any such indebtedness accruing after the commencement of any insolvency or bankruptcy proceedings; and (vii) obligations associated with derivative products such as interest rate and currency exchange contracts, foreign exchange contracts, commodity contracts, and similar arrangements, unless, in each case, the instrument by which the Company incurred, assumed or guaranteed the indebtedness or

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obligations described in clauses (i) through (vii) hereof expressly provides that such indebtedness or obligation is not senior in right of payment to the Debt Securities.

Special Record Date:

The term “Special Record Date” for the payment of any Defaulted Interest (as defined in Section 3.08) means a date fixed by the Trustee pursuant to Section 3.08.

Stated Maturity:

The term “Stated Maturity” when used with respect to any Debt Security or any installment of principal thereof or of interest thereon, means the date specified in such Debt Security as the fixed date on which the principal of such Debt Security, or such installment of interest, is due and payable.

Subsidiary:

The term "Subsidiary" means any Person of which the Company, or the Company and one or more Subsidiaries, or any one or more Subsidiaries, directly or indirectly own more than 50% of the Voting Stock.

Trustee:

"Trustee" means the party named as the "Trustee" in the first paragraph of this Indenture until a successor replaces it 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 the Debt Securities of that series.

Trust Indenture Act of 1939:

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

Voting Stock:

The term "Voting Stock" means outstanding shares of capital stock or similar equity interests having under ordinary circumstances voting power for the election of directors, managers or the substantial equivalent thereof whether at all times or only so long as no senior class of stock or similar equity interest has such voting power by reason of the happening of any contingency.

**ARTICLE 2.
DEBT SECURITY FORMS.**

SECTION 2.01. *Forms Generally.* The Debt Securities of each series and the certificates of authentication thereon shall have such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Indenture (the provisions of which shall be appropriate to reflect the terms of each series of Debt Securities, including the currency or denomination, which may be Dollars or Foreign Currency), 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 signing of such Debt Securities. Any portion of the text of any Debt Security may be set forth on the reverse thereof, with an appropriate reference thereto on the face of the Debt Security.

SECTION 2.02. *Forms of Debt Securities.* The Debt Securities of each series shall be in such form or forms (including global form) as shall be established by or pursuant to a Board Resolution or in one or more indentures supplemental hereto.

Prior to the delivery of a Debt Security of any series in any such form to the Trustee for the Debt Securities of such series for authentication, the Company shall deliver to the Trustee the following:

- (a) The Board Resolution or indenture supplemental hereto by or pursuant to which such form of Debt Security has been approved;
- (b) An Officers' Certificate dated the date such Certificate is delivered to the Trustee stating that all conditions precedent provided for in this Indenture relating to the authentication and delivery of Debt Securities in such form have been complied with; and
- (c) The Opinion of Counsel described in Section 3.04.

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

SECTION 2.03. *Form of Trustee's Certificate of Authentication.* The following is the form of the Certificate of Authentication of the Trustee to be endorsed on all Debt Securities substantially as follows:

This is one of the Debt Securities of the series designated therein issued under the within-mentioned Indenture.

[•],
as Trustee

By
Authorized Signatory

SECTION 2.04. *Debt Securities in Global Form.* (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 Debt Securities, then the Company shall execute and the Trustee or its agent shall, in accordance with Section 3.04 and the Company Order delivered to the Trustee or its agent thereunder, authenticate and deliver such Global Debt Security or Global Debt 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 Debt Security or Global Debt Securities, or such portion thereof as the Company shall specify in a Company Order, (ii) shall be registered in the name of the Depository for such Global Debt Security or Global Debt Securities or its nominee, (iii) shall be delivered by the Trustee or its agent to the Depository or pursuant to the Depository's instruction or held by the Trustee as custodian for the Depository and (iv) shall bear a legend substantially to the following effect: "Unless this certificate is presented by an authorized representative of the Depository to the Company or its agent for registration of transfer, exchange, or payment, and any certificate issued is registered in the name of the nominee of the Depository or in such other name as is requested by an authorized representative of the Depository (and any payment is made to the nominee of the Depository or to such other entity as is requested by an authorized representative of the Depository), ANY TRANSFER, PLEDGE, OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, the nominee of the Depository, has an interest herein."

(b) Notwithstanding any other provision of this Section 2.04 or of Section 3.06, and subject to the provisions of paragraph (c) below, unless the terms of a Global Debt Security expressly permit such Global Debt Security to be exchanged in whole or in part for individual certificates representing Debt Securities, a Global Debt Security may be transferred, in whole but not in part and in the manner provided in Section 3.06, only to a nominee of the Depository for such Global Debt Security, or to the Depository, or a successor Depository for such Global Debt Security selected or approved by the Company, or to a nominee of such successor Depository.

(c) (1) If at any time the Depository for a Global Debt Security notifies the Company that it is unwilling or unable to continue as Depository for such Global Debt Security or if at any time the Depository for the Global Debt Securities for such series shall no longer be eligible or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation, the Company shall appoint a successor Depository with respect to such Global Debt Security. If a successor Depository for such Global Debt 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 or its agent, upon receipt of a Company Request for the authentication and delivery of certificates representing Debt Securities of such series in exchange for such Global Debt Security, will authenticate and deliver, certificates representing Debt Securities of such series of like tenor and terms in an aggregate principal amount equal to the principal amount of the Global Debt Security in exchange for such Global Debt Security.

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(2) The Company may at any time and in its sole discretion (subject, however, to the procedures of the Depository) determine that the Debt Securities of any series or portion thereof issued or issuable in the form of one or more Global Debt Securities shall no longer be represented by such Global Debt Security or Global Debt Securities. In such event the Company will execute, and the Trustee, upon receipt of a Company Request for the authentication and delivery of certificates representing Debt Securities of such series in exchange in whole or in part for such Global Debt Security, will authenticate and deliver certificates representing Debt Securities of such series of like tenor and terms in definitive form in an aggregate principal amount equal to the principal amount of such Global Debt Security or Global Debt Securities representing such series or portion thereof in exchange for such Global Debt Security or Global Debt Securities.

(3) If an Event of Default with respect to Debt Securities issued or issuable in the form of a Global Debt Security has occurred and is continuing, the Depository for such Global Debt Security may surrender such Global Debt Security in exchange in whole or in part for certificates representing Debt Securities of such series of like tenor and terms in definitive form on such terms as are acceptable to the Company and such Depository. Thereupon the Company shall execute, and the Trustee or its agent shall authenticate and deliver, without a service charge, (A) to each Person specified by the Depository a certificate or certificates representing Debt Securities of the same series of like tenor and terms and of any authorized denomination as requested by such Person in an aggregate principal amount equal to and in exchange for such Person's beneficial interest as specified by the Depository in the Global Debt Security; and (B) to such Depository a new Global Debt 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 Debt Security and the aggregate principal amount of certificates representing Debt Securities delivered to Holders thereof.

(4) In any exchange provided for in any of the preceding three paragraphs, the Company will execute and the Trustee or its agent will authenticate and deliver certificates representing Debt Securities in definitive registered form in authorized denominations for Debt Securities of the same series or any integral multiple thereof. Upon the exchange of the entire principal amount of a Global Debt Security for certificates representing Debt Securities, such Global Debt Security shall be cancelled by the Trustee or its agent. Except as provided in the preceding paragraph, certificates representing Debt Securities issued in exchange for a Global Debt Security pursuant to this Section shall be registered in such names and in such authorized denominations for Debt Securities of that series or any integral multiple thereof, as the Depository shall instruct the Trustee or its agent. The Trustee or the Debt Security Registrar shall deliver at its Corporate Trust Office such certificates representing Debt Securities to the Holders in whose names such Debt Securities are so registered.

ARTICLE 3. THE DEBT SECURITIES.

SECTION 3.01. *Title and Terms.* The aggregate principal amount of Debt Securities which may be authenticated and delivered under this Indenture is unlimited. The Debt Securities may be issued up to the aggregate principal amount of Debt Securities from time to time authorized by or pursuant to a Board Resolution.

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The Debt Securities may be issued in one or more series. All Debt Securities of each series issued under this Indenture shall in all respects be equally and ratably entitled to the benefits hereof with respect to such series without preference, priority or distinction on account of the actual time or times of the authentication and delivery or maturity of the Debt Securities of such series. There shall be established in or pursuant to a Board Resolution, and set forth in an Officers' Certificate to the extent not established in a Board Resolution, or established in one or more indentures supplemental hereto, prior to the issuance of Debt Securities of any series:

- (a) the title of the Debt Securities of the series (which shall distinguish the Debt Securities of the series from all other series of Debt Securities);
- (b) any limit upon the aggregate principal amount of the Debt Securities of the series which may be authenticated and delivered under this Indenture (except for Debt Securities authenticated and delivered upon registration of transfer of, or in exchange for, or in lieu of, other Debt Securities of that series pursuant to this Article Three, the second paragraph of Section 4.03, or Section 11.04);
- (c) the date or dates (or the manner of calculation thereof) on which the principal of the Debt Securities of the series is payable;
- (d) the rate or rates (or the manner of calculation thereof) at which the Debt Securities of the series shall bear interest, if any, the date or dates from which such interest shall accrue, the Interest Payment Dates on which such interest shall be payable and the Regular Record Date for the interest payable on any Interest Payment Date;
- (e) the Place of Payment;
- (f) the period or periods within which, the price or prices at which, the currency or currency units in which, and the terms and conditions upon which Debt Securities of the series may be redeemed, in whole or in part, at the option of the Company;
- (g) the obligation, if any, of the Company to redeem or purchase Debt Securities of the series pursuant to any sinking fund or analogous provisions or at the option of a Holder thereof and the period or periods within which, the price or prices in the currency at which, the currency or currency units in which, and the terms and conditions upon which Debt Securities of the series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;
- (h) the denominations in which the Debt Securities of such series shall be issuable if other than minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof;
- (i) if other than Dollars, the currencies in which payments of interest or principal of (and premium, if any, with respect to) the Debt Securities of the series are to be made;
- (j) if the interest on or principal of (or premium, if any, with respect to) the Debt Securities of the series are to be payable, at the election of the Company or a Holder thereof or otherwise, in a currency other than that in which such Debt Securities are payable, the period or periods within which, and the other terms and conditions upon which, such election may be

made, and the time and manner of determining the exchange rate between the currency in such Debt Securities are denominated or stated to be payable and the currency in which such Debt Securities or any of them are to be so payable;

- (k) whether the amount of payments of interest on or principal of (or premium, if any, with respect to) the Debt Securities of such series may be determined with reference to an index, formula or other method (which index, formula or method may be based, without limitation, on one or more currencies, commodities, equity indices or other indices), and, if so, the terms and conditions upon which and the manner in which such amounts shall be determined and paid or payable;
- (l) the extent to which any Debt Securities will be issuable in permanent global form, the manner in which any payments on a permanent global Debt Security will be made, and the appointment of any Depository relating thereto;
- (m) any deletions from, modifications of or additions to the Events of Default or covenants with respect to the Debt Securities of such series, whether or not such Events of Default or covenants are consistent with the Events of Default or covenants set forth herein;
- (n) if any of the Debt Securities of such series are to be issuable upon the exercise of warrants, this shall be so established as well as the time, manner and place for such Debt Securities to be authenticated and delivered;
- (o) the inapplicability of any of the provisions of Article 13 with respect to any series of Debt Securities;
- (p) the terms of any right to convert the Debt Securities of such series into, or exchange the Debt Securities for, the Company's common stock or other securities or property or cash in lieu of the Company's common stock or other securities or property, or any combination thereof; and
- (q) any other terms of the series (which terms shall not be inconsistent with the provisions of this Indenture).

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

Notwithstanding Section 3.01(b) and unless otherwise expressly provided with respect to a series of Debt Securities, the aggregate principal amount of a series of Debt Securities may be increased and additional Debt Securities of such series may be issued up to the maximum aggregate principal amount authorized with respect to such series as increased.

If any of the terms of the series are established by action taken pursuant to a Board Resolution, a copy of an appropriate record of such action shall be certified by the Secretary or an Assistant Secretary of the Company and delivered to the Trustee at or prior to the delivery of the Officers' Certificate setting forth the terms of the series.

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SECTION 3.02. *Denominations.* The Debt Securities of each series shall be issuable in registered form without coupons in such denominations as shall be specified as contemplated in Section 3.01. In the absence of any specification with respect to the Debt Securities of any series, the Debt Securities of such series shall be issuable in minimum denominations of \$2,000 and any integral multiple of \$1,000 in excess thereof, which may be in Dollars or any Foreign Currency.

SECTION 3.03. *Payment of Principal and Interest.* The principal of, premium, if any, and interest on the Debt Securities shall be payable at the office or agency of the Company designated for that purpose in the Place of Payment, as provided in Section 5.02; provided, however, that interest may be payable at the option of the Company by check mailed to the address of the Person entitled thereto as such address shall appear on the Debt Security Register on the Regular Record Date for such interest payment.

SECTION 3.04. *Execution of Debt Securities.* The Debt Securities shall be executed manually or by facsimile in the name and on behalf of the Company by its Chairman of the Board of Directors, its President, one of its Vice Presidents or its Treasurer and by its Secretary or one of its Assistant Secretaries. Only such Debt Securities as shall bear thereon a certificate of authentication substantially in the form hereinbefore recited, manually executed by the Trustee, shall be entitled to the benefits of this Indenture or be valid or become obligatory for any purpose. Such certificate by the Trustee upon any Debt Security executed by the Company shall be conclusive evidence that the Debt Security so authenticated has been duly authenticated and delivered hereunder and that the Holder is entitled to the benefits of this Indenture.

In case any officer of the Company who shall have executed any of the Debt Securities shall cease to be such officer before the Debt Securities so executed shall have been authenticated and delivered by the Trustee, or disposed of by the Company, such Debt Securities nevertheless shall be valid and binding and may be authenticated and delivered or disposed of as though the Person who executed such Debt Securities had not ceased to be such officer of the Company; and any Debt Securities may be executed on behalf of the Company by such Persons as, at the actual date of the execution of such Debt Security, shall be the proper officers of the Company, although at the date of such Debt Security or of the execution of this Indenture any such Person was not such an officer.

At any time and from time to time after the execution and delivery of this Indenture, the Company may deliver Debt Securities of any series, properly created in accordance with Section 3.01 and executed by the Company, to the Trustee for authentication; and the Trustee shall authenticate and deliver such Debt Securities upon receipt of a Company Order. In the event that any other Person performs the Trustee's duties as Authenticating Agent pursuant to a duly executed agreement, the Company shall notify the Trustee in writing of the issuance of any Debt Securities hereunder, such notice to be delivered in accordance with the provisions of Section 15.03 on the date such Debt Securities are delivered by the Company for authentication to such other Person.

Prior to any such authentication and delivery, the Trustee shall be entitled to receive, and shall be fully protected in relying upon, in addition to the Officers' Certificates relating to the

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issuance of any series of Debt Securities pursuant to Sections 2.02, 3.01 (if required by that Section), and Section 15.05, Opinions of Counsel stating that:

(a) all instruments furnished to the Trustee conform to the requirements of this Indenture and constitute sufficient authority hereunder for the Trustee to authenticate and deliver such Debt Securities;

(b) all laws and requirements with respect to the form and execution by the Company of the supplemental indenture, if any, have been complied with; the execution and delivery of the supplemental indenture, if any, will not violate the terms of this Indenture; the supplemental indenture has been duly qualified under the Trust Indenture Act of 1939; the Company has corporate or company power to execute and deliver any such supplemental indenture and has taken all necessary corporate action for those purposes; and any such supplemental indenture has been executed and delivered and constitutes the legal, valid and binding obligation of the Company enforceable in accordance with its terms (subject, as to enforcement of remedies, to applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect);

(c) the form and terms of such Debt Securities have been established in conformity with the provisions of this Indenture; and

(d) all laws and requirements with respect to the execution and delivery by the Company of such Debt Securities have been complied with; the authentication and delivery of the Debt Securities by the Trustee will not violate the terms of this Indenture; the Company has the corporate or company power to issue such Debt Securities; and such Debt Securities have been duly executed on behalf of the Company and, assuming due authentication and delivery by the Trustee, constitute legal, valid and binding obligations of the Company in accordance with their terms (subject, as to enforcement of remedies, to

applicable bankruptcy, reorganization, insolvency, moratorium or other laws affecting creditors' rights generally from time to time in effect) and are entitled to the benefits of this Indenture, equally and ratably with all other Outstanding Debt Securities, if any, of such series.

The Trustee shall not be required to authenticate such Debt Securities if the issue thereof will 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 or such action would expose the Trustee to personal liability to existing Holders.

Unless otherwise provided in the form of Debt Security for any series, all Debt Securities shall be dated the date of their authentication.

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 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.

SECTION 3.05. *Temporary Debt Securities.* Pending the preparation of definitive Debt Securities of any series, the Company may execute, and upon receipt of the documents

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required by Sections 2.02, 3.01 and 3.04, together with a Company Order, the Trustee shall authenticate and deliver, such temporary Debt Securities which may be printed, lithographed, typewritten, mimeographed or otherwise produced, in any authorized denominations, substantially of the tenor of such definitive Debt Securities in lieu of which they are issued and with such appropriate insertions, omissions, substitutions and other variations as the officers executing such temporary Debt Securities may determine, as evidenced by their execution of such temporary Debt Securities.

If temporary Debt Securities of any series are issued, the Company will cause definitive Debt Securities of such series to be prepared without unreasonable delay. After the preparation of definitive Debt Securities of any series, the temporary Debt Securities of such series shall be exchangeable for definitive Debt Securities of such series, upon surrender of the temporary Debt Securities of such series at any office or agency maintained by the Company for such purposes as provided in Section 5.02, without charge to the Holder. Upon surrender for cancellation of any one or more temporary Debt Securities of any series, the Company shall execute and the Trustee shall authenticate and deliver in exchange therefore a like principal amount of definitive Debt Securities of such series having the same interest rate and Stated Maturity and bearing interest from the same date of any authorized denominations. Until so exchanged the temporary Debt Securities of such series shall in all respects be entitled to the same benefits under this Indenture as definitive Debt Securities of such series.

SECTION 3.06. *Exchange and Registration of Transfer of Debt Securities.* Debt Securities may be exchanged for a like aggregate principal amount of Debt Securities of such series that are of other authorized denominations. Debt Securities to be exchanged shall be surrendered at any office or agency to be maintained for such purpose by the Company, as provided in Section 5.02, and the Company shall execute and the Trustee shall authenticate and deliver in exchange therefore the Debt Security or Debt Securities of authorized denominations which the Debt Security Holder making the exchange shall be entitled to receive. Each agent of the Company appointed pursuant to Section 5.02 as a person authorized to register and register transfer of Debt Securities is sometimes herein referred to as a "Debt Security Registrar."

The Company shall keep, at an office or agency of the Company maintained for such purpose, as provided in Section 5.02, a register for each series of Debt Securities hereunder (the registers of all Debt Security Registrars being herein sometimes 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 and shall register the transfer of Debt Securities as provided in this Article Three. For avoidance of doubt, there shall only be one Debt Security Register for each series of Debt Securities. At all reasonable times, such Debt Security Register shall be open for inspection by the Trustee and any Debt Security Registrar other than the Trustee. Upon due presentment for registration of transfer of any Debt Security at any such office or agency, the Company shall execute and cause to be registered and the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Debt Security or Debt Securities of the same series of authorized denominations for an equal aggregate principal amount. Registration or registration of transfer of any Debt Security by any Debt Security Registrar in the registry books maintained by such Debt Security Registrar, and delivery of such Debt Security, duly authenticated, shall be deemed to complete the registration or registration of

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transfer of such Debt Security. The Trustee is hereby appointed as Debt Security Registrar for each series of Debt Securities.

No Person shall at any time be appointed as or act as a Debt Security Registrar unless such Person is at such time empowered under applicable law to act as such and duly registered to act as such under and to the extent required by applicable law and regulations.

All Debt Securities presented to a Debt Security Registrar for registration of transfer shall be duly endorsed by, or be accompanied by a written instrument or instruments of transfer in form satisfactory to the Company and such Debt Security Registrar duly executed by the registered Holder or such Holder's attorney duly authorized in writing.

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

The Company shall not be required to issue, exchange or register a transfer of (a) any Debt Securities of any series for a period of 15 days next preceding the mailing of a notice of redemption of Debt Securities of such series and ending at the close of business on the day of the mailing of a notice of redemption of Debt Securities of such series so selected for redemption, or (b) any Debt Securities selected, called or being called for redemption except, in the case of any Debt Security to be redeemed in part, the portion thereof not so to be redeemed.

All Debt Securities issued in exchange for or upon registration of transfer 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 for such exchange or registration of transfer.

None of the Trustee, any agent of the Trustee, any paying agent or the Company 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 Debt Security or for maintaining, supervising or reviewing any records relating to such beneficial ownership interests.

SECTION 3.07. *Mutilated, Destroyed, Lost or Stolen Debt Securities.* In case any temporary or definitive Debt Security shall become mutilated or be destroyed, lost or stolen, the Company in its discretion may execute, and upon its request the Trustee shall authenticate and deliver, a new Debt Security, bearing a number, letter or other distinguishing mark not contemporaneously Outstanding, in exchange and substitution for the mutilated Debt Security, or in lieu of and in substitution for the Debt Security so destroyed, lost or stolen. In every case the applicant for a substituted Debt Security shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless, and, in every case of destruction, loss or theft, the applicant shall also furnish to the Company and to the Trustee evidence to their satisfaction of the destruction, loss or theft, of such Debt Security and of the ownership thereof.

In the absence of notice to the Trustee or the Company that such Debt Security has been acquired by a bona fide purchaser, the Trustee shall authenticate any such substituted Debt Security and deliver the same upon any Company Request. Upon the issuance of any substituted

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Debt Security, the Company may require the payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in relation thereto and any other expenses connected therewith. In case any Debt Security which has matured or is about to mature shall become mutilated or be destroyed, lost or stolen, the Company may, instead of issuing a substituted Debt Security, pay or authorize the payment of the same (without surrender thereof except in the case of a mutilated Debt Security) if the applicant for such payment shall furnish to the Company and to the Trustee such security or indemnity as may be required by them to save each of them harmless and, in case of destruction, loss or theft, evidence satisfactory to the Company and to the Trustee of the destruction, loss or theft of such Debt Security and of the ownership thereof.

Every substituted Debt Security issued pursuant to the provisions of this Section 3.07 by virtue of the fact that any Debt Security is destroyed, lost or stolen shall constitute an additional contractual obligation of the Company, whether or not the destroyed, lost or stolen Debt Security shall be found at any time, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Debt Securities duly issued hereunder. All Debt Securities shall be held and owned upon the express condition that the foregoing provisions are exclusive with respect to the replacement or payment of mutilated, destroyed, lost or stolen Debt Securities and shall preclude (to the extent permitted by law) any and all other rights or remedies with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

SECTION 3.08. *Payment of Interest; Interest Rights Preserved.* Interest which is payable, and is punctually paid or duly provided for, on any Interest Payment Date, on any Debt Security, shall unless otherwise provided in such Debt Security be paid to the Person in whose name the Debt Security (or one or more Predecessor Debt Securities) is registered at the close of business on the Regular Record Date for such interest.

Unless otherwise stated in the form of Debt Security of a series, interest on the Debt Securities of any series shall be computed on the basis of a 360 day year comprised of twelve 30 day months.

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

(a) The Company may elect to make payment of any Defaulted Interest to the Persons in whose names any such Debt Securities (or their respective Predecessor Debt Securities) are registered at the close of business on a Special Record Date for the payment of such Defaulted Interest, which shall be fixed in the following manner. The Company shall notify the Trustee in writing of the amount of Defaulted Interest proposed to be paid on each Debt Security and the date of the proposed payment, and at the same time the Company shall deposit with the Trustee an amount of money equal to the aggregate amount proposed to be paid in respect of such Defaulted Interest or shall make arrangements satisfactory to the Trustee for such deposit prior to the date of the proposed payment, such money when deposited to be held in trust

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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 cause notice of the proposed payment of such Defaulted Interest and the Special Record Date therefore to be mailed, first-class postage prepaid, to each Holder of such Debt Securities, at such Holder's address 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 mailed as aforesaid, such Defaulted Interest shall be paid to the Persons in whose names such Debt Securities (or their respective Predecessor Debt Securities) are registered at the close of business on such Special Record Date and shall no longer be payable pursuant to the following Clause (b).

(b) The Company may make payment of any Defaulted Interest in any other lawful manner not inconsistent with the requirements of any securities exchange on which the Debt Securities of that series 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 payment shall be deemed practicable by the Trustee.

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

SECTION 3.09. *Persons Deemed Owners*. The Company, the Trustee and any agent of the Company or the Trustee may treat the Person in whose name any Debt Security is registered as the owner of such Debt Security for the purpose of receiving payment of principal of, premium, if any, and (subject to Section 3.08) interest on, such Debt Security and for all other purposes whatsoever whether or not such Debt Security be overdue, and neither the Company, the Trustee, nor any agent of the Company or the Trustee shall be affected by notice to the contrary.

SECTION 3.10. *Cancellation of Debt Securities Paid, etc.* All Debt Securities surrendered for the purpose of payment, redemption, exchange or registration of transfer or delivered in satisfaction in whole or in part of any sinking fund obligation shall, if surrendered to the Company or any agent of the Trustee or the Company under this Indenture, be delivered to the Trustee and promptly cancelled by it, or, if surrendered to the Trustee, shall be promptly cancelled by it, and no Debt Securities shall be issued in lieu thereof except as expressly permitted by any of the provisions of this Indenture. The Company may at any time deliver to the Trustee for cancellation any Debt Securities previously authenticated and delivered hereunder which the Company may have acquired in any manner whatsoever, and may deliver to the Trustee (or to any other Person for delivery to the Trustee) for cancellation any Debt Securities previously authenticated hereunder which the Company has not issued and sold, and all Debt Securities so delivered shall be promptly cancelled by the Trustee. The Trustee shall dispose of

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cancelled Debt Securities in accordance with its customary procedures unless directed by a Company Order.

SECTION 3.11. *Currency and Manner of Payments*. (a) With respect to Debt Securities denominated in Dollars or a Foreign Currency, the following payment provisions shall apply:

(1) Except as provided in subparagraph (a)(2) or in paragraph (c) of this Section 3.11, payment of principal of and premium, if any, on any Debt Securities will be made at the offices established pursuant to Section 5.02 by delivery of a check in the currency in which the Debt Security is denominated on the payment date against surrender of such Debt Security, and any interest on any Debt Security will be paid at such office by mailing a check in the currency in which the Debt Securities were issued to the Person entitled thereto at the address of such Person appearing on the Debt Security Register.

(2) Payment of the principal of and premium, if any, and interest on such Debt Security may also, subject to applicable laws and regulations and subject to surrender as aforesaid in the case of principal and premium, if any, be made at such other place or places as may be designated by the Company by any appropriate method.

(b) Not later than the fourth Business Day after the Regular Record Date for such Interest Payment Date, the paying agent will deliver to the Company a written notice specifying, in the currency in which each series of the Debt Securities are denominated, the respective aggregate amounts of principal of and premium, if any, and interest on the Debt Securities to be made on such payment date, specifying the amounts so payable in respect of the Debt Securities. The failure of the paying agent to deliver such notice shall not relieve the Company from its obligation to make all payments with respect to any Debt Security when due.

(c) If the Foreign Currency in which any of the Debt Securities are denominated ceases to be used both by the government of the country which issued such currency and for the settlement of transactions by public institutions of or within the international banking community, then with respect to each date for the payment of Foreign Currency occurring after the last date on which the Foreign Currency was so used (the "Conversion Date"), the Dollar shall be the currency of payment for use on each such Interest Payment Date. The Dollar amount to be paid by the Company to the Trustee and by the Trustee or any paying agent to the Holder of such Debt Securities with respect to such payment date shall be the Dollar Equivalent of the Foreign Currency as determined by the Currency Determination Agent in the manner provided in paragraph (d) below.

(d) The "Dollar Equivalent of the Foreign Currency" shall be determined by the Currency Determination Agent by converting the specified Foreign Currency into Dollars at the Market Exchange Rate as of the Conversion Date.

(e) The "Market Exchange Rate" shall mean, for any currency, the highest firm bid quotation for U.S. dollars received by the Currency Determination Agent at approximately 11:00 a.m., New York City time, on the second Business Day preceding the

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applicable payment date (or, if no such rate is quoted on such date, the last date on which such rate was quoted, or under the circumstances described

in the foregoing paragraph (c), on the Conversion Date), from three recognized foreign exchange dealers in the City of New York selected by the Currency Determination Agent and approved by the Company (one of which may be the Currency Determination Agent) for the purchase by the quoting dealer, for settlement on such payment date, of the aggregate amount of such currency payable on such payment in respect of all Notes denominated in such currency.

(f) All decisions and determinations of the Currency Determination Agent regarding the Dollar Equivalent of the Foreign Currency and the Market Exchange Rate shall be in its sole discretion and shall, in the absence of manifest error, be conclusive for all purposes and irrevocably binding upon the Company and all Holders of the Debt Securities. In the event that the Foreign Currency ceases to be used both by the government of the country which issued such currency and for the settlement of transactions by public institutions of or within the international banking community, the Company, after learning thereof, will promptly give notice thereof to the Trustee (and the Trustee will promptly thereafter give notice in the manner provided in Section 15.03 to the Holders) specifying the Conversion Date.

(g) The Trustee shall be fully justified and protected in relying on and acting upon the information so received by it from the Company or the Currency Determination Agent and shall not otherwise have any duty or obligation to determine such information independently.

(h) If the principal of (and premium, if any) and interest on any Debt Securities is payable in a Foreign Currency and such Foreign Currency is not available for payment due to the imposition of exchange controls or other circumstances beyond the control of the Company, then the Company shall be entitled to satisfy its obligations to Holders under this Indenture by making such payment in Dollars on the basis of the Market Exchange Rate for such Foreign Currency on the latest date for which such rate was established on or before the date on which payment is due. Any payment made pursuant to this Section 3.11 in Dollars where the required payment is in a Foreign Currency shall not constitute a default or Event of Default under this Indenture.

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 changes in the “CUSIP” numbers.

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ARTICLE 4. REDEMPTION OF DEBT SECURITIES; SINKING FUNDS.

SECTION 4.01. *Applicability of Article.* The Company may reserve the right to redeem and pay before Stated Maturity all or any part of the Debt Securities of any series, either by optional redemption, sinking fund (mandatory or optional) or otherwise, by provision therefor in the form of Debt Security for such series on such terms as are specified in such form or the Board Resolution or Officers’ Certificate delivered pursuant to Section 3.01 or the indenture supplemental hereto as provided in Section 3.01 with respect to Debt Securities of such series. Redemption of Debt Securities of any series shall be made in accordance with the terms of such Debt Securities and, to the extent that this Article does not conflict with such terms, in accordance with this Article.

SECTION 4.02. *Notice of Redemption; Selection of Debt Securities.* In case the Company shall desire to exercise the right to redeem all, or, as the case may be, any part of a series of Debt Securities pursuant to Section 4.01, the Company shall fix a date for redemption and the Company, or, at the Company’s request, the Trustee in the name of and at the expense of the Company, shall mail a notice of such redemption at least 30 and not more than 60 days prior to the date fixed for redemption to the Holders of Debt Securities so to be redeemed as a whole or in part at their last addresses as the same appear on the Debt Security Register. *provided, however,* that the Company shall have delivered to the Trustee, at least 45 days prior to the Redemption Date (or such shorter period as may be acceptable to the Trustee), an Officers’ Certificate requesting that the Trustee give such notice and setting forth the information to be stated in such notice as provided in the next succeeding paragraph. Such mailing shall be by first class mail; provided, however, that so long as the Debt Securities of such series are represented by one or more Global Debt Securities, such notice shall be given in accordance with the procedures of the Depository therefor. The notice if mailed in the manner herein provided shall be conclusively presumed to have been duly given, whether or not the Holder receives such notice. In any case, failure to give such notice by mail or any defect in the notice to the Holder of any Debt Security designated for redemption as a whole or in part shall not affect the validity of the proceedings for the redemption of any other Debt Security.

Notice of redemption shall be given in the name of the Company and shall specify the date fixed for redemption, the Redemption Price at which Debt Securities of any series are to be redeemed, or if not then ascertainable, the manner of calculation thereof, the place of payment (which shall be at the offices or agencies to be maintained by the Company pursuant to Section 5.02), that payment of the Redemption Price will be made upon presentation and surrender of such Debt Securities, that interest accrued to the date fixed for redemption will be paid as specified in said notice that on and after said date interest thereon or on the portions thereof to be redeemed will cease to accrue, and the Section of this Indenture or the paragraph or section of the Debt Securities pursuant to which Debt Securities will be redeemed. In case less than all Debt Securities of any series are to be redeemed, the notice of redemption shall also identify the particular Debt Securities to be redeemed as a whole or in part and shall state that the redemption is for the sinking fund, if such is the case. In case any Debt Security is to be redeemed in part only, the notice of redemption shall state the portion of the principal amount thereof to be redeemed and shall state that on and after the date fixed for redemption, upon surrender of such

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Debt Security, a new Debt Security or Debt Securities of such series in aggregate principal amount equal to the unredeemed portion thereof will be issued without charge to the Holder.

If Debt Securities of any series are to be redeemed, the Company shall give the Trustee notice, at least 45 days (or such shorter period acceptable to the Trustee) in advance of the date fixed for redemption, as to the aggregate principal amount of Debt Securities to be redeemed and as to the date fixed for redemption. Debt Securities may be redeemed in part in multiples equal to the minimum authorized denomination for Debt Securities of such series or any multiple thereof. Thereupon the Trustee shall select, in such manner as in its sole discretion it shall deem appropriate and fair, the Debt Securities or portions thereof to be redeemed, and shall as promptly as practicable notify the Company of the Debt Securities or portions thereof so selected; provided, however, if the Debt Securities of such series are represented by one or more Global Debt Securities, interests in such Debt Securities shall be selected for redemption by the Depository therefor in accordance with its customary procedures and the Trustee shall have no responsibilities with respect to such selection. For all purposes of this Indenture, unless the context otherwise requires, all provisions relating to the redemption of Debt Securities of any series shall relate, in the case of any Debt Security redeemed or to be redeemed only in part, to the portion of the principal amount of such Debt Security which has been or is 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 or elsewhere in this Indenture, the Company shall furnish the Trustee with an Officers' Certificate evidencing compliance with such restriction or condition.

On or prior to the date fixed for redemption specified in the notice of redemption given as provided in this Section 4.02, the Company will deposit with the Trustee or with the paying agent an amount of money in the currency in which the Debt Securities of such series are payable sufficient to redeem on the date fixed for redemption all the Debt Securities so called for redemption at the appropriate Redemption Price, together with accrued interest to the date fixed for redemption.

The Trustee shall not mail any notice of redemption of any series of Debt Securities during the continuation of any default in payment of interest on any series of Debt Securities when due or of any Event of Default, except that where notice of redemption with respect to any series of Debt Securities shall have been mailed prior to the occurrence of such default or Event of Default, the Trustee shall redeem such Debt Securities provided funds are deposited with it for such purpose.

SECTION 4.03. *Payment of Debt Securities Called for Redemption*. If notice of redemption has been given as herein provided, the Debt Securities or portions of Debt Securities with respect to which such notice has been given shall become due and payable on the date and at the place stated in such notice at the applicable Redemption Price, together with interest accrued to the date fixed for redemption, and on and after said date (unless the Company shall default in the payment of such Debt Securities or portions thereof at the Redemption Price, together with interest accrued to said date) interest on the Debt Securities or portions of Debt Securities so called for redemption shall cease to accrue, and such Debt Securities and portions of Debt Securities shall be deemed not to be Outstanding hereunder and shall not be entitled to

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any benefit under this Indenture except to receive payment of the Redemption Price, together with accrued interest to the date fixed for redemption. On presentation and surrender of such Debt Securities at the place of payment in said notice specified, the said Debt Securities or the specified portions thereof shall be paid and redeemed by the Company at the applicable Redemption Price, together with interest accrued thereon to the date fixed for redemption; provided, however, that any installments of interest becoming due on or prior to the date fixed for redemption shall be payable to the Holders of such Debt Securities, or one or more previous Debt Securities evidencing all or a portion of the same debt as that evidenced by such particular Debt Securities, registered as such on the relevant record dates according to their terms and the provisions of Section 3.08.

Upon presentation and surrender of any Debt Security redeemed in part only, 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 such Holder's attorney duly authorized in writing, the Company shall execute and the Trustee shall authenticate and deliver to the Holder thereof, at the expense of the Company, a new Debt Security or Debt Securities of the same series having the same interest rate and Stated Maturity and bearing interest from the same date, of any authorized denominations as requested by such Holder, in aggregate principal amount equal to the unredeemed portion of the Debt Security so presented and surrendered.

SECTION 4.04. *Exclusion of Certain Debt Securities from Eligibility for Selection for Redemption*. Debt Securities shall be excluded from eligibility for selection for redemption if they are identified by registration and certificate number in a written statement signed by a Responsible Officer of the Company and delivered to the Trustee at least 45 days prior to the last date on which notice of redemption may be given as being owned of record and beneficially by, and not pledged or hypothecated by, either (a) the Company or (b) an entity specifically identified in such written statement as directly or indirectly controlling or controlled by or under direct or indirect common control with the Company.

SECTION 4.05. *Provisions with Respect to any Sinking Funds*. Unless the form or terms of any series of Debt Securities shall provide otherwise, in lieu of making all or any part of any mandatory sinking fund payment with respect to such series of Debt Securities in cash, the Company may at its option (a) deliver to the Trustee for cancellation any Debt Securities of such series theretofore acquired by the Company, or (b) receive credit for any Debt Securities of such series (not previously so credited) acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed pursuant to provisions for an optional redemption or optional sinking fund redemption, then Debt Securities so delivered or credited shall be credited at the applicable sinking fund Redemption Price with respect to the Debt Securities of such series.

On or before the 45th day next preceding each sinking fund Redemption Date, the Company will deliver to the Trustee a certificate signed by the Chief Financial Officer, any Vice President, the Treasurer or any Assistant Treasurer of the Company specifying (i) the portion of the mandatory sinking fund payment to be satisfied by deposit of cash in the currency in which the Debt Securities of such series are payable, by delivery of Debt Securities theretofore purchased or otherwise acquired by the Company (which Debt Securities shall accompany such

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certificate) and by credit for Debt Securities acquired by the Company and theretofore delivered to the Trustee for cancellation or redeemed by the Company pursuant to provisions for optional redemption or optional sinking fund redemption and stating that the credit to be applied has not theretofore been so applied and the basis for such credit and (ii) whether the Company intends to exercise its right, if any, to make an optional sinking fund payment, and, if so, the amount thereof. Such certificate shall also state that no Event of Default has occurred and is continuing. Such certificate shall be irrevocable and upon its delivery the Company shall be obligated to make the payment or payments therein referred to, if any, on or before the next succeeding sinking fund payment date. In case of the failure of the Company on or before the 45th day next preceding each sinking fund Redemption Date to deliver such certificate (or to deliver the Debt Securities specified in this paragraph), the sinking fund payment due on the next succeeding sinking fund payment date shall be paid entirely in cash (in the currency described above) and shall be sufficient to redeem the principal amount of Debt Securities as a mandatory sinking fund payment, without the option to deliver or credit Debt Securities as provided in the first paragraph of this Section 4.05 and without the right to make an optional sinking fund payment as provided herein.

If the sinking fund payment or payments (mandatory or optional) with respect to any series of Debt Securities made in cash (in the currency described above) shall exceed the minimum authorized denomination set forth in an Officers' Certificate pursuant to Section 3.01 or the equivalent in the currency in which the Debt Securities of such series are payable (or a lesser sum if the Company shall so request), unless otherwise provided by the terms of such series of Debt Securities, said cash shall be applied by the Trustee on the sinking fund Redemption Date with respect to Debt Securities of such series at the applicable sinking fund Redemption Price with respect to Debt Securities of such series, together with accrued interest, if any, to the date fixed for redemption, with the effect provided in Section 4.03. The Trustee shall select, in the manner provided in Section 4.02, for redemption on such sinking fund Redemption Date a sufficient principal amount of Debt Securities of such series to utilize said cash and shall thereupon cause notice of redemption of the Debt Securities of such series for the sinking fund to be given in the manner provided in Section 4.02 (and with the effect provided in Section 4.03) for the redemption of Debt Securities in part at the option of the Company. Debt Securities of any series which are identified by registration and certificate number in an Officers' Certificate at least 45 days prior to the sinking fund Redemption Date as being beneficially owned by, and not pledged or hypothecated by, the Company or an entity directly or indirectly controlling or controlled by or under direct or indirect common control with the Company shall be excluded from Debt Securities of such series eligible for selection for redemption. Any sinking fund moneys not so applied or allocated by the Trustee to the redemption of Debt Securities of such series shall be added to the next cash sinking fund payment with respect to Debt Securities of such series received by the Trustee and, together with such payment, shall be applied in accordance with the provisions of this Section 4.05. Any and all sinking fund moneys with respect to Debt Securities of any series held by the Trustee at the maturity of Debt Securities of such series, and not held for the payment or redemption of particular Debt Securities of such series, shall be applied by the Trustee, together with other moneys, if necessary, to be deposited sufficient for the purpose, to the payment of the principal of the Debt Securities of such series at maturity.

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The Trustee shall not convert any currency in which the Debt Securities of such series are payable for the purposes of such sinking fund application unless a Company Request is made, and any such conversion agreed to by the Trustee in response to such request shall be for the account and at the expense of the Company and shall not affect the Company's obligation to pay the Holders in the currency to which such Holder is entitled.

On or before each sinking fund Redemption Date provided with respect to Debt Securities of any series, the Company shall pay to the Trustee in cash in the currency described above a sum equal to all accrued interest, if any, to the date fixed for redemption on Debt Securities to be redeemed on such sinking fund Redemption Date pursuant to this Section 4.05.

ARTICLE 5. PARTICULAR COVENANTS OF THE COMPANY.

SECTION 5.01. *Payment of Principal, Premium and Interest.* The Company will duly and punctually pay or cause to be paid (in the currency in which the Debt Securities of such series are payable) the principal of and premium, if any, and interest on each of the Debt Securities at the place (subject to Section 3.03), at the respective times and in the manner provided in each series of Debt Securities and in this Indenture.

SECTION 5.02. *Offices for Notices and Payments, etc.* (a) So long as the Debt Securities of any series remain Outstanding, the Company will maintain at the Place of Payment, an office or agency where the Debt Securities may be presented for payment, an office or agency where the Debt Securities may be presented for registration of transfer and for exchange as provided in this Indenture, and an office or agency where notices and demands to or upon the Company in respect of the Debt Securities or of this Indenture may be served and shall give the Trustee written notice thereof and any changes in the location thereof. In case the Company shall at any time fail to maintain any such office or agency, or shall fail to give notice to the Trustee of any change in the location thereof, presentation and demand may be made and notice may be served in respect of the Debt Securities or of this Indenture at said office of the Trustee. The Company hereby appoints the Trustee as its agent for all of the foregoing purposes with respect to the Debt Securities of each series.

(b) In addition to the office or agency maintained by the Company pursuant to Section 5.02(a), the Company may from time to time designate one or more other offices or agencies where the Debt Securities may be presented for payment and presented for registration of transfer and for exchange in the manner provided in this Indenture, and the Company may from time to time rescind such designations, as the Company may deem desirable or expedient; *provided, however*, that no such designation or rescission shall in any manner relieve the Company of its obligation to maintain such office and agency at the Place of Payment, for the purposes abovementioned. The Company will give to the Trustee prompt written notice of (i) any such designation or rescission thereof, and (ii) the location of any such office or agency outside the Place of Payment and of any change of location thereof.

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SECTION 5.03. *Appointments to Fill Vacancies in Trustee's Office.* The Company, whenever necessary to avoid or fill a vacancy in the office of Trustee, will appoint, in the manner provided in Section 8.10, a Trustee, so that there shall at all times be a Trustee hereunder.

SECTION 5.04. *Provisions as to Paying Agent.* (a) (1) Whenever the Company shall have one or more paying agents for any series of Debt Securities other than the Trustee, it will, on or before each due date of the principal of (and premium, if any) or interest on any Debt Securities of such series, deposit with a paying agent a sum sufficient to pay such amount becoming due, such sum to be held as provided by the Trust Indenture Act of 1939, and (unless such paying agent is the Trustee) the Company will promptly notify the Trustee of its action or failure so to act.

(2) The Company will cause each paying agent other than the Trustee to execute and deliver to the Trustee an instrument in which such paying agent shall agree with the Trustee, subject to the provisions of this Section, that such paying agent will: (i) comply with the provisions of the Trust Indenture Act of 1939 applicable to it as a paying agent and (ii) during the continuance of any default by the Company (or any other obligor upon any series of Debt Securities) in the making of any payment in respect of the Debt Securities of such series, upon the written request of the Trustee, forthwith pay to the Trustee all sums held in trust by such paying agent as such.

(b) If the Company shall act as its own paying agent, it will, on or prior to each due date of the principal of and premium, if any, or interest on Debt Securities of any series, set aside, segregate and hold in trust for the benefit of the Holders of such Debt Securities a sum sufficient to pay such principal and premium, if any, or interest so becoming due and will notify the Trustee of any failure to take such action and of any failure by the Company (or by any other obligor on such series of Debt Securities) to make any payment of the principal of and premium, if any, or interest on the Debt Securities when the same shall become due and payable.

(c) Anything in this Section 5.04 to the contrary notwithstanding, the Company may, at any time, for the purpose of obtaining a satisfaction and discharge of this Indenture with respect to any or all series of Debt Securities then Outstanding, or for any other reason, pay or cause to be paid to the Trustee all sums held in trust by the Company, or any paying agent hereunder, as required by this Section 5.04, such sums to be held by the Trustee upon the trusts herein contained.

(d) Anything in this Section 5.04 to the contrary notwithstanding, the agreement to hold sums in trust provided in this Section 5.04 is subject to Section 13.04.

SECTION 5.05. *Certificate to Trustee.* So long as the Debt Securities of any series remain Outstanding, the Company will deliver to the Trustee on or before 120 days after the end of each fiscal year an Officers' Certificate stating that such officer has reviewed the covenants of the Indenture with respect to each outstanding series of Debt Securities and, in the course of the performance by the signers of their duties as officers of the Company, they would normally have knowledge of any default by the Company in the performance or fulfillment or observance of any covenants or agreements contained herein during the preceding fiscal year, stating whether

or not they have knowledge of any such default and, if so, specifying each such default of which the signers have knowledge and the nature thereof. The Officers' Certificate need not comply with Section 15.05. One of the signatories to this Officers' Certificate shall be the Company's principal executive officer, principal financial officer or principal accounting officer.

SECTION 5.06. *Waivers of Covenants.* Anything in this Indenture to the contrary notwithstanding, the Company may fail or omit, in respect of any series of Debt Securities, and in any particular instance, to comply with a covenant, agreement or condition contained in Section 5.05 (unless required to be complied with pursuant to Section 314(a)(4) of the Trust Indenture Act of 1939), or with any additional covenant, agreement or condition contained in a Board Resolution or Officers' Certificate establishing such series of Debt Securities, any indenture supplemental hereto applicable to such series or any Debt Security of such series (unless such Board Resolution, Officers' Certificate, or supplemental indenture provides otherwise) if the Company shall have obtained and filed with the Trustee before or after the time for such compliance the consent in writing of the Holders of more than 50% in aggregate principal amount of the Debt Securities of the series affected by such waiver at the time Outstanding, either waiving such compliance in such instance or generally waiving compliance with such covenant or condition, but no such waiver shall extend to or affect any obligation not expressly waived nor impair any right consequent thereon and, until such waiver shall become effective, the obligations of the Company and the duties of the Trustee in respect of any such covenant or condition shall remain in full force and effect.

ARTICLE 6. HOLDERS' LISTS AND REPORTS BY THE COMPANY AND THE TRUSTEE.

SECTION 6.01. *Holder's Lists.* The Company covenants and agrees that it will furnish or cause to be furnished to the Trustee, not more than 15 days after each Regular Record Date with respect to the Debt Securities of any series, and at such other times as the Trustee may request in writing, within 30 days after receipt by the Company of any such request, a list in such form as the Trustee may reasonably require of the names and addresses of the Holders of Debt Securities of such series as of a date not more than 15 days prior to the time such information is furnished; *provided, however,* that no such list with respect to any particular series of Debt Securities need be furnished at any such time if the Trustee is in possession thereof by reason of its acting as the Debt Security Registrar for such series designated under Section 3.06 or otherwise.

SECTION 6.02. *Preservation and Disclosure of Lists.* (a) The Trustee shall preserve, in as current a form as is reasonably practicable, all information as to the names and addresses of the Holders of Debt Securities contained in the most recent list furnished to it as provided in Section 6.01 or

received by the Trustee in the capacity of the Debt Security Registrar (if so acting) under Section 3.06. The Trustee may destroy any list furnished to it as provided in Section 6.01 upon receipt of a new list so furnished.

(b) The rights of Holders to communicate with other Holders with respect to their rights under this Indenture or under the Debt Securities of any series or of all Debt

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Securities, and the corresponding rights and duties of the Trustee, shall be as provided by the Trust Indenture Act of 1939.

(c) 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 any disclosure of information as to names and addresses of Holders made pursuant to the Trust Indenture Act of 1939.

SECTION 6.03. *Reports by the Company.* The Company agrees to file with the Trustee and the Commission, and transmit to Holders, such information, documents and other reports, and such summaries thereof, as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant to such Act; *provided* that any such information, documents or reports required to be filed with the Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, as amended, shall be filed with the Trustee within 15 days after the same is so required to be filed with the Commission; *provided further* that any such information, documents or reports filed with the Commission pursuant to its Electronic Data Gathering, Analysis and Retrieval (or EDGAR) system or any successor thereto shall be deemed to be filed with the Trustee. Delivery of such reports, information and documents to the Trustee is for informational purposes only and the Trustee's receipt of such shall not constitute constructive notice of any information contained therein or determinable from information contained therein, including the Company's compliance with any of its covenants hereunder (as to which the Trustee is entitled to rely exclusively on Officers' Certificates).

SECTION 6.04. *Reports by the Trustee.* (a) The Trustee shall transmit to Holders such reports concerning the Trustee and its actions under this Indenture as may be required pursuant to the Trust Indenture Act of 1939 at the times and in the manner provided pursuant thereto. The interval between transmissions of reports to be transmitted at intervals shall be twelve months or such shorter time required by the Trust Indenture Act of 1939. If the Trust Indenture Act of 1939 does not specify the date on which a report is due, the such report shall be due on July 15 of each year following the first issuance of Debt Securities and shall be as of a date not more than sixty (60) days prior thereto.

(b) A copy of each such report shall, at the time of such transmission to Holders, be filed by the Trustee with each stock exchange upon which Debt Securities of any series are listed, with the Commission and with the Company. The Company will notify the Trustee when the Debt Securities of any series are listed on any stock exchange and of any delisting thereof.

ARTICLE 7. REMEDIES OF THE TRUSTEE AND HOLDERS ON EVENT OF DEFAULT.

SECTION 7.01. *Events of Default.* "Event of Default", with respect to any series of Debt Securities, wherever used herein, means any one of the following events (whatever the reason for such Event of Default and whether it shall be voluntary or involuntary or be effected

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by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body), unless such event is either inapplicable to such series or it is specifically deleted or modified in the Board Resolution, Officers' Certificate or supplemental indenture under which such series of Debt Securities is issued or in the form of Debt Security for such series:

(a) default in the payment of any installment of interest upon any Debt Security of such series as and when the same shall become due and payable, and continuance of such default for a period of 30 days;

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

(c) default in the payment or satisfaction of any sinking fund payment or analogous obligation, if any, with respect to the Debt Securities of such series as and when the same shall become due and payable by the terms of the Debt Securities of such series, and continuance of such default for a period of 30 days;

(d) failure on the part of the Company duly to observe or perform any of the covenants, warranties or agreements on the part of the Company in respect of the Debt Securities of such series in this Indenture (other than a covenant, warranty or agreement a default in whose performance or whose breach is specifically dealt with elsewhere in this Section) continued for a period of 60 days after the date on which written notice of such failure, specifying such failure and requiring the same to be remedied, shall have been given to the Company by the Trustee, by registered mail, or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Debt Securities of such series;

(e) if any event of default as defined in any mortgage, indenture or instrument under which there may be issued, or by which there may be secured or evidenced, any indebtedness of the Company, whether such indebtedness now exists or is hereafter created or incurred, happens and consists of default in the payment of more than \$25,000,000 in principal amount of such indebtedness at the maturity thereof, after giving effect to any applicable grace period, or results in such Indebtedness in principal amount in excess of \$25,000,000 becoming or being declared due and payable prior to the date on which it would otherwise become due and payable, and such default is not cured or such acceleration is not rescinded or annulled within a period of 30 days after the date on which written notice of such failure, specifying such failure and requiring the same to be remedied, shall have been given to the Company by the Trustee, by registered mail, or to the Company and the Trustee by the Holders of at least 25% in aggregate principal amount of the Outstanding Debt Securities of such series;

(f) the failure by the Company within 60 days to pay, bond or otherwise discharge any uninsured judgment or court order for the payment of money in excess of \$25,000,000, which is not stayed on appeal or is not otherwise being appropriately contested in good faith;

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(g) a decree or order by a court having jurisdiction in the premises shall have been entered adjudging the Company a bankrupt or insolvent, or approving as properly filed a petition seeking reorganization of the Company under the Federal bankruptcy laws or any other similar applicable Federal or state law, and such decree or order shall have continued undischarged and unstayed for a period of 60 days; or a decree or order of a court having jurisdiction in the premises for the appointment of a receiver or liquidator or trustee or assignee or other similar official in bankruptcy or insolvency of the Company or of all or substantially all of its property, or for the winding up or liquidation of its affairs, shall have been entered, and such decree or order shall have continued undischarged and unstayed for a period of 60 days;

(h) the Company shall institute proceedings to be adjudicated a voluntary bankrupt, or shall consent to the filing of a bankruptcy proceeding against it, or shall file a petition or answer or consent seeking an arrangement or a reorganization under the Federal bankruptcy laws or any other similar applicable Federal or state law, or shall consent to the filing of any such petition, or shall consent to the appointment of a receiver or liquidator or trustee or assignee or other similar official in bankruptcy or insolvency of it or of all or substantially all of its property, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts generally as they become due; or

(i) any other Event of Default provided in the Board Resolution, Officers' Certificate or the supplemental indenture under which such series of Debt Securities is issued or in the form of Debt Security for such series;

then and in each and every such case, so long as such Event of Default with respect to any series of Debt Securities for which there are Debt Securities Outstanding occurs and is continuing (other than an Event of Default specified in clause (g) or (h) of this Section 7.01) and shall not have been remedied or waived to the extent permitted by the terms of this Indenture, unless the principal of all of the Debt Securities of such series shall have already become due and payable, either the Trustee or the Holders of not less than 25% in aggregate principal amount of the Outstanding Debt Securities of such series, by notice in writing to the Company (and to the Trustee if given by Holders), may declare the principal (or, if the Debt Securities of that series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms of that series) of all the Debt Securities of such series and the interest accrued thereon to be due and payable immediately, and upon any such declaration the same shall become and shall be immediately due and payable, anything in this Indenture or in the Debt Securities of such series contained to the contrary notwithstanding. If an Event of Default specified in clause (g) or (h) of this Section 7.01 occurs and is continuing, then the principal amount of (or, if the Debt Securities of that series are Original Issue Discount Debt Securities, such portion of the principal amount as may be specified in the terms thereof as due and payable upon acceleration) and any accrued and unpaid interest on that series shall immediately become due and payable without any declaration or other act on the part of the Trustee or any Holder. This provision, however, is subject to the condition that if, at any time after the principal of the Debt Securities of such series shall have been so declared due and payable, and before any judgment or decree for the payment of the moneys due shall have been obtained or entered as hereinafter provided, the Company shall pay or shall deposit with the Trustee a sum sufficient to

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pay in the currency in which the Debt Securities of such series are payable all matured installments of interest upon all of the Debt Securities and the principal of and premium, if any, on any and all Debt Securities of such series which shall have become due otherwise than by such declaration (with interest on overdue installments of interest to the extent that payment of such interest is enforceable under applicable law and on such principal and premium, if any, at the rate borne by the Debt Securities of such series or as otherwise provided in the form of Debt Security for such series, to the date of such payment or deposit) and all amounts due to the Trustee under Section 8.06, or provision deemed by the Trustee to be adequate shall have been made therefor, and any and all defaults under this Indenture, other than the nonpayment of principal of and accrued interest on Debt Securities of such series which shall have become due by such declaration, shall have been cured or shall have been waived in accordance with Section 7.07 — then and in every such case the Holders of at least a majority in aggregate principal amount of the Debt Securities of such series then Outstanding, by written notice to the Company and to the Trustee, may rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent default, or shall impair any right consequent thereon.

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

SECTION 7.02. *Payment of Debt Securities Upon Default; Suit Therefor.* The Company covenants that (a) in case default shall be made in the payment of any installment of interest upon any Debt Security of any series as and when the same shall become due and payable, and such default

shall have continued for a period of 30 days, or (b) in case default shall be made in the payment of the principal of and premium, if any, on any Debt Security of any series as and when the same shall have become due and payable, whether at maturity of the Debt Security or upon redemption or by declaration or otherwise or (c) in case default shall be made in the making or satisfaction of any sinking fund payment or analogous obligation with respect to the Debt Securities of any series when the same becomes due by the terms of the Debt Securities of any series, and such default shall have continued for a period of 30 days—then, upon demand of the Trustee, the Company will pay to the Trustee, for the benefit of the Holders of any such series, the whole amount that then shall have become due and payable on any such Debt Securities for principal and premium, if any, or interest, or both, as the case may be, with interest upon the overdue principal and premium, if any, and (to the extent that payment of such interest is enforceable under applicable law) upon the overdue installments of interest at the rate borne by the Debt Securities of such series or as otherwise provided in the form of Debt Security of such series; and, in addition thereto, such further amount as shall be sufficient to cover the costs and expenses of collection, including a reasonable compensation to the Trustee, its agents, attorneys and counsel, and any expenses or liabilities incurred and advances made by the Trustee, except compensation or advances arising, or expenses or liabilities incurred, as a result of the Trustee's gross negligence or bad faith.

Until such demand is made by the Trustee, the Company may pay the principal of and premium, if any, and interest on the Debt Securities of any series to the Persons entitled thereto, whether or not the principal of and premium, if any, and interest on the Debt Securities of such series are overdue.

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

In case there shall be pending proceedings for the bankruptcy or for the reorganization of the Company or any other obligor on the Debt Securities of any series under the Federal bankruptcy laws or any other applicable law, or in case a receiver or trustee shall have been appointed for the property of the Company or such other obligor, or in the case of any other similar judicial proceedings relative to the Company or other obligor upon the Debt Securities of any series, or to the creditors or property of the Company or such other obligor, the Trustee, irrespective of whether the principal of the Debt Securities of such series 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 pursuant to the provisions of this Section 7.02, shall be entitled and empowered by intervention in such proceedings or otherwise, (a) to file and prove a claim or claims for the whole amount of principal and interest owing and unpaid in respect of the Debt Securities of such series, and, in case of any judicial proceedings, to file such proofs of claim and other papers or documents as may be necessary or advisable in order to have the claims of the Trustee and of the Holders of the Debt Securities of such series allowed in such judicial proceedings relative to the Company or any other obligor on such Debt Securities, its or their creditors, or its or their property, (b) unless prohibited by applicable law and regulations, to vote on behalf of the Holders of any Debt Securities of any series in any election of a trustee or a standby trustee in arrangement, reorganization, liquidation or other bankruptcy or insolvency proceedings or person performing similar functions in comparable proceedings, and (c) to collect and receive any moneys or other property payable or deliverable on any such claims, and to distribute the same after the deduction of its charges and expenses; and any receiver, assignee or trustee in bankruptcy or reorganization is hereby authorized by each of the Holders of the Debt Securities of such series to make such payments to the Trustee, and, in the event that the Trustee shall consent to the making of such payments directly to such Holders, to pay to the Trustee such amount as shall be sufficient to cover reasonable compensation to the Trustee, its agents, attorneys and counsel, and all other expenses and liabilities incurred and advances made by the Trustee except compensation or advances arising, or expenses or liabilities incurred, as a result of the Trustee's gross negligence or bad faith.

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 or 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 (except, as aforesaid, for the election of a trustee in bankruptcy or other Person performing similar functions) in any such proceeding.

All rights of action and of asserting claims under this Indenture, or under any of the Debt Securities of any series, may be enforced by the Trustee without the possession of any of such Debt Securities, or the production thereof on any trial or other proceeding relative thereto, and any such suit or proceeding instituted by the Trustee shall be brought in its own name as trustee of an express trust, and any recovery of judgment shall be for the ratable benefit of the Holders of the Debt Securities of such series in respect of which such judgment has been recovered.

In any proceedings brought by the Trustee (and also any proceedings involving the interpretation of any provision of this Indenture to which the Trustee shall be a party), the Trustee shall be held to represent all the Holders of the Debt Securities in respect to which such action was taken, and it shall not be necessary to make any Holders of such Debt Securities parties to any such proceedings.

SECTION 7.03. *Application of Moneys Collected by Trustee.* Any moneys collected by the Trustee pursuant to Section 7.02 and any other money or property distributed in respect of the Company's obligations under this Indenture after an Event of Default shall be applied in the order following, at the date or dates fixed by the Trustee for the distribution of such moneys, upon presentation of the Debt Securities of such series, and stamping thereon the payment, if only partially paid, and upon surrender thereof, if fully paid:

FIRST: To the payment of costs and expenses of collection and reasonable compensation to the Trustee, its agents, attorneys and counsel, and of all other expenses and liabilities incurred, and all advances made, by the Trustee except compensation or advances arising, or expenses or liabilities incurred, as a result of its gross negligence or bad faith, and any other amounts owing the Trustee under Section 8.06;

SECOND: To the payment of the amounts then due and unpaid to the holders of Senior Indebtedness, to the extent required by Article Sixteen;

THIRD: In case the principal of the Debt Securities of such series shall not have become due and be unpaid, to the payment of interest on such Debt Securities, in the order of the maturity of the installments of such interest, with interest (to the extent that such interest has been collected by the Trustee) upon the overdue installments of interest at the rate borne by such Debt Securities, such payments to be made ratable to the Persons entitled thereto;

FOURTH: In case the principal of the Debt Securities of such series shall have become due, by declaration or otherwise, to the payment of the whole amount then owing and unpaid upon such Debt Securities for principal and premium, if any, and interest, with interest on the overdue principal and premium, if any, and (to the extent that such interest has been collected by the Trustee) upon overdue installments of interest at the rate borne by such Debt Securities;

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and in case such moneys shall be insufficient to pay in full the whole amounts so due and unpaid upon such Debt Securities, then, to the payment of such principal and premium, if any, and interest without preference or priority of principal and premium, if any, over interest, or of interest over principal and premium, if any, or of any installment of interest over any other installment of interest, or of any Debt Security of such series over any other such Debt Security, ratably to the aggregate of such principal and premium, if any, and accrued and unpaid interest;

FIFTH: To the payment of any surplus then remaining to the Company, its successors or assigns, or to whomsoever may be lawfully entitled to receive the same.

SECTION 7.04. *Proceedings by Holders.* No Holder of any Debt Security of any series shall have any right by virtue of or by availing of any provision of this Indenture to institute any suit, action or proceeding in equity or at law or in bankruptcy or otherwise upon or under or with respect to this Indenture or for the appointment of a receiver or trustee, or for any other remedy hereunder, unless such Holder previously shall have given to the Trustee written notice of default and of the continuance thereof, as hereinbefore provided, and unless also the Holders of not less than 25% in aggregate principal amount of the Debt Securities of such series then Outstanding shall have made written request upon the Trustee to institute such action, suit or proceeding in its own name as Trustee hereunder and shall have offered to the Trustee such reasonable indemnity as it may require against the costs, expenses and liabilities to be incurred therein or thereby, and the Trustee for 60 days after its receipt of such notice, request and offer of indemnity, shall have neglected or refused to institute any such action, suit or proceeding (and no direction inconsistent with such written request shall have been given to the Trustee pursuant to Section 7.07), it being understood and intended, and being expressly covenanted by the taker and Holder of every Debt Security of every series with every other taker and Holder and the Trustee, that no one or more Holders of Debt Securities 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 Holder of such Debt Securities, or to obtain or seek to obtain priority over or preference to any other such Holder, or to enforce any right under this Indenture, except in the manner herein provided and for the equal, ratable and common benefit of all Holders of Debt Securities.

SECTION 7.05. *Proceedings by Trustee.* In case of an Event of Default hereunder the Trustee may in its discretion proceed to protect and enforce its rights and the rights of the Holders vested in it by this Indenture by such appropriate judicial proceedings as the Trustee shall deem most effectual to protect and enforce any of such rights, either by suit in equity or by action at law or by proceeding in bankruptcy or otherwise, whether for the specific enforcement of any covenant or agreement contained in this Indenture or in aid of the exercise of any power granted in this Indenture, or to enforce any other legal or equitable right vested in the Trustee by this Indenture or by law.

SECTION 7.06. *Remedies Cumulative and Continuing.* All powers and remedies given by this Article Seven to the Trustee or to the Holders shall, to the extent permitted by law, be deemed cumulative and not exclusive of any thereof or of any other powers and remedies available to the Trustee or the Holders, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements contained in this Indenture, and no delay or omission of the Trustee or of any Holder to exercise any right or power accruing upon

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any default occurring and continuing as aforesaid shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein; and, subject to the provisions of Section 7.04, every power and remedy given by this Article Seven or by law to the Trustee or to the Holders may be exercised from time to time, and as often as shall be deemed expedient, by the Trustee or by the Holders.

SECTION 7.07. *Direction of Proceedings and Waiver of Defaults by Majority of Holders.* The Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of any 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 by this Indenture; provided, however, that (subject to the provisions of Section 8.01) the Trustee shall have the right to decline to follow any such direction if the Trustee shall determine upon advice of counsel that the action or proceeding so directed may not lawfully be taken or if the Trustee in good faith by its board of directors or trustees, executive committee, or a trust committee of directors or trustees and/or Responsible Officers shall determine that the action or proceeding so directed would involve the Trustee in personal liability or if the Trustee in good faith shall so determine that the actions or forbearances

specified in or pursuant to such direction would be unduly prejudicial to the interests of Holders of the Debt Securities of all series not joining in the giving of said directions, it being understood that (subject to Section 8.01) the Trustee shall have no duty to ascertain whether or not such actions or forbearances are duly prejudicial to such Holders. The Trustee may take any other action deemed proper by the Trustee not inconsistent with such direction. Subject to Section 7.01, the Holders of a majority in aggregate 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 or Event of Default hereunder and its consequences except a default in the payment of principal of or premium, if any, or interest on such Debt Securities, or a default in the making of any sinking fund payment with respect to such Debt Securities. Upon any such waiver the Company, the Trustee and the Holders of such Debt Securities shall be restored to their former positions and rights hereunder, respectively; but no such waiver shall extend to any subsequent or other default or Event of Default or impair any right consequent thereon. Whenever any default or Event of Default shall have been waived as permitted by this Section 7.07, said default or Event of Default shall for all purposes of the Debt Securities and this Indenture be deemed to have been cured and to be not continuing.

This Section 7.07 shall be in lieu of Sections 316(a)(1)(A) and 316(a)(1)(B) of the Trust Indenture Act of 1939 and such Sections 316(a)(1)(A) and Section 316(a)(1)(B) are hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act of 1939.

SECTION 7.08. *Notice of Defaults.* Within 90 days after the occurrence of any default hereunder with respect to the Debt Securities of any series, the Trustee shall transmit by first-class by mail, postage prepaid, to all Holders of Debt Securities of such series, as their names and addresses appear in the Debt Security Register, notice of such default hereunder known to the Trustee, unless such default shall have been cured or waived; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Debt Security of such series or in the payment of any sinking fund installment with respect to Debt Securities of such series, the Trustee shall be protected in withholding such notice if and so long as the board of directors, the executive committee or a trust committee of

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directors or Responsible Officers of the Trustee in good faith determines that the withholding of such notice is in the interest of the Holders of Debt Securities of such series; and provided, further, that in the case of any default of the character specified in Section 7.01(d) with respect to Debt Securities of such series, 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 with respect to Debt Securities of such series.

SECTION 7.09. *Undertaking to Pay Costs.* In any suit for the enforcement of any right or remedy under this Indenture, or in any suit against the Trustee for any action taken, suffered or omitted by it as Trustee, a court may require any party litigant in such suit to file an undertaking to pay the costs of such suit, and may assess costs against any such party litigant, in the manner and to the extent provided in the Trust Indenture Act of 1939; provided that neither this Section nor the Trust Indenture Act of 1939 shall be deemed to authorize any court to require such an undertaking or to make such an assessment in any suit instituted by the Company or the Trustee, and any provision of the Trust Indenture Act of 1939 to such effect is hereby expressly excluded from this Indenture, as permitted by the Trust Indenture Act of 1939.

SECTION 7.10. *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 rights, which are absolute and unconditional, to receive payment of the principal of, premium, if any, and (subject to Section 3.08) interest on such Debt Security on the respective Stated Maturities expressed in such Debt Security (or in the case of redemption or repayment, on the date for redemption or repayment, as the case may be) and to institute suit for the enforcement of any such payment, and such rights shall not be impaired without the consent of such Holder.

ARTICLE 8. CONCERNING THE TRUSTEE.

SECTION 8.01. *Duties and Responsibilities of Trustee.*

(a) Except during the continuance of an Event of Default, (1) the Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Indenture, and no implied covenants or obligations shall be read into this Indenture against the Trustee and (2) in the absence of bad faith on its part, the Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Trustee and conforming to the requirements of this Indenture, but in the case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Trustee, the Trustee shall be under a duty to examine the certificates and opinions to determine whether or not they conform to the requirements of this Indenture (but need not confirm or investigate the accuracy of mathematical calculations or other facts stated therein).

(b) In case an Event of Default has occurred and is continuing, the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the

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same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

- (1) this Subsection (c) shall not be construed to limit the effect of Subsection (a) of this Section 8.01;
- (2) the Trustee shall not be liable for any error of judgment made in good faith by a Responsible Officer of the Trustee, unless it shall be proved that the Trustee was negligent in ascertaining the pertinent facts;
- (3) the Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Holders of a majority in principal amount of the Outstanding Securities of any series 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 with respect to the Debt Securities of such series; and
- (4) no provision of this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have reasonable grounds for believing that repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it.
- (d) Whether or not therein expressly so provided, every provision of this Indenture relating to the conduct or affecting the liability of or affording protection to the Trustee shall be subject to the provisions of this Section 8.01.

SECTION 8.02. *Reliance on Documents, Opinions, etc.* . Subject to the provisions of Section 8.01,

- (a) the Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, bond, debenture, note or other paper document believed by it to be genuine and to have been signed or presented by the proper party or parties;
- (b) any request, direction, order or demand of the Company mentioned herein shall be sufficiently evidenced by Company Request or Company Order (unless otherwise evidence in respect thereof be herein specifically prescribed); and any resolution of the Board of Directors may be evidenced to the Trustee by a copy thereof certified by the Secretary or an Assistant Secretary of the Company;
- (c) the Trustee may consult with counsel and the advice of such counsel or any Opinion of Counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and reliance thereon;

- (d) the Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Indenture at the request or direction of any of the Holders, pursuant to the provisions of this Indenture, unless such Holders shall have offered to the Trustee security or indemnity reasonably satisfactory to the Trustee against the costs, expenses and liabilities which may be incurred by it in compliance with such request or direction;
- (e) the Trustee shall not be liable for any action taken, suffered or omitted to be taken by it in good faith and believed by it to be authorized or within the discretion or rights or powers conferred upon it by this Indenture;
- (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, consent, order, approval, bond, debenture, note, or other paper or document, unless requested in writing to do so by the Holders of not less than a majority in principal amount of such Debt Securities then Outstanding; *provided, however*, that the reasonable expenses of every such investigation shall be paid by the Company or, if paid by the Trustee, shall be repaid by the Company upon demand; and *provided, further*, that if the payment within a reasonable time to the Trustee of the costs, expenses or liabilities likely to be incurred by it in the making of such investigation is, in the opinion of the Trustee, not reasonably assured to the Trustee by the security afforded to it by the terms of this Indenture, the Trustee may require reasonable indemnity against such expenses or liabilities as a condition to so proceeding;
- (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 liable or responsible for any misconduct, bad faith or negligence on the part of any agent or attorney appointed with due care by it hereunder;
- (h) the Trustee shall not be deemed to have notice or be charged with knowledge of any default or Event of Default unless written notice of such default or Event of Default from the Company or any Holder is received by a Responsible Officer of the Trustee at the Corporate Trust Office of the Trustee, and such notice references the Debt Securities and this Indenture;
- (i) the rights, privileges, protections, immunities and benefits given to the Trustee, including its right to be indemnified, are extended to, and shall be enforceable by, the Trustee in each of its capacities hereunder, and each agent, custodian and other Person employed to act hereunder;
- (j) the permissive rights of the Trustee enumerated herein shall not be construed as duties;
- (k) in no event shall the Trustee be responsible or liable for special, indirect, or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Trustee has been advised of the likelihood of such loss or damage and regardless of the form of action;

(l) the Trustee may request that the Company deliver an Officers' Certificate setting forth the names of individuals and/or titles of officers authorized at such time to take specified actions pursuant to this Indenture, which Officers' Certificate may be signed by any person authorized to sign an Officers' Certificate, including any person specified as so authorized in any such certificate previously delivered and not superseded; and

(m) in no event shall the Trustee be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including, without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Trustee shall use reasonable efforts which are consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

SECTION 8.03. *No Responsibility for Recitals, etc.* The recitals contained herein and in the Debt Securities (except in the Trustee's certificate of authentication) shall be taken as the statements of the Company, and the Trustee assumes no responsibility for the correctness of the same. The Trustee makes no representations as to the validity or sufficiency of this Indenture or of the Debt Securities of any series. The Trustee represents that it is duly authorized to execute and deliver this Indenture. Neither the Trustee nor the Authenticating Agent shall be accountable for the use or application by the Company or any Debt Securities or the proceeds of any Debt Securities authenticated and delivered by the Trustee hereunder.

SECTION 8.04. *Trustee and Agents May Own Debt Securities.* The Trustee, any paying agent, or any agent of the Trustee or the Company under this Indenture, in its individual or any other capacity, may become the owner or pledgee of Debt Securities of any series with the same rights it would have if it were not Trustee or such agent and, subject to Sections 8.08 and 8.13, if operative, may otherwise deal with the Company and receive, collect, hold, and retain collections from the Company with the same rights it would have if it were not the Trustee or such agent.

SECTION 8.05. *Moneys to be Held in Trust.* Subject to the provisions of Section 13.04, all moneys received by the Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated from other funds except to the extent required by law. Neither the Trustee nor any paying agent shall be under any liability for interest on, or to invest, any moneys received by it hereunder except such as it may agree with the Company to pay thereon. So long as no Event of Default with respect to the Debt Securities of any series shall have occurred and be continuing, all interest allowed on any such moneys shall be paid from time to time upon the receipt of a Company Order.

SECTION 8.06. *Compensation and Expenses of Trustee.* The Company covenants and agrees to pay to the Trustee from time to time, and the Trustee shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a trustee of an express trust), and the Company will pay or reimburse the Trustee upon its request for all reasonable expenses, disbursements and advances incurred or

made by the Trustee in accordance with any of the provisions of this Indenture (including the reasonable compensation and the expenses and disbursements of its counsel and all persons not regularly in its employ and any amounts paid by the Trustee to any Authenticating Agent pursuant to Section 8.14) except any such expense, disbursement or advance as may arise from its gross negligence or bad faith. The Company also covenants to indemnify the Trustee for, and to hold it harmless against, any loss, damage, claims, liability or expense incurred without gross negligence or bad faith on the part of the Trustee and arising out of or in connection with this Indenture, including the acceptance or administration of this trust, or the performance of its duties hereunder, including the current payment of all costs and expenses of defending itself against any claim of liability in the premises. The obligations of the Company under this Section 8.06 to compensate and indemnify the Trustee and to pay or reimburse the Trustee for expenses, disbursements and advances shall constitute additional indebtedness hereunder. Such additional indebtedness shall be secured by a lien prior to that of the Debt Securities upon all property and funds held or collected by the Trustee as such, except funds held in trust for the benefit of the Holders of particular Debt Securities. In addition to, but without prejudice to its other rights under this indenture or available to the Trustee under applicable law, when the Trustee incurs expenses or renders services in connection with an Event of Default specified in Section 7.01(g) or Section 7.01(h), 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.

"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.

The provisions of this Section shall survive the termination of this Indenture, the satisfaction and discharge of this Indenture and the resignation or removal of the Trustee.

SECTION 8.07. *Officers' Certificate as Evidence.* Subject to the provisions of Section 8.01, whenever in the administration of the provisions of this Indenture the Trustee shall deem it necessary or desirable that a matter be proved or established prior to taking or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of gross negligence or bad faith on the part of the Trustee, be deemed to be conclusively proved and established by an Officers' Certificate conforming to the requirements of this Indenture delivered to the Trustee, and such Certificate, in the absence of gross negligence or bad faith on the part of the Trustee, shall be full warrant to the Trustee for any action taken or omitted by it under the provisions of this Indenture upon the faith thereof.

SECTION 8.08. *Conflicting Interest of Trustee.* If the Trustee has or shall acquire any conflicting interest within the meaning of the Trust

Indenture Act of 1939, the Trustee shall either eliminate such conflicting interest or resign in the manner provided by, and subject to the provisions of, the Trust Indenture Act of 1939 and this Indenture.

SECTION 8.09. *Eligibility of Trustee.* There shall at all times be a Trustee with respect to each series of Debt Securities hereunder which shall be a Person organized and doing business under the laws of the United States or any state or territory thereof or of the District of Columbia authorized under such laws to exercise trust powers, having a combined capital and

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surplus of at least \$50,000,000, subject to supervision or examination by Federal, state, territorial, or District of Columbia authority and willing to act as Trustee hereunder. If such Person publishes reports of condition at least annually, pursuant to law or to the requirements of the aforesaid supervising or examining authority, then for the purposes of this Section 8.09, the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Trustee with respect to any series of Debt Securities shall cease to be eligible in accordance with the provisions of this Section 8.09, such Trustee shall resign immediately in the manner and with the effect specified in Section 8.10.

SECTION 8.10. *Resignation or Removal of Trustee.* (a) The Trustee may at any time resign with respect to any series of Debt Securities by giving written notice by first class mail of such resignation to the Company and to the Holders of such series of Debt Securities at their addresses as they shall appear on the Debt Security Register. Upon receiving such notice of resignation, the Company shall promptly appoint a successor trustee with respect to such series by written instrument, in duplicate, executed by order of the Board of Directors, one copy of which instrument shall be delivered to the resigning Trustee and one copy to the successor trustee. If no successor trustee with respect to such series shall have been so appointed and have accepted appointment within 45 days after the mailing of such notice of resignation to the Holders, the resigning Trustee may, at the expense of the Company, petition any court of competent jurisdiction for the appointment of a successor trustee, or any Holder of such series of Debt Securities who has been a bona fide Holder of a Debt Security or Debt Securities of such series for at least six months may, subject to the provisions of Section 7.09, on behalf of such Holder and all others similarly situated, petition any such court for the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, appoint such successor trustee.

(b) In case at any time any of the following shall occur—

- (1) the Trustee shall fail to comply with the provisions of Section 8.08 after written request therefor by the Company or by any Holder who has been a bona fide Holder of a Debt Security or Debt Securities of such series for at least six months, unless the Trustee's duty to resign is stayed in accordance with the provisions of Section 310(b) of the Trust Indenture Act of 1939,
- (2) the Trustee shall cease to be eligible in accordance with the provisions of Section 8.09 and shall fail to resign after written request therefor by the Company or by any such Holder of a Debt Security of such series, or
- (3) the Trustee shall become incapable of acting with respect to any series of Debt Securities, 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, the Company may remove the Trustee with respect to such series and appoint a successor trustee for such series by Company Order, one copy of which Company Order shall be delivered to the Trustee so removed and one copy to the successor trustee, or,

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subject to the provisions of Section 7.09, any Holder who has been a bona fide Holder of a Debt Security or Debt Securities of such series for at least six months may, on behalf of such Holder and all others similarly situated, petition any court of competent jurisdiction for the removal of the Trustee and the appointment of a successor trustee with respect to such series. Such court may thereupon, after such notice, if any, as it may deem proper and prescribe, remove such Trustee and appoint such successor trustee.

(c) The Holders of a majority in aggregate principal amount of the Outstanding Debt Securities of any series may at any time remove the Trustee with respect to such series by delivering to the Trustee so removed, to the successor trustee so appointed and to the Company the evidence provided for in Section 9.01 of the action in that regard taken by the Holders, and nominate a successor Trustee which shall be deemed appointed as successor Trustee unless within ten days after such nomination the Company objects thereto, in which case the Trustee so removed or any Holder of a Debt Security or Debt Securities of such series, upon the terms and conditions and otherwise as in subsection (a) of this Section 8.10 provided, may petition any court of competent jurisdiction for an appointment of a successor Trustee with respect to such series.

(d) Any resignation or removal of the Trustee with respect to all or any series of Debt Securities and any appointment of a successor Trustee pursuant to any of the provisions of this Section 8.10 shall become effective upon acceptance of appointment by the successor Trustee as provided in Section 8.11.

SECTION 8.11. *Acceptance by Successor Trustee.* Any successor Trustee appointed as provided in Section 8.10 shall execute, acknowledge and deliver to the Company and to its predecessor Trustee an instrument accepting such appointment hereunder, and thereupon the resignation or removal of the predecessor Trustee shall become effective with respect to all or any series as to which it is resigning as Trustee, and such successor Trustee, without any further act, deed or conveyance, shall become vested with all the rights, powers, duties and obligations of its predecessor hereunder with respect to

all or any such series, with like effect as if originally named as Trustee herein with respect to all or any such series; nevertheless, on the written request of the Company or of the successor Trustee, the Trustee ceasing to act shall, upon payment of any amounts then due it pursuant to the provisions of Section 8.06, execute and deliver an instrument transferring to such successor Trustee all the rights and powers of the Trustee with respect to all or any such series so ceasing to act. Upon request of any such successor Trustee, the Company shall execute any and all instruments in writing for more fully and certainly vesting in and confirming to such successor Trustee all such rights and powers. Any Trustee ceasing to act shall, nevertheless, retain a lien upon all property or funds held or collected by such Trustee with respect to all or any series as to which it is ceasing to act as Trustee, to secure any amounts, including indemnities, then due it pursuant to the provisions of Section 8.06.

No successor Trustee shall accept appointment as provided in this Section 8.11 unless at the time of such acceptance such successor Trustee shall be qualified under the provisions of Section 8.08 and eligible under the provisions of Section 8.09.

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Upon acceptance of appointment by a successor Trustee with respect to all or any series of Debt Securities as provided in this Section 8.11, the Company shall mail notice of the succession of such Trustee hereunder to the Holders of Debt Securities of such series at their addresses as they shall appear on the Debt Security Register. If the Company fails to mail such notice within ten days after acceptance of appointment by the successor Trustee, the successor Trustee shall cause such notice to be mailed at the expense of the Company.

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

SECTION 8.12. *Succession by Merger, etc.* Subject to Sections 8.08 and 8.09, any Person into which the Trustee may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, conversion or consolidation to which the Trustee shall be a party, or any Person succeeding to all or substantially all the corporate trust business of the Trustee, shall be the successor of the Trustee hereunder without the execution or filing of any paper or any further act on the part of any of the parties hereto.

In case at the time any successor to the Trustee by merger, conversion or consolidation shall succeed to the trusts created by this Indenture any of the Debt Securities shall have been authenticated but not delivered, any such successor to the Trustee may adopt the certificate of authentication of any predecessor Trustee, and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any such successor to the Trustee may authenticate such Debt Securities either in the name of the predecessor Trustee or such successor Trustee; and in all such cases such certificate shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of the Trustee shall have.

SECTION 8.13. *Limitation on Rights of Trustee as a Creditor.* If and when the Trustee shall be or become a creditor of the Company (or any other obligor upon the Debt Securities), the Trustee shall be subject to the provisions of the Trust Indenture Act of 1939 regarding the collection of claims against the Company (or any such other obligor).

SECTION 8.14. *Authenticating Agents.* There may be an Authenticating Agent or Authenticating Agents appointed by the Trustee from time to time with power to act on its behalf and subject to its direction in the authentication and delivery of any series of Debt Securities issued upon original issuance, exchange, transfer or redemption thereof as fully to all intents and purposes as though such Authenticating Agent (or Authenticating Agents) had been expressly

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authorized to authenticate and deliver such Debt Securities, and Debt Securities so authenticated shall be entitled to the benefits of this Indenture and shall be valid and obligatory for all purposes as though authenticated by the Trustee hereunder. For all purposes of this Indenture, the authentication and delivery of Debt Securities by any Authenticating Agent pursuant to this Section 8.14 shall be deemed to be the authentication and delivery of such Debt Securities "by the Trustee", and whenever this Indenture provides that "the Trustee shall authenticate and deliver" Debt Securities or that Debt Securities "shall have been authenticated and delivered by the Trustee", such authentication and delivery by any Authenticating Agent shall be deemed to be authentication and delivery by the Trustee. Any such Authenticating Agent shall at all times be a Person organized and doing business under the laws of the United States of America or of any state or territory thereof or the District of Columbia, with a combined capital and surplus of at least \$50,000,000 and authorized under such laws to act as an authenticating agent, duly registered to act as such, if and to the extent required by applicable law and subject to supervision or examination by Federal or state authority. If such Person publishes reports of its condition at least annually pursuant to law or the requirements of such authority, then for the purposes of this Section 8.14 the combined capital and surplus of such Person shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. If at any time an Authenticating Agent shall cease to be eligible in accordance with the provisions of this Section 8.14, or to be duly registered if and to the extent required by applicable law and regulations, it shall resign immediately in the manner and with the effect herein specified in this Section 8.14.

Whenever reference is made in this Indenture to the authentication and delivery of Debt Securities of any series 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 its Authenticating Agent appointed with respect to the Debt Securities of such series and a certificate of authentication executed on behalf of the Trustee by its Authenticating Agent appointed with respect to the Debt Securities of such series.

Any Person into which any Authenticating Agent may be merged or converted or with which it may be consolidated, or any Person resulting from any merger, consolidation or conversion to which any Authenticating Agent shall be a party, or any Person succeeding to the authenticating agency business of any Authenticating Agent, shall be the successor of such Authenticating Agent hereunder, if such successor Person is otherwise eligible under this Section 8.14, without the execution or filing of any paper or any further act on the part of the parties hereto or such Authenticating Agent or such successor Person.

In case at the time such successor to any such agency shall succeed to such agency any of the Debt Securities shall have been authenticated but not delivered, any such successor to such Authenticating Agent may adopt the certificate of authentication of any predecessor Authenticating Agent and deliver such Debt Securities so authenticated; and in case at that time any of the Debt Securities shall not have been authenticated, any successor to any Authenticating Agent may authenticate such Debt Securities either in the name of any predecessor hereunder or in the name of the successor Authenticating Agent; and in all cases such certificate shall have the full force which it is anywhere in the Debt Securities or in this Indenture provided that the certificate of the predecessor Authenticating Agent shall have such force; *provided, however*, that the right to adopt the certificate of authentication of any predecessor Authenticating Agent

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or to authenticate Debt Securities in the name of any predecessor Authenticating Agent shall apply only to its successor or successors by merger, conversion or consolidation.

Any Authenticating Agent may at any time resign as Authenticating Agent with respect to any series of Debt Securities by giving written notice of resignation to the Trustee and to the Company. The Trustee may at any time terminate the agency of any Authenticating Agent with respect to any series of Debt Securities by giving written notice of termination 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 under this Section 8.14, the Trustee may, and shall, upon request of the Company, promptly use its best efforts to appoint a successor Authenticating Agent.

Upon the appointment, at any time after the original issuance of any of the Debt Securities, of any successor, additional or new Authenticating Agent, the Trustee shall give written notice of such appointment to the Company and shall at the expense of the Company mail notice of such appointment to all Holders of Debt Securities of such series as the names and addresses of such Holders appear on the Debt Security Register.

Any successor Authenticating Agent with respect to any series of Debt Securities upon acceptance of its appointment hereunder shall become vested with all the rights, powers and duties of its predecessor hereunder, with like effect as though originally named as an Authenticating Agent herein with respect to such series. No successor Authenticating Agent shall be appointed unless eligible under the provisions of this Section 8.14 and duly registered if and to the extent required under applicable law and regulations.

Any Authenticating Agent by the acceptance of its appointment with respect to any series of Debt Securities shall be deemed to have agreed with the Trustee that: (a) it will perform and carry out the duties of an Authenticating Agent as herein set forth with respect to such series, including the duties to authenticate and deliver Debt Securities when presented to it in connection with exchanges, registrations of transfer or redemptions thereof; (b) it will keep and maintain, and furnish to the Trustee from time to time as requested by the Trustee appropriate records of all transactions carried out by it as Authenticating Agent and will furnish the Trustee such other information and reports as the Trustee may reasonably require; (c) it is eligible for appointment as Authenticating Agent under this Section 8.14 and will notify the Trustee promptly if it shall cease to be so qualified; and (d) it will indemnify the Trustee against any loss, liability or expense incurred by the Trustee and will defend any claim asserted against the Trustee by reason of any acts or failures to act of the Authenticating Agent with respect to such series but it shall have no liability for any action taken by it at the specific written direction of the Trustee.

The Company agrees to pay to each Authenticating Agent from time to time reasonable compensation and expenses for its services, and the Trustee shall have no liability for such payments.

The provisions of Sections 8.02(a), (b), (c), (e) and (f), 8.03, 8.04, 8.06 (insofar as it pertains to indemnification), 3.09, 9.01 and 9.02 shall bind and inure to the benefit of each Authenticating Agent to the same extent that they bind and inure to the benefit of the Trustee.

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If an appointment with respect to one or more series is made pursuant to this Section 8.14, the Debt Securities of such series may have endorsed thereon, in addition to the Trustee's certificate of authentication, an alternate certificate of authentication in the following form:

This is one of the Debt Securities of the series designated therein issued under the within-mentioned Indenture.

[•],
As Trustee

By: _____
as Authenticating Agent

By: _____
Authorized Officer

SECTION 8.15. *Trustee's Application for Instructions from the Company.* Any application by the Trustee for written instructions from the Company may, at the option of the Trustee, set forth in writing any action proposed to be taken or omitted by the Trustee under this Indenture and the date on and/or after which such action shall be taken or such omission shall be effective. The Trustee shall not be liable for any action taken by, or omission of, the Trustee in accordance with a proposal included in such application on or after the date specified in such application (which date shall not be less than three Business Days after the date any officer of the Company actually receives such application, unless any such officer shall have consented in writing to any earlier date) unless prior to taking any such action (or the effective date in the case of an omission), the Trustee shall have received written instructions in response to such application specifying the action to be taken or omitted.

ARTICLE 9. CONCERNING THE HOLDERS.

SECTION 9.01. *Action by Holders.* Whenever in this Indenture it is provided that the Holders of a specified percentage in aggregate principal amount of the Debt Securities of any series may take any action (including the making of any demand or request, the giving of any notice, consent or waiver or the taking of any other action) the fact that at the time of taking any such action the Holders of such specified percentage of such series have joined therein may be evidenced (a) by any instrument or any number of instruments of similar tenor executed by Holders of such series in person or by agent or proxy appointed in writing, or (b) by the record of the Holders of such series voting in favor thereof at any meeting of such Holders duly called and held in accordance with the provisions of Article Ten, or (c) by a combination of such instrument or instruments and any such record of such a meeting of Holders of such series. 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 or so voting at any such meeting.

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SECTION 9.02. *Proof of Execution by Holders.* Subject to the provisions of Sections 8.01, 8.02 and 10.05, proof of the execution of any instrument by a Holder or such Holder's agent or proxy shall be sufficient if made in accordance with such reasonable rules and regulations as may be prescribed by the Trustee or in such manner as shall be satisfactory to the Trustee. The ownership of Debt Securities shall be provided by the Debt Security Register or by a certificate of the Debt Security Registrar with respect to a series of Debt Securities.

The record of any Holders' meeting shall be proved in the manner provided in Section 10.06.

SECTION 9.03. *Company-Owned Debt Securities Disregarded.* In determining whether the Holders of the requisite aggregate principal amount of Debt Securities of any series have given any request, demand, authorization, direction, notice, consent, or waiver under this Indenture, Debt Securities of such series which are owned by the Company or any other obligor upon such Debt Securities or any Affiliate of the Company or such other obligor (except in the case in which the Company or such other obligor or Affiliate owns all Debt Securities Outstanding under the Indenture, or all Outstanding Debt Securities of each such series, as the case may be, without regard to this proviso) shall be disregarded and deemed not to be Outstanding for the purpose of any such determinations; *provided, however*, that for the purposes of determining whether the Trustee shall be protected in relying on any such request, demand, authorization, direction, notice, consent, or waiver only such Debt Securities which a Responsible Officer of the Trustee actually knows are so owned shall be so disregarded. Debt Securities so owned which have been pledged in good faith may be regarded as Outstanding notwithstanding this Section 9.03 if the pledgee shall establish to the satisfaction of the Trustee the right of the pledgee to act with respect to such Debt Securities and that the pledgee is not a Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any such other obligor. Upon request of the Trustee, the Company shall furnish to the Trustee promptly an Officers' Certificate listing and identifying all Debt Securities of a series, if any, known by the Company to be owned or held by or for the account of the Company or any other obligor on such Debt Securities or by any Person directly or indirectly controlling or controlled by or under direct or indirect common control with the Company or any other obligor on such Debt Securities; and, subject to the provisions of Section 8.01, the Trustee shall be entitled to accept such Officers' Certificates as conclusive evidence of the facts therein set forth and of the fact that all such Debt Securities not listed therein are Outstanding for the purpose of any such determination.

SECTION 9.04. *Revocation of Consents; Future Holders Bound.* At any time prior to (but not after) the evidencing to the Trustee, as provided in Section 9.01, of the taking of any action by the Holders of the percentage in aggregate principal amount of the Debt Securities of any series specified in this Indenture in connection with such action, any Holder of a Debt Security which is shown by the evidence to be included in the Debt Securities the Holders of which have consented to or are bound by consents to such action, may, by filing written notice with the Trustee at the Corporate Trust Office and upon proof of holding as provided in Section 9.02, revoke such action so far as concerns such Debt Security. Except as aforesaid any such action taken by the Holder of any Debt Security shall be conclusive and binding upon such Holder and upon all future Holders and owners of such Debt Security and of any Debt Security issued on registration of transfer thereof or in exchange or substitution therefor, irrespective of

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whether or not any notation in regard thereto is made upon any such Debt Security. Any action taken by the Holders of the percentage in aggregate principal amount of the Debt Securities specified in this Indenture in connection with such action shall be conclusively binding upon the Company, the Trustee and the

Holders of all of the Debt Securities affected by such action.

ARTICLE 10. HOLDERS' MEETINGS.

SECTION 10.01. *Purposes of Meetings.* A meeting of Holders of the Debt Securities of all or any series may be called at any time and from time to time pursuant to the provisions of this Article Ten for any of the following purposes:

- (a) to give any notice to the Company or to the Trustee with respect to such series, or to give any directions to the Trustee, or to consent to the waiving of any default hereunder and its consequences, or to take any other action authorized to be taken by Holders pursuant to any of the provisions of Article Seven;
- (b) to remove the Trustee and nominate a successor trustee pursuant to the provisions of Article Eight;
- (c) to consent to the execution of an indenture or indentures supplemental hereto pursuant to the provisions of Section 11.02; or
- (d) to take any other action authorized to be taken by or on behalf of the Holders of any specified aggregate principal amount of the Debt Securities of all or any series, as the case may be, under any other provision of this Indenture or under applicable law.

SECTION 10.02. *Call of Meetings by Trustee.* The Trustee may at any time call a meeting of Holders of Debt Securities of all or any series to take any action specified in Section 10.01, to be held at such time and at such place as the Trustee shall determine. Notice of every meeting of the Holders of Debt Securities of all or any series, setting forth the time and place of such meeting and in general terms the action proposed to be taken at such meeting, shall be mailed by the Trustee to Holders of Debt Securities of each series that may be affected by the action proposed to be taken at such meeting at their addresses as they shall appear on the Debt Security Register. Such notice shall be mailed not less than 20 nor more than 90 days prior to the date fixed for the meeting.

SECTION 10.03. *Call of Meetings by Company or Holders.* In case at any time the Company, pursuant to a resolution by the Board of Directors, or the Holders of at least 10% in aggregate principal amount of the Debt Securities then Outstanding of each series that may be affected by the action proposed to be taken shall have requested the Trustee to call a meeting of such Holders, by written request setting forth in reasonable detail the action proposed to be taken at the meeting, and the Trustee shall not have mailed the notice of such meeting within 20 days after receipt of such request, then the Company or such Holders may determine the time and place for such meeting and may call such meeting to take any action authorized in Section 10.01, by mailing notice thereof as provided in Section 10.02.

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SECTION 10.04. *Qualifications for Voting.* To be entitled to vote at any meeting of Holders of Debt Securities a person shall (a) be a Holder of one or more Debt Securities of a series affected by the action proposed to be taken or (b) be a Person appointed by an instrument in writing as proxy by a Holder of one or more such Debt Securities. The rights of Holders of Debt Securities to have their votes counted shall be subject to the provision in the definition of "Outstanding" in Section 1.01. The only Persons who shall be entitled to be present or to speak at any meeting of Holders of Debt Securities 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 10.05. *Regulations.* 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 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 think fit. Except as otherwise permitted or required by any such regulation, the holding of Debt Securities shall be proved in the manner specified in Section 9.02 and the appointment of any proxy shall be proved in the manner specified in said Section 9.02 or by having the signature of the Person executing the proxy witnessed or guaranteed by any bank, broker or trust company.

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 of Debt Securities as provided in Section 10.03, in which case the Company or the Holders of Debt Securities calling the meeting, as the case may be, shall in like manner appoint a temporary chairman. A permanent chairman and a secretary of the meeting shall be elected by vote of the Holders of a majority in aggregate principal amount of the Debt Securities represented at the meeting and entitled to vote.

Subject to the provisions of Section 9.03, at any meeting each Holder of a Debt Security of a series entitled to vote at such meeting or proxy shall be entitled to one vote for each \$1,000 principal amount of Debt Securities of such series held or represented by such Holder; *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 Debt Securities of such series or proxy therefor. Any meeting of Holders of Debt Securities duly called pursuant to the provisions of Section 10.02 or 10.03 may be adjourned from time to time and the meeting may be held as so adjourned without further notice.

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

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SECTION 10.06. *Voting.* The vote upon any resolution submitted to any meeting of Holders of Debt Securities shall be by written ballots on which shall be subscribed the signatures of the Holders of Debt Securities entitled to vote at such meeting or of their representatives by proxy, and the letter or letters, serial number or numbers or other distinguishing marks of the Debt Securities held or represented by each such Holder. The permanent chairman of the meeting shall appoint two inspectors of votes who shall count all votes cast at the meeting for or against any resolution and who shall make and file with the secretary of the meeting their verified written reports in duplicate of all votes cast at the meeting. A record in duplicate of the proceedings of each meeting of Holders of Debt Securities shall be prepared by the secretary of the meeting and there shall be attached to said record the original reports of the inspectors of votes on any vote by ballot taken thereat and affidavits by one or more persons having knowledge of the facts setting forth a copy of the notice of the meeting and showing that said notice was mailed as provided in Section 10.02. The record shall be signed and verified by the affidavits of the permanent chairman and secretary of the meeting and one of the duplicates shall be delivered to the Company and the other to the Trustee to be preserved by the Trustee, the latter to have attached thereto the ballots voted at the meeting.

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

SECTION 10.07. *No Delay of Rights by Meeting.* Nothing in this Article Ten contained shall be deemed or construed to authorize or permit, by reason of any call of a meeting of Holders of Debt Securities of any or all series or any rights expressly or impliedly conferred hereunder to make such call, any hindrance or delay in the exercise of any right or rights conferred upon or reserved to the Trustee or to the Holders of Debt Securities under any of the provisions of this Indenture or of the Debt Securities.

ARTICLE 11. SUPPLEMENTAL INDENTURES.

SECTION 11.01. *Supplemental Indentures without Consent of Holders.* The Company, when authorized by a Board Resolution, and the Trustee may from time to time and at any time enter into an indenture or indentures supplemental hereto (which shall conform to the provisions of the Trust Indenture Act of 1939 as in force at the date of the execution thereof) for one or more of the following purposes:

- (a) to evidence the succession of another Person to the Company, or successive successions, and the assumption by the successor Person of the covenants, agreements and obligations of the Company pursuant to Articles Five and Twelve hereof;
- (b) to add to the covenants of the Company such further covenants, restrictions, conditions or provisions as the Board of Directors shall consider to be for the protection of the Holders of Debt Securities of any or all series, and to make the occurrence, or the occurrence and continuance, of a default in any of such additional covenants, restrictions, conditions or provisions a default or an Event of Default with respect to such series permitting the enforcement of all or any of the several remedies provided in this Indenture as herein set forth; *provided, however,* that in respect of any

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such additional covenant, restriction or condition, such supplemental indenture may provide for a particular period of grace after default (which period may be shorter or longer than that allowed in the case of other defaults) or may provide for an immediate enforcement upon such default or may limit the remedies available to the Trustee upon such default;

- (c) to cure any ambiguity or to correct or supplement any provision contained herein or in any supplemental indenture which may be defective or inconsistent with any other provision contained herein or in any supplemental indenture or to make any changes hereto that are required by law;
- (d) to convey, transfer, assign, mortgage or pledge any property to or with the Trustee;
- (e) to make such other provisions in regard to matters or questions arising under this Indenture as shall not adversely affect the interests of the Holders of the Debt Securities and to make any change that would provide additional rights or benefits to the Holders of Debt Securities of any or all series or that does not adversely affect the legal rights under this Indenture of any such Holder of Debt Securities;
- (f) to evidence and provide for the acceptance of appointment by another Person as a successor Trustee hereunder with respect to one or more series of Debt Securities 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 Section 8.11;
- (g) to modify, amend or supplement this Indenture in such a manner as to permit the qualification of any indenture supplemental hereto under the Trust Indenture Act of 1939 as then in effect, except that nothing herein contained shall permit or authorize the inclusion in any indenture supplemental hereto of the provisions referred to in Section 316(a)(2) of the Trust Indenture Act of 1939;
- (h) to provide for the issuance under this Indenture of Debt Securities in coupon form (including Debt Securities registrable as to principal only) and to provide for exchangeability of such Debt Securities with Debt Securities of the same series issued hereunder in fully registered form and to make all appropriate changes for such purpose;
- (i) to change or eliminate any of the provisions of this Indenture, *provided, however,* that any such change or elimination shall become effective only when there is no Debt Security Outstanding of any series created prior to the execution of such supplemental indenture which is

entitled to the benefit of such provision; or

(j) to establish the form of the Debt Securities of a series and to provide for the issuance of Debt Securities of a series, as permitted by Section 3.01, and to set forth the terms thereof.

The Trustee is hereby required to join with the Company in the execution of any such supplemental indenture, to make any further appropriate agreements and stipulations which may

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be therein contained and to accept the conveyance, transfer, assignment, mortgage or pledge of any property thereunder, but the Trustee shall not be obligated to enter into any such supplemental indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

Any supplemental indenture authorized by the provisions of this Section 11.01 may be executed by the Company and the Trustee without the consent of the Holders of any of the Debt Securities at the time Outstanding, notwithstanding any of the provisions of Section 11.02.

SECTION 11.02. *Supplemental Indentures with Consent of Holders.* With the consent (evidenced as provided in Section 9.01) of the Holders of greater than 50% in aggregate principal amount of the Outstanding Debt Securities of each series affected by such supplemental indenture (each such series voting as a single and separate 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 from time to time and at any time enter into an indenture or indentures supplemental hereto for the purpose of adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or of any supplemental indenture or of modifying in any manner the rights of the Holders of the Debt Securities of each series under this Indenture; *provided, however*, that no such supplemental indenture shall, without the consent of the Holders of all of the Outstanding Debt Securities of each series affected, (a) change the Stated Maturity of the principal of, or any premium or installment of interest on, any Debt Security of such series or make the principal thereof or interest or premium thereon payable in any coin or currency other than that provided in the Debt Securities of such series; (b) reduce the principal amount of, or the rate, or modify the calculation of such rate, of interest on, or any premium payable upon the redemption of, any Debt Security of such series; (c) reduce the amount of the principal of any Original Issue Discount Debt Security that would be due and payable upon a declaration of acceleration of the maturity thereof or the amount thereof provable in bankruptcy; (d) change the redemption provisions of any Debt Security in a manner adverse to the rights of the Holders thereof or adversely affect the right of repayment at the option of any Holder of any Debt Security of such series; (e) change the coin or currency in which the principal of, any premium or interest on any Debt Security of such series is payable; (f) impair the right to institute suit for the enforcement of any payment on or after the Stated Maturity of any Debt Security of such series or, in the case of redemption, on or after the Redemption Date or, in the case of repayment at the option of any Holder, on or after the repayment date; (g) make any change that adversely affects the right to convert or exchange any Debt Security into or for shares of common stock or preferred stock or other securities, cash or property in accordance with its terms, (h) amend Sections 5.02, 5.03 and 5.04 in any manner that is materially adverse to the rights of Holders of any series of Debt Securities or (i) reduce the percentage of Debt Securities of such series, the Holders of which are required to: (i) consent to any supplemental indenture, (ii) rescind and annul a declaration that the Debt Securities of such series are due and payable as a result of the occurrence of an Event of Default, (iii) waive any past Event of Default and its consequences, or (iv) waive compliance with the provisions of this Indenture or with any additional covenant, agreement or condition contained in a Board Resolution or Officers' Certificate establishing such series of Debt Securities, any indenture supplemental hereto applicable to such series or any Debt Security of such series.

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

A supplemental indenture which changes or eliminates any covenant or other provision of this Indenture which has expressly been included solely for the benefit of one or more particular series of Debt Securities, or which modifies the rights of the Holders of Debt Securities of such series 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.

It shall not be necessary for the consent of the Holders of Debt Securities under this Section 11.02 to approve the particular form of any proposed supplemental indenture, but it shall be sufficient if such consent shall approve the substance thereof.

SECTION 11.03. *Effect of Supplemental Indentures.* Upon the execution of any supplemental indenture pursuant to the provisions of this Article Eleven, this Indenture shall be and be deemed to be modified and amended in accordance therewith and the respective rights, limitation of rights, obligations, duties and immunities under this Indenture of the Trustee, the Company and the Holders of Debt Securities shall thereafter be determined, exercised and enforced hereunder subject in all respects to such modifications and amendments and all the terms and conditions of any such supplemental indenture shall be and be deemed to be part of the terms and conditions of this Indenture for any and all purposes.

SECTION 11.04. *Notation on Debt Securities.* Debt Securities authenticated and delivered after the execution of any supplemental indenture pursuant to the provisions of this Article Eleven may bear a notation in form approved by the Trustee as to any matter provided for in such supplemental indenture. If the Company or the Trustee shall so determine, new Debt Securities of any series so modified as to conform, in the opinion of the Trustee and the Board of Directors, to any modification of this Indenture contained in any such supplemental indenture may be prepared and executed by the Company,

authenticated by the Trustee and delivered in exchange for the Outstanding Debt Securities of such series.

SECTION 11.05. *Evidence of Compliance of Supplemental Indenture to be Furnished Trustee*. The Trustee, subject to the provisions of Sections 8.01 and 8.02, shall receive, and shall be fully protected in relying upon, an Officers' Certificate and an Opinion of Counsel as conclusive evidence that any supplemental indenture executed pursuant hereto complies with the requirements of this Article Eleven and is authorized and permitted by this Indenture.

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ARTICLE 12. CONSOLIDATION, MERGER, SALE AND CONVEYANCE.

SECTION 12.01. *Company May Consolidate, etc., on Certain Terms*. Nothing contained in this Indenture or in any of the Debt Securities shall prevent any consolidation or merger of the Company with or into any other Person (whether or not affiliated with the Company), or successive consolidations or mergers in which the Company or its successor or successors shall be a party or parties, or shall prevent any sale, conveyance or lease of all or substantially all of the property of the Company to any other Person (whether or not affiliated with the Company) authorized to acquire and operate the same; provided, however, and the Company hereby covenants and agrees, that any such consolidation, merger, sale, conveyance or lease shall be upon the condition that (a) immediately after such consolidation, merger, sale, conveyance or lease the Person (whether the Company or such other Person) formed by or surviving any such consolidation or merger, or to which such sale, conveyance or lease shall have been made, shall not be in default in the performance or observance of any of the terms, covenants and conditions of this Indenture to be kept or performed by the Company; (b) the Person (if other than the Company) formed by or surviving any such consolidation or merger or to which such sale, conveyance or lease shall have been made, shall be a Person organized under the laws of the United States of America or any state thereof; and (c) the due and punctual payment of the principal of and premium, if any, and interest on all of the Debt Securities, according to their tenor, and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company, shall be expressly assumed, by supplemental indenture satisfactory in form to the Trustee, executed and delivered to the Trustee by the Person (if other than the Company) formed by such consolidation, or into which the Company shall have been merged, or by the Person which shall have acquired or leased such property.

SECTION 12.02. *Successor Entity to be Substituted*. In case of any such consolidation, merger, sale, conveyance or lease and upon the assumption by the successor Person, by supplemental indenture, executed and delivered to the Trustee and satisfactory in form to the Trustee, of the due and punctual payment of the principal of and premium, if any, and interest on all of the Debt Securities and the due and punctual performance and observance of all of the covenants and conditions of this Indenture to be performed or observed by the Company, such successor Person shall succeed to and be substituted for the Company, with the same effect as if it had been named herein as the party of the first part, and (except in the event of a conveyance by way of lease) the predecessor Person shall be relieved of any further obligation under this Indenture and the Debt Securities.

In case of any such consolidation, merger, sale, conveyance or lease such changes in phraseology and form (but not in substance) may be made in the Debt Securities thereafter to be issued as may be appropriate.

SECTION 12.03. *Opinion of Counsel to Be Given Trustee*. The Trustee, subject to Sections 8.01 and 8.02, shall receive an Opinion of Counsel as conclusive evidence that any such consolidation, merger, sale conveyance or lease and any such assumption complies with the provisions of this Article Twelve and that all conditions precedent herein provided relating to such transactions have been complied with.

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ARTICLE 13. SATISFACTION, DISCHARGE AND DEFEASANCE OF INDENTURE.

SECTION 13.01. *Satisfaction, Discharge and Legal Defeasance of Debt Securities of any Series*. The Company shall be deemed to have paid and discharged the entire indebtedness on all the Debt Securities of a series, the provisions of this Indenture (except as to (x) the rights of Holders of Debt Securities of such series to receive, from the money, in the currency required, and Government Obligations deposited with the Trustee pursuant to Section 13.02(a) or the interest and principal received by the Trustee in respect of such Government Obligations, payment of the principal of (and premium, if any) and any installment of principal of (and premium, if any) or interest on such Debt Securities on the Stated Maturities thereof or upon the Redemption Dates for Debt Securities required to be redeemed pursuant to any mandatory sinking fund or analogous provisions relating to Debt Securities of that series or pursuant to any call for redemption relating to Debt Securities of that series, (y) the Company's rights and obligations with respect to such Debt Securities under Sections 3.06, 3.07, 13.03 and 13.04, 5.01, 5.02, 5.03, 5.04, 8.06, 8.10 and 8.11, and (z) the rights, powers, trusts, duties and immunities of the Trustee with respect to the Debt Securities of such series) as it relates to such Debt Securities shall no longer be in effect, and the Trustee, at the expense of the Company, shall, upon Company Request, execute proper instruments acknowledging the same if:

(a) (1) all Debt Securities of such series therefore authenticated and delivered (other than (A) Debt Securities which have been destroyed, lost or stolen and which have been replaced or paid as provided in Section 3.07 and (B) Debt Securities for whose payment money has theretofore been deposited in trust or segregated and held in trust by the Company and thereafter repaid to the Company or discharged from such trust, as provided in Sections 13.03 and 13.04) have been delivered to the Trustee for cancellation;

(2) the Company has paid or caused to be paid in the currency required all other sums payable under this Indenture in respect of the Debt Securities of such series, including all amounts owing to the Trustee under Section 8.06; and

(3) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel each stating that all conditions precedent herein provided for relating to the satisfaction of the entire indebtedness of all Debt Securities of any such series and the discharge of the Indenture as it relates to such Debt Securities have been complied with; or

(b) (1) all such Debt Securities of such series not theretofore delivered to the Trustee for cancellation (A) have become due and payable, or (B) will become due and payable at their Stated Maturity within one year, or (C) are to be called for redemption within one year under arrangements satisfactory to the Trustee for the giving of notice of redemption by the Trustee in the name, and at the expense of the Company;

(2) the condition described in paragraph (a) of Section 13.02 has been satisfied; and

(3) the conditions described in paragraphs (a)(2) and (a)(3) of this Section 13.01 have been satisfied; or

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(c) (1) the conditions referred to in Section 13.02 and paragraph (a)(2) of this Section 13.01 have been satisfied; and

(2) the Company has delivered to the Trustee an opinion of a nationally-recognized independent tax counsel confirming that the Company shall have received from, or there shall have been published by, the United States Internal Revenue Service a ruling or since the date of this Indenture there has been a change in the applicable Federal income tax law, in either case, to the effect that, and based thereon such opinion of counsel will confirm that, Holders of the Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and the defeasance contemplated by this paragraph (c) of this Section 13.01 and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred.

SECTION 13.02. *Covenant Defeasance of Debt Securities of any Series*. The provisions of this Indenture (except as to (x) the rights of Holders of Debt Securities of any series to receive, from the money, in the currency required, and Government Obligations deposited with the Trustee pursuant to paragraph (a) below or the interest and principal received by the Trustee in respect of such Government Obligations, payment of the principal of (and premium, if any) and any installment of principal of (and premium, if any) or interest on such Debt Securities on the Stated Maturities thereof or upon the Redemption Dates for Debt Securities required to be redeemed pursuant to any mandatory sinking or analogous provisions relating to Debt Securities of that series or pursuant to any call for redemption relating to Debt Securities of that series, (y) the Company's rights and obligations with respect to such Debt Securities under Sections 3.06, 3.07, 13.03, 13.04, Article Seven (other than subsection (d) of Section 7.01, to the extent relating to the covenants defeased hereby), Sections 5.01, 5.02, 5.03, 5.04, 6.01, 8.06, 8.10 and 8.11 and (z) the rights, powers, trusts, duties and immunities of the Trustee with respect to the Debt Securities of such series) as it relates to Debt Securities of any series shall no longer be in effect, and the Trustee, at the expense of the Company shall, upon Company Request, execute proper instruments acknowledging the same if:

(a) the Company has irrevocably (subject to Section 13.04) deposited or caused to be deposited with the Trustee as trust funds in trust and specifically pledged as security for, and dedicated solely to, the benefit of the Holders of Debt Securities of such series (1) Dollars or Foreign Currency, as applicable, in an amount, or (2) Government Obligations which through the payment of interest and principal in respect thereof in accordance with their terms will provide on or before the due date of any payment in respect of such series of Debt Securities funds in an amount, or (3) a combination thereof, sufficient, after payment of all Federal, state and local taxes in respect thereof payable by the Trustee, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, which opinion need only be provided if Government Obligations shall have been deposited, to pay and discharge the principal of (and premium, if any) and each installment of principal (and premium, if any) and interest on the Outstanding Debt Securities of that series to the Stated Maturity of such principal or installment of principal or interest or to the Redemption Dates for Debt Securities required to be redeemed pursuant to any mandatory sinking fund or analogous provisions relating to Debt Securities of that series or pursuant to any call for

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redemption relating to Debt Securities of that series on each day on which such payments are due and payable in accordance with the terms of the Indenture and such Debt Securities;

(b) no Event of Default or event which with notice or lapse of time would become an Event of Default shall have occurred and be continuing on the date of the deposit referred to in paragraph (a) of this Section 13.02 or, insofar as an Event of Default described in paragraph (g) or (h) of Section 7.01 are concerned, at any time during the period ending on the 91st day after the date of such deposit or, if longer, ending on the day following the expiration date of the longest preference period applicable to the Company in respect of the deposit (and this condition will not be deemed satisfied until the expiration of such period; *provided, however*, that should this condition fail to be satisfied on or before such ninety-first day, the Trustee shall promptly, upon satisfactory receipt of evidence of such failure, return such deposit to the Company);

(c) the interest of the Holders in such deposit shall have been duly perfected under the applicable provisions of the Uniform Commercial Code;

(d) such defeasance shall not (A) cause the Trustee to have a conflicting interest as defined in Section 8.08 or for purposes of the Trust Indenture Act of 1939 with respect to any securities of the Company or (B) result in the trust arising from such deposit to constitute, unless it is qualified as, a regulated investment company under the Investment Company Act of 1940, as amended;

(e) such defeasance shall not result in a breach or violation of, or constitute a default under, this Indenture or any other agreement or instrument to which the Company is a party or by which it is bound;

(f) the Company has delivered to the Trustee an opinion of counsel of a nationally-recognized independent tax counsel confirming that the Holders of the Debt Securities of such series will not recognize income, gain or loss for Federal income tax purposes as a result of such deposit and the defeasance contemplated by this Section 13.02 and will be subject to Federal income tax on the same amounts and in the same manner and at the same times as would have been the case if such deposit and defeasance had not occurred; and

(g) the Company has delivered to the Trustee an Officers' Certificate and an Opinion of Counsel, each stating that all conditions precedent herein provided for relating to the defeasance contemplated by this Section have been complied with.

SECTION 13.03. *Application of Trust Funds; Indemnification.* (a) Subject to the provisions of Section 13.04, all money and Government Obligations deposited with the Trustee pursuant to Section 13.01 or 13.02 and all money received by the Trustee in respect of Government Obligations deposited with the Trustee, shall be held in trust and applied by it, in accordance with the provisions of the Debt Securities and this Indenture, to the payment, either directly or through any paying agent (including the Company acting as its own paying agent) as the Trustee may determine, to the Persons entitled thereto, of the principal (and premium, if any) and interest for whose payment such money and Government Obligations have been deposited with or received by the Trustee as contemplated by Section 13.01 or 13.02.

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(b) The Company shall pay and shall indemnify the Trustee against any tax, fee or other charge imposed on or assessed against Government Obligations deposited pursuant to Section 13.01 or 13.02 or the interest and principal received in respect of such obligations, other than any such tax, fee or other charge payable by or on behalf of Holders. The Company shall be entitled to prompt notice of an assessment or the commencement of any proceeding for which indemnification may be sought hereunder and, at its election, to contest such assessment or to participate in, assume the defense of, or settle such proceeding.

(c) The Trustee shall deliver or pay to the Company from time to time upon Company Request any Government Obligations or money held by it as provided in Section 13.01 or 13.02 which, in the opinion of a nationally recognized firm of independent public accountants expressed in a written certification thereof delivered to the Trustee, which opinion need only be provided if Government Obligations shall have been deposited, are then in excess of the amount thereof which then would have been required to be deposited for the purpose for which such obligations or money were deposited or received.

SECTION 13.04. *Return of Unclaimed Moneys.* Any moneys deposited with or paid to the Trustee or any paying agent for payment of the principal of and premium, if any, or interest on Debt Securities and not applied but remaining unclaimed by the Holders of Debt Securities for two years after the date upon which the principal of and premium, if any, or interest on such Debt Securities, as the case may be, shall have become due and payable, shall be repaid to the Company by the Trustee or such paying agent on Company Request; and the Holder of any of the Debt Securities entitled to receive such payment shall thereafter look only to the Company for any payment thereof and all liability of the Trustee or such paying agent with respect to such moneys shall thereupon cease.

SECTION 13.05. *Reinstatement.* If the Trustee is unable to apply any money or Government Obligations in accordance with Sections 13.01 or 13.02 by reason of any legal proceeding or by reason of any order or judgment of any court or governmental authority enjoining, restraining or otherwise prohibiting such application, the Company's obligations under this Indenture and the Debt Securities shall be revived and reinstated as though no deposit had occurred pursuant to Sections 13.01 or 13.02 until such time as the Trustee is permitted to apply all such money or Government Obligations in accordance with Sections 13.01 or 13.02; provided that, if the Company has made any payment of principal of or interest on the Debt Securities because of the reinstatement of its obligations, the Company shall be subrogated to the rights of the Holders of such Debt Securities to receive such payment from the money or Government Obligations held by the Trustee.

ARTICLE 14. IMMUNITY OF INCORPORATORS, STOCKHOLDERS, OFFICERS AND DIRECTORS.

SECTION 14.01. *Indenture and Debt Securities Solely Obligations of the Company.* No recourse under or upon any obligation, covenant or agreement of this Indenture, any supplemental indenture, or of any Debt Security, or for any claim based thereon or otherwise in

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respect thereof, shall be had against any incorporator, organizer, stockholder, member, owner, officer, director, manager or employee, as such, past, present or future, of the Company or any Subsidiary or of any predecessor or successor Person, either directly or through the Company, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise; it being expressly understood that this Indenture and the obligations issued hereunder are solely obligations of the Company, and that no such personal liability whatever shall attach to, or is or shall be incurred by, any incorporator, organizer, stockholder, member, owner, officer, director, manager or employee, as such, of the Company or of any predecessor or successor Person, or any of them, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture, or in any of the Debt Securities or implied thereby; and that any and all such personal liability, either at common law or in equity or by constitution or statute of, and any and all such rights and claims against, every such incorporator, organizer, stockholder, member, owner,

officer, director, manager or employee, as such, because of the creation of the indebtedness hereby authorized, or under or by reason of the obligations, covenants or agreements contained in this Indenture or in any of the Debt Securities or implied thereby, are hereby expressly waived and released as a condition of, and as a consideration for, the execution of this Indenture and the issue of such Debt Securities.

ARTICLE 15.
MISCELLANEOUS PROVISIONS.

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

SECTION 15.02. *Indenture for Sole Benefit of Parties and Holders of Debt Securities.* Nothing in this Indenture or in the Debt Securities, expressed or implied, shall give or be construed to give to any Person, firm or corporation, other than the parties hereto, any agent of the Trustee or the Company under this Indenture and the Holders of the Debt Securities, any legal or equitable right, remedy or claim under or in respect of this Indenture, or under any covenant, condition or provision herein contained; all such covenants, conditions and provisions being, subject to the provisions of Articles Twelve, Fourteen and Sixteen, for the sole benefit of the parties hereto, any agent of the Trustee or the Company under this Indenture and the Holders of the Debt Securities.

SECTION 15.03. *Addresses for Notices, etc.* Any notice or demand which by any provision of this Indenture is required or permitted to be given or served by the Trustee or by the Holders of Debt Securities on the Company may be given or served by being deposited, registered or certified mail postage prepaid, in a post office letter box in the United States addressed (until another address is filed by the Company with the Trustee) to the Company, Bonanza Creek Energy, Inc., 410 17th Street, Suite 1400, Denver, Colorado 80202, Telecopier No.: _____, Attention: _____, with a copy to Bonanza Creek Energy, Inc., 410 17th Street, Suite 1400, Denver, Colorado 80202 Telecopier No.: _____, Attention: General Counsel. Any notice, direction, request or demand by any Holder of a Debt Security or the Company to or upon the Trustee shall be deemed to have been sufficiently given or made, for all purposes, if given or made in writing at the Corporate Trust Office of the

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Trustee, addressed to the attention of its Corporate Trust Department. Any notice, report or other instrument required by any of the provisions of this Indenture to be given by the Trustee to the Holders of Debt Securities of any or all series shall be deemed to have been sufficiently given, for all purposes, when mailed by first class mail.

The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods; provided, however, that (a) the party providing such electronic instructions or directions, subsequent to the transmission thereof, shall provide the originally executed instructions or directions to the Trustee in a timely manner and (b) such originally executed instructions or directions shall be signed by an authorized representative of the party providing such instructions or directions. The Trustee shall not be liable for any losses, costs or expenses arising directly or indirectly from the Trustee's reliance upon and compliance with such instructions or directions notwithstanding such instructions or directions conflict or are inconsistent with a subsequent written instruction or direction or if the subsequent written instruction or direction is never received. The party providing instructions or directions by unsecured e-mail, facsimile transmission or other similar unsecured electronic methods, as aforesaid, agrees to assume all risks arising out of the use of such electronic methods to submit instructions and directions to the Trustee, including without limitation the risk of the Trustee acting on unauthorized instructions, and the risk of interception and misuse by third parties.

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

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

SECTION 15.04. *New York Contract; Waiver of Trial by Jury.* This Indenture and the Debt Securities shall for all purposes be construed in accordance with and governed by the laws of the State of New York. EACH OF THE COMPANY, THE TRUSTEE, AND THE HOLDERS HEREBY IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS INDENTURE, THE DEBT SECURITIES OR THE TRANSACTIONS CONTEMPLATED HEREBY.

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SECTION 15.05. *Evidence of Compliance with Conditions Precedent.* Upon any request to the Trustee to take any action under any of the provisions of this Indenture, the Company shall furnish to the Trustee an Officers' Certificate stating that all conditions precedent, if any (including any covenant, compliance with which constitutes a condition precedent) provided for in this Indenture relating to the proposed action have been complied with and an Opinion of Counsel stating that, in the opinion of such counsel, all such conditions precedent have been complied with, except that in the case of any such application or demand as to which the furnishing of such document is specifically required by any provision of this Indenture relating to such particular

application or demand, no additional certificate or opinion need be furnished.

Each certificate or opinion provided for in this Indenture and delivered to the Trustee with respect to compliance with a condition or covenant provided for in this Indenture shall include (a) a statement that the Person making such certificate or opinion has read such covenant or condition; (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 such Person, he or she 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 or not, in the opinion of such Person, such condition or covenant has been complied with.

SECTION 15.06. *Legal Holidays*. In any case where the date of maturity of interest on or principal of or premium, if any, on any series of Debt Securities or the date fixed for redemption or repayment of any Debt Security or Debt Securities will be a legal holiday or a day on which banking institutions are legally authorized or obligated to close in New York, New York or any other location where a paying agent appointed pursuant to Section 5.02 is located, then payment of such interest on or principal of and premium, if any, on such Debt Securities need not be made by such paying agent on such date but may be made by such paying agent on the next succeeding day that is not a day in such location that is either a legal holiday nor a day on which banking institutions are legally authorized or obligated to close, with the same force and effect as if made on such date of maturity or the date fixed for redemption or repayment and no interest shall accrue for the period from and after such prior date.

SECTION 15.07. *Trust Indenture Act of 1939 to Control*. If any provision hereof limits, qualifies or conflicts with the duties imposed by any of Sections 310 through 317 of the Trust Indenture Act of 1939, by the operation of Section 318(c) thereof, such imposed duties shall control, except as, and to the extent, expressly excluded from this Indenture, as permitted by the Trust Indenture Act of 1939. If any provision of this Indenture modifies or excludes any provision of the Trust Indenture Act of 1939 that may be so modified or excluded, the latter provision shall be deemed to apply to this Indenture as so modified or to be excluded, as the case may be.

SECTION 15.08. *Table of Contents, Headings, etc.* The table of contents and the titles and headings of the articles and sections of this Indenture have been inserted for convenience of reference only, are not to be considered a part hereof, and shall in no way modify or restrict any of the terms or provisions hereof.

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SECTION 15.09. *Determination of Principal Amount*. In determining whether the Holders of the requisite principal amount of Outstanding Debt Securities of any series have given any request, demand, authorization, direction, notice, consent or waiver hereunder, or whether sufficient funds are available for redemption or for any other purpose, (a) the principal amount of an Original Issue 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 7.01, (b) the principal amount of any Debt Securities denominated in a Foreign Currency that shall be deemed to be Outstanding for such purposes shall be determined by converting the Foreign Currency into Dollars at the Market Exchange Rate as of the date of such determination and (c) the principal amount of any Indexed Debt Security that shall be deemed to be Outstanding for such purposes shall be the amount of the principal face amount of such Indexed Debt Security at original issuance, unless otherwise provided in or pursuant to this Indenture.

SECTION 15.10. *Execution in Counterparts*. This Indenture may be executed in any number of counterparts, each of which shall be an original and such counterparts shall together constitute but one and the same instrument. [•] hereby accepts the trusts in this Indenture declared and provided, upon the terms and conditions hereinabove set forth.

ARTICLE 16. SUBORDINATION OF DEBT SECURITIES.

SECTION 16.01. *Debt Securities Subordinated to Senior Indebtedness*. The Company covenants and agrees, and each Holder of Debt Securities, by such Holder's acceptance thereof, likewise covenants and agrees, that the indebtedness represented by the Debt Securities and the payment of any and all amounts payable in respect of each and all of the Debt Securities is hereby expressly subordinated, to the extent and in the manner hereinafter set forth, in right of payment to the prior payment in full of Senior Indebtedness, whether outstanding on the date of this Indenture or thereafter incurred, assumed or guaranteed.

In the event (x) of any distribution of assets of the Company upon any dissolution, winding up, liquidation or reorganization of the Company whether in a bankruptcy, insolvency, reorganization or receivership proceeding or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of the Company or otherwise, except a distribution in connection with a merger or consolidation or a conveyance or transfer of all or substantially all of the properties of the Company which complies with the requirements of Article Twelve, (y) that a default shall have occurred and be continuing with respect to the payment of any amount payable in respect of any Senior Indebtedness, or (z) that the principal of the Debt Securities of any series shall have been declared due and payable pursuant to Section 7.01 and such declaration shall not have been rescinded and annulled as provided in Section 7.01, then:

(a) in a circumstance described in the foregoing clause (x) or (y) the holders of all Senior Indebtedness, and in the circumstance described in the foregoing clause (z) the holders of all Senior Indebtedness outstanding at the time the principal of such Debt Securities (or in the case of Original Issue Discount Debt Securities, such portion of the principal amount) shall have been so declared due and payable, shall first be entitled to receive payment of the full amount

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due thereon, or provision shall be made for such payment in money or money's worth, before the Holders of any of the Debt Securities are entitled to receive any payment in respect of the indebtedness evidenced by the Debt Securities;

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

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

SECTION 16.02. *Subrogation.* Subject to the payment in full of all Senior Indebtedness to which the indebtedness evidenced by the Debt Securities is in the circumstances subordinated as provided in Section 16.01, the Holders of the Debt Securities shall be subrogated to the rights of the holders of such Senior Indebtedness to receive payments or distributions of cash, property or securities of the Company applicable to such Senior Indebtedness until all amounts owing on the Debt Securities shall be paid in full, and, as between the Company, its creditors other than holders of such Senior Indebtedness, and the Holders of the Debt Securities, no such payment or distribution made to the holders of such Senior Indebtedness by virtue of this Article which otherwise would have been made to the Holders of the Debt Securities shall be deemed to be a payment by the Company on account of such Senior Indebtedness, it being

understood that the provisions of this Article are and are intended solely for the purpose of defining the relative rights of the Holders of the Debt Securities, on the one hand, and the holders of Senior Indebtedness.

SECTION 16.03. *Obligation of the Company Unconditional.* Nothing contained in this Article or elsewhere in this Indenture or in the Debt Securities is intended to or shall impair, as between the Company, its creditors other than the holders of Senior Indebtedness, and the Holders of the Debt Securities, the obligation of the Company, which is absolute and unconditional, to pay to the Holders of the Debt Securities the principal of and interest on and any additional amounts owing in respect of the Debt Securities as and when the same shall become due and payable in accordance with their terms, or is intended to or shall affect the relative rights of the Holders of the Debt Securities and creditors of the Company other than the holders of Senior Indebtedness nor shall anything herein or therein prevent the Trustee or the Holder of any Debt Security from exercising all remedies otherwise permitted by applicable law upon default under this Indenture, subject to the rights, if any, under this Article of the holders of Senior Indebtedness in respect of cash, property or securities of the Company received upon the exercise of any such remedy.

Upon any payment or distribution of assets of the Company referred to in this Article, the Trustee and the Holders of the Debt Securities shall be entitled to rely upon any order or decree made by any court of competent jurisdiction in which any such dissolution, winding up, liquidation or reorganization proceeding affecting the affairs of the Company is pending or upon a certificate of the trustee in bankruptcy, receiver, assignee for the benefit of creditors, liquidating trustee or agent or other Person making any payment or distribution, delivered to the Trustee or to the Holders of the Debt Securities, for the purpose of ascertaining the Persons entitled to participate in such payment or distribution, the holders of the Senior Indebtedness and other indebtedness of the Company, the amount thereof or payable thereon, the amount paid or distributed thereon and all other facts pertinent thereto or to this Article. The Trustee shall be entitled to rely on the delivery to it of a written notice by a Person representing himself to be a holder of Senior Indebtedness (or an agent or representative of such holder or a trustee under any indenture under which any instruments evidencing any such Senior Indebtedness may have been issued) to establish that such notice has been given by a holder of such Senior Indebtedness or such agent or representative or trustee on behalf of such holder. In the event that the Trustee determines in good faith that further evidence is required with respect to the right of any Person as a holder of Senior Indebtedness to participate in any payment or distribution pursuant to this Article Sixteen, the Trustee may request such Person to furnish evidence to the reasonable satisfaction of the Trustee as to the amount of Senior Indebtedness held by such Person, the extent to which such Person is entitled to participate in such payment or distribution and any other facts pertinent to the right of such Person under this Article Sixteen, and, if such evidence is not furnished, the Trustee may defer any payment to such Person pending judicial determination as to the right of such Person to receive such payment or distribution.

SECTION 16.04. *Payments on Debt Securities Permitted.* Nothing contained in this Article or elsewhere in this Indenture, or in any of the Debt Securities, shall affect the obligation of the Company to make, or prevent the Company from making, payment of the principal of or interest on or any additional amounts owing in respect of the Debt Securities in accordance with the provisions hereof and thereof, except as otherwise provided in this Article.

SECTION 16.05. *Effectuation of Subordination by Trustee.* Each Holder of Debt Securities, by such Holder’s acceptance thereof, authorizes and directs the Trustee on such Holder’s behalf to take such action as may be necessary or appropriate to effectuate the subordination provided in this Article and appoints the Trustee such Holder’s attorney-in-fact for any and all such purposes.

SECTION 16.06. *Trustee Has No Fiduciary Duty to Holders of Senior Indebtedness; Knowledge of Trustee .* With respect to the holders of Senior Indebtedness, the Trustee undertakes to perform or to observe only such of its covenants and obligations as are specifically set forth in this Indenture, and no implied covenants or obligations with respect to the holders of Senior Indebtedness shall be read into this Indenture against the Trustee. The Trustee shall not be deemed to owe any fiduciary duty to the holders of Senior Indebtedness, and shall not be liable to any such holders if it shall pay over or deliver to the Holders or the Company or any other Person, money or assets to which any holders of Senior Indebtedness shall be entitled by virtue of this Article or otherwise. Notwithstanding the provisions of this Article or any other provisions of this Indenture, the Trustee shall not be charged with knowledge of the existence of any facts which would prohibit the making of any payment of moneys to or by the Trustee in respect of the Debt Securities of any series, or the taking of any other action by the Trustee, unless and until a Responsible Officer of the Trustee shall have received at the Corporate Trust Office of the Trustee written notice thereof from the Company, any Holder of Debt Securities, any paying or conversion agent of the Company or the holder or representative of any class of Senior Indebtedness; and before the receipt of any such written notice, the Trustee shall be entitled in all respects to assume that no such facts exist; *provided* that if the Trustee shall not have received the notice provided for in this Section at least three Business Days prior to the date upon which, by the terms hereof, any money may become payable for any purpose (including the payment of the principal of or interest on, or additional amounts owing in respect of, any Debt Security) then, anything herein contained to the contrary notwithstanding, the Trustee shall have all power and authority to receive such money and to apply the same to the purpose for which such money was received and shall not be affected by any notice to the contrary which may be received by it during or after such three Business Day period. Moneys and Government Obligations held by the Trustee under Article Thirteen shall not be subject to the claims of the holders of Senior Indebtedness.

SECTION 16.07. *Trustee May Hold Senior Indebtedness.* The Trustee in its individual capacity shall be entitled to all the rights set forth in this Article with respect to any Senior Indebtedness at the time held by it, to the same extent as any other holder of Senior Indebtedness, and nothing in the Trust Indenture Act of 1939 or elsewhere in this Indenture shall deprive the Trustee of any of its rights as such holder.

Nothing in this Article shall apply to the claims of, or payments to, the Trustee under or pursuant to Sections 7.03, 8.06 or 13.03(b).

SECTION 16.08. *Rights of Holders of Senior Indebtedness Not Impaired.* No right of any present or future holder of any Senior Indebtedness to enforce the subordination herein shall at any time or in any way be prejudiced or impaired by any act or failure to act on the part of the Company or by any noncompliance by the Company with the terms, provisions and

covenants of this Indenture, regardless of any knowledge thereof any such holder may have or be otherwise charged with.

IN WITNESS WHEREOF, BONANZA CREEK ENERGY, INC. has caused this Indenture to be executed by its _____, and [●] has caused this Indenture to be executed by one of its officers, as of the day and year first written above.

BONANZA CREEK ENERGY, INC.

By _____
Title _____

[●], as Trustee

By _____
Title _____

[QuickLinks](#) -- Click here to rapidly navigate through this document

Exhibit 5.1

MAYER • BROWN

Mayer Brown LLP
700 Louisiana Street
Suite 3400
Houston, Texas 77002-2730

January 14, 2013

Main Tel +1 713 238 3000
Main Fax +1 713 238 4888
www.mayerbrown.com

Bonanza Creek Energy, Inc.
410 17th Street, Suite 1400
Denver, Colorado 80202

Ladies and Gentlemen:

We have acted as counsel for Bonanza Creek Energy, Inc., a Delaware corporation (the "Company"), in connection with the preparation of a Registration Statement on Form S-3 (the "Registration Statement"), to be filed by the Company with the Securities and Exchange Commission (the "SEC") under the Securities Act of 1933, as amended (the "Securities Act"). The Registration Statement relates to, among other things, the issuance and sale from time to time pursuant to Rule 415 of the General Rules and Regulations promulgated under the Securities Act, of the following securities:

(i) shares of the Company's common stock, par value \$0.001 per share, including shares of common stock issuable upon conversion or exercise of other securities described herein to be offered and sold by the Company (the "Primary Shares");

(ii) shares of the Company's common stock to be offered and sold by certain stockholders of the Company (the "Secondary Shares"; and, together with the Primary Common Shares, the "Common Stock");

(iii) shares of preferred stock of the Company, par value \$0.001 per share, including shares of preferred stock issuable upon conversion or exercise of other securities described herein (the "Preferred Stock");

(iv) debt securities of the Company, which may be senior debt securities (the "Senior Debt Securities") or subordinated debt securities (the "Subordinated Debt Securities" and together with the Senior Debt Securities, the "Debt Securities"), including Debt Securities issuable upon conversion or exercise of other securities described herein;

(v) warrants (the "Warrants") to purchase Primary Shares, Preferred Stock or Debt Securities; and

(vi) units (the "Units") comprised of Primary Shares, Preferred Stock, Debt Securities or Warrants in any combination.

The Common Stock, the Preferred Stock, the Debt Securities, the Warrants, and the Units are collectively referred to herein as the "Securities."

Mayer Brown LLP operates in combination with other Mayer Brown entities with offices in Europe and Asia
and is associated with Tauil & Chequer Advogados, a Brazilian law partnership.

Unless otherwise provided in any prospectus supplement forming a part of the Registration Statement relating to a particular series of Debt Securities:

(i) the Senior Debt Securities will be issued under an indenture between the Company and a trustee to be selected by the Company, the form of which is filed as Exhibit 4.4 to the Registration Statement (the "Senior Indenture"); and

(ii) the Subordinated Securities will be issued under the indenture between the Company and a trustee to be selected by the Company, the form of which is filed as Exhibit 4.5 to the Registration Statement (the "Subordinated Indenture" and, together with the Senior Indenture, the "Indentures" and each, individually, an "Indenture").

The Warrants may be issued pursuant to one or more warrant agreements (the terms and conditions of which will be set forth in one or more prospectus supplements relating to the issuance of Warrants) entered into between the Company and a financial institution identified therein as warrant agent, as such warrant agreements may be supplemented from time to time (each such warrant agreement, a "Warrant Agreement").

The Units may be issued pursuant to one or more unit agreements (the terms and conditions of which will be set forth in one or more prospectus supplements relating to the issuance of Units), as such may be supplemented from time to time (each such unit agreement, a "Unit Agreement").

In our capacity as counsel to the Company, we have examined the Registration Statement and the forms of the Indentures. We have also examined originals, or duplicates or conformed copies, of such documents, corporate records, agreements and other instruments, and have made such other investigations, as we have deemed relevant and necessary for purposes of the opinions hereinafter set forth. As to questions of fact material to this opinion letter, we have relied upon certificates or comparable documents of public officials and upon oral or written statements and representations of officers and representatives of the Company.

During the course of such examination and review, and in connection with furnishing the opinions set forth below, we have assumed the accuracy and completeness of all documents and records that we have reviewed, the genuineness of all signatures, the legal capacity of all natural persons, the authenticity of the documents submitted to us as originals and the conformity to authentic original documents of all documents submitted to us as certified, conformed or reproduced copies. We are familiar with the proceedings taken and proposed to be taken by the Company in connection with the authorization and issuance of the Securities, and, for the purposes of this opinion letter, we have assumed that any future, similar or other required proceedings will be timely completed in the manner presently contemplated.

Based upon the foregoing, we are of the opinion that:

(1) With respect to any Primary Shares, when necessary corporate action on the part of the Company has been taken to authorize a particular issuance and sale of Primary Shares (including any issuance of Primary Shares (i) upon the exchange or conversion of any validly issued, fully paid and non-assessable Preferred Stock that are exchangeable or convertible into Primary Shares, (ii) upon the exchange or conversion of any Debt Securities representing valid and legally binding obligations of the Company that are exchangeable or convertible into Primary Shares, or (iii) upon the exercise of any validly issued Warrants to purchase Primary Shares) and upon the issuance and delivery of and payment for such Primary Shares in the manner contemplated by the Registration Statement (and in the case of the issuance of Primary Shares pursuant to clauses (i), (ii) or (iii) above, upon the satisfaction of and compliance with the conditions to such exchange, conversion or exercise), such Primary Shares will be validly issued, fully paid and non-assessable.

(2) With respect to any Preferred Stock, when necessary corporate action on the part of the Company has been taken to authorize a particular issuance and sale of Preferred Stock (including any issuance of shares of a series or class of Preferred Stock (i) upon the exchange or conversion of Debt Securities representing valid and legally binding obligations of the Company that are exchangeable or convertible into Preferred Stock or (ii) upon the exercise of any validly issued Warrants for the purchase of Preferred Stock) and upon the issuance and delivery of and payment for such Preferred Stock in the manner contemplated by the Registration Statement (and in the case of the issuance of Preferred Stock pursuant to clauses (i) and (ii) above, upon the satisfaction of and compliance with the conditions to the exercise, exchange or conversion), such Preferred Stock of such series or class will be validly issued, fully paid and non-assessable.

(3) With respect to any Secondary Shares to be offered by selling stockholders pursuant to the Registration Statement, such Secondary Shares have been duly authorized and validly issued and are fully paid and non-assessable.

(4) With respect to any Debt Securities, when (i) necessary corporate action on the part of the Company has been taken to authorize a particular issuance and sale of Debt Securities, (ii) the applicable Indenture and any required supplemental indenture has been duly authorized, executed and delivered by all parties thereto, (iii) the applicable Indenture and any required supplemental indenture will have become qualified under the Trust Indenture Act of 1939, as amended, (iv) the terms of such Debt Securities and of their issuance and sale have been duly established in conformity with the applicable Indenture and any applicable supplemental indenture so as to not violate any applicable law or the certificate of incorporation or bylaws of the Company, or to not result in a default under or breach of any agreement or instrument binding upon the Company and so as to comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company, (v) such Debt Securities have been duly executed and authenticated and delivered in accordance with the terms and provisions of the applicable Indenture and supplemental indenture and (vi) such Debt Securities have been issued and sold as contemplated by the Registration Statement and the acts, proceedings and documents referred to above, such Debt Securities will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms.

(5) With respect to any Warrants, when (i) necessary corporate action on the part of the Company has been taken to authorize a particular issuance and sale of Warrants, (ii) any applicable Warrant Agreement relating to the Warrants has been duly authorized, executed and delivered by all parties thereto, (iii) the terms of such Warrants and of their issuance and sale have been duly established in conformity with any applicable Warrant Agreement, do not violate any applicable law or the certificate of incorporation or bylaws of the Company, do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the Company and (iv) such Warrants have been duly executed and countersigned in accordance with the applicable Warrant Agreement and issued and sold as contemplated by the Registration Statement, such Warrants will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms;

(6) With respect to any Units, when (i) necessary corporate action on the part of the Company has been taken to authorize a particular issuance and sale of Units, (ii) the applicable Unit Agreement relating to the Units has been duly authorized, executed and delivered by all parties thereto, (iii) the terms of such Units and of their issuance and sale have been duly established in conformity with the applicable Unit Agreement, do not violate any applicable law or the certificate of incorporation and bylaws of the Company, do not result in a default under or breach of any agreement or instrument binding upon the Company and comply with any requirement or restriction imposed by any court or governmental body having jurisdiction over the

Company and (iv) such Units have been duly executed and countersigned in accordance with the applicable Unit Agreement and issued and sold as contemplated by the Registration Statement, such Units will constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms.

Our opinions above are subject to applicable bankruptcy, insolvency (including, without limitation, all laws relating to fraudulent transfer or conveyance), reorganization, moratorium and other similar laws affecting creditors' rights generally and to general principles of equity and public policy (regardless of whether enforcement is sought in a proceeding in equity or at law), including, without limitation, (a) the possible unavailability of specific performance, injunctive relief or any other equitable remedy and (b) concepts of materiality, reasonableness, good faith and fair dealing, and we express no opinion herein with respect to provisions relating to severability or separability. Our opinions above, insofar as they pertain to the choice of law provisions of the instruments referred to in such paragraphs, are rendered solely in reliance upon New York General Obligations Law Section 5-1401, and are expressly conditioned upon the assumption that the legality, validity, binding effect and enforceability of said provisions will be determined by a court of the State of New York or a United States federal court sitting in New York and applying New York choice of law rules, including said Section 5-1401. We express no opinion as to any constitutional limitations upon said Section 5-1401 or their effect, if any, upon any opinion herein expressed.

This opinion is limited to matters governed by the Federal laws of the United States of America, the laws of the State of New York and the General Corporation Law of the State of Delaware (including the applicable provisions of the Delaware Constitution and the reported judicial decisions interpreting the General Corporation Law of the State of Delaware and such applicable provisions of the Delaware Constitution).

The opinions and statements expressed herein are as of the date hereof. We assume no obligation to update or supplement this opinion letter to reflect any facts or circumstances that may hereafter come to our attention or any changes in applicable law which may hereafter occur.

We hereby consent to the filing of this opinion as an exhibit to the Registration Statement and to our reference under the caption "Legal Matters" in the Prospectus. In giving such consent, we do not thereby concede that we are included in the category of persons whose consent is required under Section 7 of the Securities Act or the rules and regulations thereunder.

Very truly yours,

/s/ Mayer Brown LLP

QuickLinks

[Exhibit 5.1](#)

Bonanza Creek Energy, Inc.
Ratio of Earnings to Fixed Charges
Unaudited
(dollars in thousands)

	Nine Months Ended September 30, 2012	Year Ended December 31,				
		2011	2010(1)	2009(2)	2008(2)	2007(2)
Earnings						
Earnings (loss) from continuing operations	\$ 51,113	\$ 27,655	\$ 14,528	\$ (129,783)	\$ 68,754	\$ (40,360)
Interest						
Expense	2,342	4,017	26,920	24,545	18,857	7,432
Income after fixed charges	\$ 53,455	\$ 31,672	\$ 41,448	\$ (105,238)	\$ 87,611	\$ (32,928)
Fixed Charges						
Interest expense	2,342	4,017	26,920	24,545	18,857	7,432
Total fixed charges	2,342	4,017	26,920	24,545	18,857	7,432
Ratio of earnings to fixed charges	22.83	7.88	1.54	(4.29)(3)	4.65	(4.43)(4)

- (1) Based on combined financial information for the 8 day period ended December 31, 2010 for Bonanza Creek Energy, Inc. and the 357 day period ended December 23, 2010 for Bonanza Creek Energy, LLC, a predecessor company.
- (2) Based on financial information for Bonanza Creek Energy, LLC, a predecessor company.
- (3) The coverage deficiency was \$129.8 million.
- (4) The coverage deficiency was \$40.4 million.

QuickLinks

[Exhibit 12.1](#)

[Bonanza Creek Energy, Inc. Ratio of Earnings to Fixed Charges Unaudited \(dollars in thousands\)](#)

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Exhibit 23.1

CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM

We consent to the incorporation by reference in the Registration Statement on Form S-3 of Bonanza Creek Energy, Inc. and Subsidiaries of our report dated March 22, 2012, relating to our audits of the consolidated financial statements of Bonanza Creek Energy, Inc. and its subsidiaries as of December 31, 2011 and 2010, and for the year ended December 31, 2011 and the period from its inception (December 23, 2010) to December 31, 2010, and the Bonanza Creek Energy Company, LLC and subsidiaries (predecessor) consolidated financial statements for the period January 1, 2010 to December 23, 2010 and the year ended December 31, 2009, which appears in the Annual Report on Form 10-K of Bonanza Creek Energy, Inc. and Subsidiaries for the year ended December 31, 2011.

We also consent to the reference to our firm under the caption "Experts" in the Prospectus, which is part of this Registration Statement.

/s/ Hein & Associates LLP

Denver, Colorado

January 14, 2013

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[Exhibit 23.1](#)

[CONSENT OF INDEPENDENT REGISTERED PUBLIC ACCOUNTING FIRM](#)

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Exhibit 23.2

CAWLEY, GILLESPIE & ASSOCIATES, INC.

PETROLEUM CONSULTANTS

302 FORT WORTH CLUB BUILDING
306 WEST SEVENTH STREET
FORT WORTH, TEXAS 76102-4987
(817) 336-2461

CONSENT OF INDEPENDENT PETROLEUM ENGINEERS

We hereby consent to the incorporation by reference in this Registration Statement on Form S-3 of our report on oil and gas reserves of Bonanza Creek Energy, Inc. and its subsidiaries as of January 1, 2012, and to all references to our firm in the Annual Report of Bonanza Creek Energy, Inc. on Form 10-K for the year ended December 31, 2011, which is incorporated by reference in this Registration Statement on Form S-3. We hereby also consent to the use of our name as it appears under the caption "Experts" in this Registration Statement on Form S-3.

Yours truly,

CAWLEY, GILLESPIE & ASSOCIATES

/s/ J. ZANE MEEKINS, P.E.

J. Zane Meekins, P.E.

Executive Vice President

Fort Worth, Texas

January 11, 2013

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[Exhibit 23.2](#)

[CONSENT OF INDEPENDENT PETROLEUM ENGINEERS](#)